Rutto v Kiprono & another (Suing as the administrators of the Estate of Daniel Chemweno Kosgei) (Civil Appeal 8 of 2023) [2024] KEHC 15073 (KLR) (29 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15073 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ITEN

CIVIL APPEAL 8 OF 2023

JRA WANANDA, J

NOVEMBER 29, 2024

BETWEEN

VINCENT KIBIWOTT RUTTO ..... APPELLANT

AND

LINAH JEPKORIR KIPRONO & VICTOR KIPROTICH KOSGEI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF DANIEL CHEMENO KOSGEI) ..... RESPONDENT

(FORMERLY ELDORET HIGH COURT CIVIL APPEAL NO. 061 OF 2022)

JUDGMENT

1. This Appeal is against the quantum of damages awarded in Iten Principal Magistrates Civil Case No. 2 of 2020 as compensation for the death of a 62 years old male that occurred as a result of a fatal road accident. In the trial Court, the Appellant was the Defendant while the Respondents were the Plaintiffs. The Appellant now seeks reduction of the amount of compensation awarded claiming that the same was manifestly excessive.

2. The suit was instituted vide the Plaint filed on 22/01/2022 through Messrs Mwakio, Kirwa & Co. Advocates. Suing as the legal representatives of the deceased, the Respondents pleaded that the Appellant was the owner or driver of the motor vehicle registration number KBG 035L, (hereinafter referred to as "the matatu"), that on 28/01/2019, the driver of the Appellant's said matatu in which the deceased was travelling as a fare paying passenger so negligently drove or managed the matatu causing it to swerve and overturn at an area of the road with a sharp bend occasioning a self-involving accident which resulted into fatal injuries to the deceased and consequently, loss and damage to the estate of the deceased and dependents. 2 widows and 14 children (all adults), were then listed as the deceased's dependents. It was pleaded further that at the time of his death, the deceased was in perfect health and was working at Kerio Valley Development Authority as a carpenter earning a monthly income of Kshs

34,714/- which he was using to maintain his said dependents. The Respondents then sought general damages, special damages, costs of the suit and interest.

3. The Appellant, through Messrs Kimondo Gachoka & Co. Advocates filed a defence whereof the allegations of negligence were denied. Blame for the injuries and death were also attributed to the deceased for, among others, failing to take precautions when travelling.

4. It was then agreed that a separate suit, namely, Iten PMCC No. 5 of 2020, arising from the same accident as the one the subject hereof, do serve as a test suit on the issue of liability. Upon such test suit being determined and liability found at 100% against the Appellant, the same was adopted and the suit then proceeded to formal proof for purposes of assessment of damages. The Respondent called 1 witness while the Appellant did not call any.

Respondent's evidence before the trial Court

5. PW1 was the 1st Respondent herein, Linah Jepkorir Kiprono. She adopted her Witness Statement and produced exhibits contained in his bundle of documents. Under cross-examination by Mr. Amihanda, Counsel for the Appellant, she stated that the deceased was her husband, that her last born was 22 years old, and that the deceased was a carpenter and also a businessman. She stated that she did not know how much was raised in the harambee (fundraiser) to cater for funeral expenses. She stated that some of the children are working but stated that she did not know their net income. In cross-examination, she stated that the deceased used to earn Kshs 34,714/- as per the pay-slip that she produced.

6. By its Judgment delivered on 20/04/2022, the Court assessed and awarded damages to the Respondents as follows:

Pain & suffering	Kshs 50,000.00
Loss of expectation of life	Kshs 70,000.00
Loss of dependency	Kshs 1,388,560.00
Special damages	Kshs 159,000.00
Total	Kshs 1,667,560.00

7. The award for "loss of dependency" at Kshs 1,388,560/- (computed as Kshs 34,417/- for 12 months x 5 years x 2/3) was based on the following parameters:

Multiplicand (monthly earning)	Earning years (multiplier)	Dependency ratio
34,714/-	5	2/3

8. Dissatisfied with the Judgement, the Appellant filed this Appeal on 25/04/2022. The Memorandum of Appeal contains the following 9 grounds:

    i. That the learned trial magistrate erred in law and in fact by proceeding on wrong principles when assessing the damages payable to the Respondent for loss of dependency under The *Fatal Accidents Act*.

