



REPUBLIC OF KENYA



Ngugi v Muriithi & another (Suing as the Personal Representatives of the Estate of Job Mukwima Njoroge) (Civil Appeal E001 of 2021) [2023] KEHC 3009 (KLR) (31 March 2023) (Judgment)

Neutral citation: [2023] KEHC 3009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E001 OF 2021
LN MUGAMBI, J
MARCH 31, 2023**

BETWEEN

JOSEPH MUCHAI NGUGI APPELLANT

AND

**GRACE WAMUCII MURIITHI & JOSEPH NGUGI (SUING AS THE
PERSONAL REPRESENTATIVES OF THE ESTATE OF JOB MUKWIMA
NJOROGE) RESPONDENT**

*(Being an appeal arising from the Judgement of the Honourable G. Onsarigo,
Senior Resident Magistrate, Kikuyu Law Courts delivered on the 17th
of December, 2021 in Kikuyu SPM Court Civil Suit No. 241 of 2017)*

JUDGMENT

1. Both the Appellant and the Respondent contest the judgement of the Honourable, G Onsarigo-Senior Resident Magistrate, Kikuyu Law Courts delivered on the December 17, 2021.

Summary Pleadings

2. The suit in the trial court was initiated by the Respondent (Plaintiff in the trial court) seeking damages under the *Law Reform Act* Cap 36 and loss of dependency under the *Fatal Accidents Act* due to an accident that allegedly occurred on January 6, 2017 and occasioned the death of Job Mukwima Njoroge who was knocked while walking on pedestrian footpath by the Defendant's motor vehicle registration number xxxx along the Naivasha-Nairobi highway at a place called Regen. The particulars of negligence on the Defendant's were provided as follows:
 - a. Driving on a pedestrian lane and at a high speed thereby killing the deceased as a lawful pedestrian;
 - b. Failure to observe traffic rules while on the public road;



- c. Driving carelessly and recklessly thereby hitting the pedestrian who was on the pedestrian path;
 - d. Failing to keep any proper look out and or any sufficient regard to the pedestrians on the road;
 - e. Causing and permitting the accident to happen;
 - f. Generally causing the accident carelessly.
3. The Plaintiffs averred further that the deceased was twenty (20) years old at the time of his death and was working as a driver earning Kshs 20,000/- per month. They prayed for judgement against the Defendant for:
- a. Special damages in the sum of Kshs 120,400/-;
 - b. General damages under the *Fatal Accidents Act* for the benefits of the deceased's dependants and further damages under the Law Reforms Act for the benefits of the deceased's estate;
 - c. Interests at court rates;
 - d. Costs of the suit.
4. In his defence filed on the September 25, 2017, the Defendant denied the allegations in the Plaint and particularly the description of how the accident occurred. The Defendant attributed the cause of the accident to the deceased and outlined the particulars of negligence on the deceased's part as:
- a. Failing to keep the pedestrian walk;
 - b. Failed to have regard to other road users and particularly motor vehicle registration number xxxx;
 - c. Failed to walk with due care and attention;
 - d. Failed to move and avoid the accident;
 - e. Walked carelessly and dangerously on the road.
5. The Defendant urged the Court to dismiss the suit with costs.
6. The hearing in the trial court commenced on the September 30, 2019. The Plaintiff called three witnesses: Police Constable Godfrey Kirui testified as PW1, Grace Wamucii Muriithi testified as PW2 and Lincoln Saisi Sakide as PW3.
7. The defence case was heard on the March 2, 2020 when the Defendant called its witness, Police Constable Joseph Muthui (DW 1) and was closed.
8. Judgement was delivered on the December 17, 2020. The trial court found both the deceased and the Defendant liable for the accident and apportioned liability on equal basis at the ratio of 50:50.
9. It awarded damages as follows:
- a. Pain and suffering, Kshs 30,000.
 - b. Loss of expectation of life- Kshs 150,000 citing the fact that deceased was aged 30 years.
 - c. Loss of dependancy Kshs 4,000,000- (computed as follows: Kshs 20,000 x 2/3 x 25 x 12= Kshs 4,300,400 less 50% contribution= 2,150,200/-
 - d. Special damages- 120,400/-



- e. Costs of the suit & interest.

The Appeal

10. In his memorandum of appeal dated December 28, 2020 and filed on the January 4, 2021 the Appellant listed the following grounds of appeal:
 - a. That the Learned Magistrate erred in law and in fact when he failed to consider the Appellant's evidence on the points of law and facts on finding the Appellant fully liable for the accident which is the subject matter of this suit;
 - b. The Learned Magistrate's decision was unjust, against the weight of evidence was based on misguided points of facts on and wrong principles of law and has occasioned a miscarriage of justice;
 - c. The Learned Magistrate's decision was unjust, against the weight of evidence and was misguided on deciding that the Respondent was entitled to Kshs 4,300,000/- as general damages which ought to be dismissed;
 - d. The Learned Magistrate erred in law and in fact in awarding excessive and undeserved sum of Kshs 4,300,000/- to the Respondent as general damages for injuries sustained and liability as against the Appellant at 50% without accessing the real question on liability on the part of Job Mukimwa Njoroge;
 - e. The Learned Magistrate erred in law and in fact in unduly disregarding the Appellant's evidence, submissions and facts produced in assessing liability and quantum to the Respondent.
11. The Appellant urged this Court to find merit in this appeal, allow the same with costs, dismiss the judgement of the trial court and make further orders as it may deem fit to grant.
12. The Respondents also filed a cross-appeal being dissatisfied and aggrieved by the judgement of trial Court on the following grounds:
 - a. That the Learned Trial Magistrate erred in law and in fact in finding that the deceased was 50% liable for the accident;
 - b. That the Learned Trial Magistrate erred in law and in fact in failing to appreciate that no evidence was tendered by the driver of the motor vehicle that caused the fatal accident or eye witnesses on the part of the Appellant;
 - c. That the Learned Trial Magistrate erred in law in failing to consider and/or appreciate the Respondents' submission on liability as well as the authorities thereto; and
 - d. That the Learned Trial Magistrate erred in law and in fact in failing to consider and evaluate the evidence of PW1, 2 and 3 to the effect that the deceased was knocked down off the road side hence the driver was entirely and wholly to blame for the accident which evidence was not rebutted.
13. The Respondents urged this Court to allow the cross appeal with costs, dismiss the appeal and set aside the trial court's finding on liability and substitute the same with the finding that the Appellant was 100% liable for the accident.



14. On the March 3, 2022 the appeal and cross appeal were admitted for hearing and on the May 16, 2022, the Court directed that the appeal be canvassed by way of written submissions. The Record of Appeal was filed on the November 2, 2021 and the Supplementary Record of Appeal on the March 21, 2022.

The Appellant's Submissions

15. The Appellant filed his submissions on the September 21, 2022. He outlined the facts of the case and proceeded to submit on the issue of quantum. He submitted that the award of Kshs 150,000 for loss of expectation and Kshs 4,000,000 for loss of dependency was inordinately high considering that the deceased was 30 years old and that the Respondent failed to prove neither the earning nor the occupation of the deceased. He relied on the case of *Loice Wanjiku Kagunda vs Julius Gachau Mwangi CA 142/2003 (UR)* which was cited in the case of Francis Odhiambo Nyunja & 2 others vs Josephine Malala Owinyi (suing as the legal administrator of the estate of Kevin Osore Rapando (deceased) (2020) eKLR) where the Court stated thus:

' We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (see Manga vs Musila (1984) KLR 257).'

16. He urged the Court to review the award of Kshs 150,000 downwards to Kshs 100,000 and relied on the case of [*Kenya Red Cross vs IDS suing as the legal representative of the estate of MDR \(deceased\) \(2020\) eKLR*](#) where it was held that:

' On loss of expectation of life: the award of Kshs 100,000/= under this head is conventional and well merited and in accordance with the applicable principles of law.'

17. He also relied on the case of Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another (suing as the legal administrator of the estate of the late Robert Mwangi (2019) eKLR to affirm the award of damages of Kshs 100,000/-.
18. The Appellants submitted that he was aggrieved by the award under the head of dependency as the Respondents never adduced any evidence to show where the deceased was working as a driver. That the Respondents only produced a driver's license as evidence in support of the allegation that the deceased was a driver. That this merely showed that the deceased possessed the knowledge of operating a motor vehicle and not that he was a driver. That due to the lack of proof, the Kshs 20,000 relied on by the Trial Court as the deceased's salary was unfounded and speculative and the Court should have relied on the minimum wage. He relied on the case of Francis Odhiambo Nyunja & 2 others vs Josephine Malala Owinyi (suing as the legal administrator of the estate of Kevin Osore Rapando (deceased) (2020) eKLR.
19. The Appellant urged this Court to have the award reviewed to Kshs 700,000 as adequate compensation for the deceased's estate. He relied on the case of [*Anne Kitbinji \(suing as the legal representative of the estate of Patrick Koome \(deceased\)\) & 2 others vs Jacob Kirari & Another \(2018\) eKLR \(Civil Appeal No 78 of 2017\)*](#) where the appellate Court awarded Kshs 800,000 damages for loss of dependency in place of the Kshs 500,000 awarded by the trial Court.