ii. That the learned trial magistrate erred in law and in fact in applying the wrong principles in law and/or misapprehending the evidence on record while assessing the damages payable to the Respondent.

iii. That the learned trial magistrate erred in law and in fact using the multiplier approach in awarding damages for loss of dependency under the *Fatal Accidents Act* instead of applying the global award approach in view of the evidence on record and/or adduced during trial.

iv. That the learned trial magistrate erred in law and in fact by awarding Kshs 1,667,560/= as general damages which award is inordinately high in the circumstances thus representing an entirely erroneous estimate of an award of general damages vis-a-vis the Respondent's claim and thus the award constituted a miscarriage of justice.

v. That in the alternative and without prejudice to the foregoing if at all applying the multiplier approach was proper, the learned trial magistrate erred in law and in fact by adopting a multiplicand of Kshs 34,714/= which was the deceased's gross pay as opposed to a multiplicand of Kshs 6,952.45 which was the deceased's net pay in accordance with the pay slip adduced in evidence.

vi. That the learned trial magistrate erred in law and in fact by applying a multiplier of 5 years without any lawful justification.

vii. That the learned trial magistrate erred in law and in fact by failing to consider the Appellant's written Submissions on quantum more specifically on the issue of loss of dependency thereby arriving at a determination on quantum which is wholly erroneous

viii. That the learned trial magistrate erred in law and in fact by applying the multiplier approach in awarding damages for loss of dependency in view of the evidence on record as the deceased had surpassed the retirement age of 60 years as at the time the accident occurred.

ix. That the learned trial magistrate erred in law and in fact by awarding Kshs 159,000/- as special damages whereas the receipts adduced in evidence lacked revenue stamps in contravention with the provisions of the *Stamp Duty Act*.

Hearing of the Appeal

9. It was then agreed that the Appeal would be canvassed by way of written Submissions. Pursuant thereto, the Respondents filed their Submissions on 10/06/2024. For the Appellant however, up to the time of concluding this Judgment, I had not come across any Submissions filed by him or on his behalf.

Respondents' Submissions

10. Regarding "pain and suffering", Counsel for the Respondents submitted that damages awardable under this head usually depends on the span of time it took for the deceased to succumb to his injuries and that in this case, the deceased died on the spot. For this reason, he submitted that the award of Kshs 50,000/- was proper and should be maintained.

11. On "loss of expectation of life", he submitted that from the evidence, the deceased was 62 years of age, enjoyed good health, lived a happy and vigorous life, and that that he was a carpenter working at Kerio Valley Development Authority earning a monthly salary of Kshs 34,714/- as evidenced by the payslips provided. He supported the award of Kshs 70,000/- under this head.

12. Regarding "loss of dependency", Counsel submitted that the deceased had 14 children, some adults and others underage but all of school going age as evidenced by the copies of the birth certificates, letters from schools and letter from the Chief produced. He supported the dependency ratio of 2/3 adopted by the trial Court. He then submitted that the Court should take judicial notice of the retirement age for public servants which, according to him, is now a minimum of 65 years and urged further that the nature of the work done by the deceased (carpentry) would have been undertaken well beyond such 65 years of age up to and beyond 70 years. He also referred to the copies of the financial statements alleged to be in respect to the deceased's milk production and selling business and added that the deceased had high prospects of continuing with the business besides employment and would have undertaken the same well beyond the minimum age of retirement. He then urged that while under normal circumstances, the "global sum" approach may be adopted for persons of the calibre of the deceased, a "multiplier" approach would be most ideal in the circumstances of this case. He therefore suggested that this Court adopts a multiplier of 8 years and in the end, proposed an award under this head of "loss of dependency" made up as follows:

    (Kshs 34,714/- for 12 months) x 8 years x 2/3 = Kshs 2,406,837/-

13. On "special damages", which as aforesaid, the trial Court awarded at Kshs 159,000/-, Counsel urged this Court to award the entire figure of Kshs 517,530/- that was pleaded in the Plaint and which, according to him, was proved by way of receipts.

Determination

14. This being a first appeal, the Court is enjoined to analyze and re-assess the evidence afresh and reach its own conclusions but always bearing in mind that it neither saw nor heard the witnesses testify (see Selle v Associated Motor Boat Co. [1968] EA 123 and Kiruga v Kiruga & Another [1988] KLR 348).

15. Further, this being an appeal only on quantum, this Court is aware of the limits of its jurisdiction in interfering with the assessment of damages made by the trial Court as was restated by the Court of Appeal in the case of Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.M. Lubia and Olive Lubia [1985] as follows:

> " The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

16. Before I proceed further, I observe that while the trial Court adopted a multiplier at 4 years, Counsel for the Respondents, in his Submissions, appears to be seeking an enhancement thereof to 8 years. Similarly, while the trial Court awarded special damages at Kshs 159,000, Counsel appears to be seeking an enhancement thereof to Kshs 517,530. My simple answer to why this Court cannot entertain that line of Submissions is that the Respondents not having filed any cross-Appeal of their own, and this Appellate Court having not therefore been moved to determine the issue of enhancement of damages, the Appellant has not had an opportunity to respond thereto. The only Appeal before this Court is the one seeking reduction of the quantum and that is all I will deal with herein. I therefore decline the invitation to "stray" into the issue of enhancement of the multiplier and special damages.

17. In the circumstances, I find the issues that remain for determination to be the following;

i. Whether adoption of the "multiplier method" in computing "loss of dependency", rather than the "global sum method", was justified and whether the award was manifestly excessive.

ii. Whether the awards for "pain and suffering", "loss of expectation of life", and "special damages" were proper and/or justified.

18. I now proceed to analyse and answer the issues.

i. Whether adoption of the "multiplier method" in computing "loss of dependency", rather than the "global sum method", was justified and whether the award was manifestly excessive

19. The Respondents' claim was based on the provisions of Section 4 of the *Fatal Accidents Act*, which provides as follows:

> "
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> "(1) Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:
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> Provided that not more than one action shall lie for and in respect of the same subject matter of complaint, and that every such action shall be commenced within three years after the death of the deceased person."

20. Regarding the choice of the method to adopt in computing "loss of dependency", Mabeya J in the case of Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR, stated as follows:

> "(23) In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.
>
> (24) The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap."

21. Similarly, Nambuye J (as she then was), in the case of Mary Khayesi Awalo & Another v Mwilu Mulungi & Another [1999] eKLR cited in Albert Odawa v Gichimu Gichenji [2007] eKLR, stated the following:

> " The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is

plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do."

22. In the same case, Nambuye J (as she then was) stated further as follows:

> " As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the court's opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books".

23. It is therefore evident that the principle advanced in the said cases and in many others, which I have not necessarily also cited, is that the "multiplier" approach should only be adopted in cases where there is satisfactory proof of the monthly income earned by a deceased person. The question therefore is whether in this case, the monthly income earned by the deceased was satisfactorily established before the trial Court.

24. Before the trial Court, the Respondents argued that the deceased was, at the time of his death, employed at the Kerio Valley Development Authority as a carpenter, earning a gross salary of Kshs 34,714/-. A copy of a payslip to that effect was then produced. It is however true, as pointed out by the Appellant in the grounds of Appeal, that the copy of the pay-slip produced was for the month of June 2013, 6 years before the deceased died in the accident the subject hereof, in January 2019. No other document of any kind was produced to support the allegation that the deceased was, at the time of his death, still employed at the said Authority. Also, taking judicial notice that the official retirement age in Kenya is 60 years (not 65 as erroneously alluded by the Respondents' Counsel) and the Authority, being a parastatal, would be presumed to be implementing that rule to that latter, I have my doubts whether the deceased, at the age of 62 years, was still in employment with the Authority.

25. Further, it was alleged that, besides being in such employment, the deceased was also a businessman. I note it is this description of "businessman" that was entered in the Certificate of Death as the deceased's occupation. While this, on one hand, contradicts the allegation that, at the time of his death, the deceased was still an employee of the said Authority, it also, on the other hand, supports the Respondent's testimony that indeed, the deceased was engaged in the business of milk production and sale. I also observe that the deceased had a large family full of dependents, namely, 2 widows and 12 children. Letters from respective secondary schools were also produced to confirm that the deceased was paying school fees for a number of the children. Since it has not been alleged that any other person used to assist the deceased in catering for this family expenses, including paying school fees as aforesaid, I would agree that presumably, he had a reliable and steady source of income that enabled him to cater for the huge financial needs of his large family as aforesaid.

26. Although therefore, in light of the inadequate documentation produced, I have my doubts on the truthfulness of the testimony given by the Respondents that the deceased was still in employment and/or was also in business at the time of his death, I also cannot ignore the fact that all the said documents were produced without any objection from the Appellant and were also not controverted in any way. The cross-examination did not also challenge or touch on the authenticity or sufficiency of the documents. In the circumstances, and although, in my view, the documentation produced was insufficient to prove the alleged earnings, coupled with the fact that the Appellant's Advocates chose not file any Submissions to demonstrate the exact nature of their grievance under this item, I will not

engage in speculating on what arguments the Appellant would have wished to present to this Court in such submissions. That is not the Court's work to do. The Appellant's Advocates, having in their wisdom chosen not to file any Submissions despite undertaking to do so, I presume that they are not interested in seriously pursuing this Appeal. In the circumstances, I decline to fault the trial Magistrate for finding that the earnings alleged had been proved by evidence and thereby adopting the "multiplier method" in computing "loss of dependency".

Multiplicand

27. Regarding "multiplicand", the Appellant has argued that the trial Magistrate erred in adopting the entire gross salary instead of the net salary. This issue was dealt with by the Court of Appeal in the case of Nyeri Civil Appeal Number 22 of 2014 - Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) vs. Kiarie Shoe Stores Limited [2015] eKLR, in which the Court of Appeal stated as follows:

> " 12. In this case, there was no complicated record of evidence to evaluate. Only Hellen testified and produced documentary evidence. On the issue of the salary, the deceased's last pay-slip was produced and it showed clearly his gross earnings of Sh. 39,683. That is followed by no less than 13 deductions ranging from statutory deductions to loan deductions leaving a balance of Sh. 16,036. The trial court used the gross earnings as the multiplicand while the High Court used the net figure. With respect, both courts were in error.
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> 13. In the case of Chunibhai J. Patel and Another v P. F. Hayes and Others [1957] EA 748, 749, the Court of Appeal stated the law on assessment of damages under the *Fatal Accidents Act* which we cite in part as follows:
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> "The Court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependants, the net earning power of the deceased (i.e his income less tax) and the proportion of his net income which he would have made available for his dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying by a figure representing so many years' purchase. (Emphasis added)
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> 14. As emphasized above, the net income determines the multiplicand and it is only net of statutory deductions. In this case, Hellen testified, and it is apparent from the pay-slip, that the net salary after statutory deductions was Sh. 19,373, and indeed counsel for KSSL accepted that figure in his submissions. There is no reason why the High Court should have interfered with that figure."

28. Similarly, the Court of Appeal, in the case of Kisumu Civil Appeal Number 48 of 2016 - Mary Osano (Personal Representative of the estate Charles Otwori Ogechi - Deceased) vs. Simon Kimutai [2020] eKLR, guided further as follows:

> " Counsel for the appellant submitted that the deceased's net pay as evidenced by a copy of his payslip was Kshs 53,550 per month, with a house allowance of Kshs 45,000 per month which totals to Kshs 98,550. The statutory deductions as contained in the payslip are; PA.Y.E at Kshs 23,947; NHIF at Kshs 320 and NSSF at Kshs 3748 which totals to Kshs 28,015. The rest do not amount to statutory deductions as the learned Judge erroneously held. In

our assessment, the rest of the deductions were either in the form of savings or payment of loans, none of which are to be factored in when determining a multiplicand."

29. In this case, the June 203 payslip produced indicates the deceased's gross salary as Kshs 34,714/-, total deductions as Kshs 27,761.55 and the net pay remaining after the deductions as Kshs 6,952.45. The deductions include statutory deductions and also non-statutory or voluntary deductions such as loan repayment instalments, employees' union dues, provident fund charges, and welfare contributions, among others. While the Appellant insists that the net pay of Kshs 6,952.45 is what should be taken as "multiplicand", the Respondent wants the entire gross salary of Kshs 34,714/- to be adopted as was done by the trial Magistrate. As stated by the Court of Appeal in the said case of Hellen Waruguru Waweru (supra), both arguments are wrong. While it is true that the deductions appearing in the payslip should be taken into account when determining the "multiplicand", it is also true that not all deductions are to be so treated, only the statutory deductions are to be excluded

30. In this case, the trial Magistrate therefore erred in adopting the entire gross salary of Kshs 34,714/- as "multiplicand" without taking into account the statutory deductions apparent in the payslip. In this case, the statutory deductions listed are Pay As You Earn (PAYE) at Kshs 4,022/-, National Social Security Fund (NSSF) at Kshs 200/- and National Health Insurance Fund (NHIF) at Kshs 320/-. These 3 statutory deductions amount to an aggregate sum of Kshs 4,542/-. What remains after this amount is excluded from the gross salary is Kshs 30,172/-. This then is the figure that the trial Magistrate ought to have adopted as the "multiplicand".

Multiplier

31. Regarding the "multiplier" adopted by the trial Court at 5 years, I note that before that Court, the Respondents had proposed a figure of 8 years. On their part, the Appellant's Advocates did not make a proposal thereon since they had suggested use of the "global sum" approach. I have looked at comparable previous cases in terms of age of the deceased and I have come across the following decisions:

    a. Hon. H. Ong'udi J in the case of John Muchiri Njoroge & another v Monicah Asami [2021] eKLR, dealing with an appeal where the deceased was 65 years old, reduced a multiplier 8 years to 5.

    b. Hon. Kiarie Waweru J, in the case of Robinson Odhiambo Kotula [Suing on behalf the Estate of Silfastus Juma Achilla] v Kenya Power & Lighting Company Ltd (Civil Appeal E117 of 2021) [2022] KEHC 11425 (KLR) (13 July 2022) (Judgment), dealing with an appeal where the deceased was 72 years old, upheld a multiplier of 5 years adopted by the trial Court.

    c. Hon. Sergon J, in the case of Philip Wanjera & another v Ahmed Liban & Shukri Ahmed Liban (suing for and on behalf oft he Estate of Habiba Liban) [2016] eKLR, dealing with an appeal where the deceased was 60 years old, reduced a multiplier of 15 years adopted by the trial Court to 7 years.

    d. Hon. Lagat-Korir J, in the case of *Kagwanji v Bett (Suing as the legal representatives of the Estate of Julius Cheruiyot Bett (Deceased) (Civil Appeal 28 of 2018*) [2023] KEHC 24424 (KLR) (18 October 2023) (Judgment), dealing with an appeal where the deceased was 55 years old upheld a multiplier of 5 years adopted by the trial Court.

32. From the foregoing, I deduce that in comparable cases, where the deceased is around 55-65 years of age, the Courts have adopted multipliers of between 5-7 years. In the circumstances, and taking into account the vagaries, uncertainties and vicissitudes of life, I find the multiplier of 5 years adopted by the

trial Court in this case to have been within that range and thus reasonable. The same cannot therefore be said to have been inordinately high. In the circumstances, I am not persuaded that I should interfere with the same.

Dependency Ratio

33. Regarding the "dependency ratio", the same has also not been expressly challenged in the grounds of Appeal. In any event, the trial Magistrate having found that the deceased had dependents, there would no ground to fault his choice of the ratio of 2/3 ratio.

ii. Whether the awards for "pain and suffering", "loss of expectation of life", and "special damages" were proper and/or justified.

Pain and Suffering

34. On the award of "pain and suffering" at Kshs 50,000/-, there is no express mention of it in the Grounds of Appeal and I presume that there is therefore no serious dispute, if any, regarding it. Before the trial Court, the Respondents proposed a sum of Kshs 50,000/- while the Appellant proposed Kshs 10,000/-. It is not in dispute that the deceased died a short time after the accident, if not instantly. My review of awards for "pain and suffering" in instances where the deceased dies on the spot reveals that the majority of the awards given by the Courts range in the region of about Kshs 20,000/- to 50,000/-. This is in consideration of the fact that there would be no prolonged distress or torture on the part of the deceased before death. I do not therefore find the award of Kshs 50,000/- to be excessive or inordinately high to merit a review by this Court. I therefore also decline to interfere with the award.

Loss of Expectation of Life

35. On the award of "loss of expectation of life" at the sum of Kshs 70,000/-, that, too, has not elicited any express mention in the Grounds of Appeal and I also therefore presume that there is no serious dispute about it. I note that while the Respondents had, before the trial Court, proposed an award Kshs 60,000/-, the Appellant proposed an even higher figure of Kshs 80,000/-. From my own review of comparable and recent authorities, it is clear that the Courts have been awarding figures in the region of about Kshs 70,000/- to Kshs 150,000/-. The trial Magistrate having therefore awarded Kshs 70,000/-, although higher than what the Appellant had even proposed, that figure is within what is ordinarily awarded. I do not therefore find any fault on the part of the Magistrate in awarding that amount.

Summary of new Award under the head of " Loss of dependency "

36. In view of the findings above, the new award for "loss of dependency" that I now substitute in place of the one assessed by the trial Court is Kshs 1,206,880/- (computed as Kshs 30,172/- for 12 months x 5 years x 2/3) based on the following parameters:

Multiplicand (monthly earning)	Earning years (multiplier)	Dependency ratio
30,172/-	5	2/3

Special Damages

37. Regarding "special damages", it is trite law that the same must be both pleaded, particularized and specifically proved. In the Court of Appeal case of Hahn v. Singh, Civil Appeal No. 42 of 1983 [1985] KLR 716, it was held as follows:

> " Special damages must not only be specifically claimed (pleaded) but also strictly proved .... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves."

38. The rationale for the above principle is that such claim represents what a party has actually lost in the form of expenses incurred and he ought to be restored to the position he was in had he not been forced to incur the expenses, hence the need to strictly prove the claims.

39. In this case, I notice that the pages of the copy of the Plaint contained in the Record of Appeal is evidently mixed-up with perhaps another Plaint for a different suit. I have, in the circumstances, resorted to reliance on the original Plaint contained in the lower Court file from which I observe that the Appellant pleaded a sum of Kshs 517,530/- as the total special damages figure as follows:

Funeral expenses	Kshs 486,980.00	
Charges in seeking grant of letters of Letters of Administration ad litem	Kshs 30,000.00	
c)	Motor vehicle search	Kshs 550.00
Total	Kshs 517,530.00	

40. The Respondents produced a large bundle of receipts and the same was admitted in evidence with no objection from the Appellant. The Receipts are quite jumbled up, and some even not so legible. It is not an easy task for this Court to accurately rummage or go through all the Receipts one by one for the purposes of ascertaining whether they add up to the sum of Kshs 159,000/- awarded by the trial Court.

41. As the party seeking relief from this Court, it was the Appellant's duty and obligation to take the Court through the Receipts and clearly demonstrate to the Court that the same do not add up or tally with the sum awarded. It is therefore the burden of the Appellant articulate its Appeal. Since, as aforesaid, the Appellant's Advocates did not file any Submissions, they missed the opportunity whereof they would have made such demonstrate. This Court will not perform for the Appellant's Advocates what it is their duty to do. In the circumstances, having not been presented with any material controverting the award made by the trial Court, I will not disturb or interfere with the trial Magistrate's award under this item.

Final Order

42. In the premises, I order and rule as follows:

    i. the Judgment entered in favour of the Respondents against the Appellant in the lower Court suit, Iten SPMCC No. 02 of 2020 , is interfered with but only to the extent that the

multiplicand figure of Kshs 34,714/- is hereby reduced to a figure of Kshs 30,172/- with the effect that the award under the head of " loss of dependency " thereby also reduces.

ii. The rest of the awards and findings made by the trial Court therefore remain intact and undisturbed.

iii. For avoidance of doubt therefore, the lower Court Judgment is hereby set aside and substituted with the following, (in favour of the Respondents, against the Appellant):

Liability at 100% against the Appellant	
Pain and suffering	Kshs 50,000/-
Loss of expectation of life	Kshs 70,000/-
Loss of dependency	Kshs 1,206,880/-
Special damages	Kshs 159,000/-
Total award	Kshs 1,485,880/-

iv. Each party shall bear his or its own costs of this Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 29 TH DAY OF NOVEMBER 2024

WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Ms. Nanjira h/b for Kabita for the Appellant

Kirwa for the Respondent

Court Assistant: Brian Kimathi