20. That in the case of *Gilbert Kimatere Nairi & Another (suing as personal representatives of the Estate of Jackline Sein Lemaiyan (deceased)) vs Civiscope Limited (2021) eKLR* the Court stated that:

' Similarly, I am not persuaded that the trial court was in any error in awarding Kshs 600,000 for loss of dependency where the deceased was 31 years. It was neither low nor high to call for this court's interference.'

21. The Appellant urged the court to set aside the lower court award and consider awarding Kshs 30,000/- for pain and suffering; Kshs 100,000/- under for the loss of expectation and Kshs 700,000/- under the loss of dependency. He also prayed for the costs of this appeal.

The Respondent's Submissions

22. The Respondent filed their submissions on the June 24, 2022. They restated the facts adduced during the trial and pressed upon this Court to consider the evidence adduced during the trial in determining this appeal and the cross-appeal.

23. The Respondent submitted that the trial court confirmed that the point of impact was off the road and correctly applied the principle of a dangerous machine and that the driver of the vehicle ought to have been more careful on the road. The Respondent submitted that despite filing a detailed statement of defence, the Appellant failed to call the driver of the vehicle who was a key witness to the accident.

24. That the magistrate erred in apportioning liability on 50/50 basis while the Respondent's evidence was not challenged at all. He urged the Court to reconsider the evidence and substitute it with 100% liability against the Appellant.

25. On the issue of quantum, the Respondents relied on the case of *Moses Akamba and Another vs Hellen Karisa Thoya (2017) eKLR* where the Court awarded Kshs 200,000 for loss of expectation of life. They urged the Court to uphold the award of Kshs 150,000 and find that the same is not excessive to warrant any disturbance.

26. On the issue of loss of dependency, the Respondent submitted that the deceased was married with a wife and a child and parents who were also depending on him. That the deceased was a driver and that this was confirmed with the driver's license and that the trial court was persuaded to apply the minimum wage guide application as at the time of his death in the year 2017 when a minimum commercial license driver's wage was Kshs 24,719 and that since they had pleaded Kshs 20,000, the Court adopted the same. She faulted the Appellant's submissions that there was no proof of employment and stated that there was sufficient oral evidence on oath which confirmed that fact and which evidence was never challenged on cross-examination. That the death certificate also indicated that the deceased was a driver. That there was no ambiguity as to the occupation of the deceased and the Respondents urged this Court to uphold the finding and the judgement of the Honourable Court.

27. The Respondents prayed that the appeal be dismissed with costs and the cross-appeal be allowed with costs by setting aside the decree on liability and substituting the same with 100% liability against the Defendant. She also prayed that the interest for the special damage run from the date of filing the suit and general damages from the date of judgement.



Determination

28. This is a first appeal and in the circumstances this Court has a duty to analyze and re-evaluate the evidence adduced in the superior court and to reconsider it to find out if it justified the decision reached. As was stated in *Selle & Another v Associated Motor Boat Co Ltd [1968] 123* at p 126: -

' The principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial Judges findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.'

29. From the pleadings and submissions before this Court it is evident that there are issues for determination:

- a. Whether the trial court erred in assessing liability at 50:50;
- b. Whether the award of Kshs 150,000 for loss of expectation of life was excessive;
- c. Whether the trial court erred in adopting the multiplicand approach instead of global award approach going by the circumstances of this case.
- d. If the damages for loss of dependency were excessive?
- e. Whether the appeal has merit;
- f. Who pays for the costs of the appeal?

30. The first ground on the memorandum of appeal contests liability by the trial court and urges this Court to find the deceased was 100% liable for the accident. On the other hand, the Respondent's cross-appeal is grounded on the fact that the trial court held both parties equally liable for the accident. They urged this Court to find the Appellant 100% liable for the accident. While discussing liability in its judgement, the trial Court stated thus:

' Taking into account the principle of a dangerous machine, the defendant's driver ought to be more careful on the road as a vehicle is a dangerous machine.

The defendants ought to have called the driver so that the court can have a full picture of what really transpired. Failure to call such a witness infers that the witness may go against the defence case.

In the absence of the sketch plan, I hold both the deceased and the driver liable at 50:50%.'

15. As I embark on the question of liability which the parties raised and argued in this appeal, I must acknowledge that the guiding principle is as was proclaimed in the case of *Khambi and Another vs Mahithi and Another [1968] EA 70*, as to when an appellate court may interfere with the trial court's finding on liability. It was held as follows:

' It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional



cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.'

31. I now turn to examine the evidence presented before the trial court on this issue. While testifying during the trial, PW1, a Police Constable stated that the accident occurred on the side of the road. PW2, the deceased's wife in her statement confirmed that she was not at the scene of the accident but she had screams and a loud bang near their house and immediately rushed to check it out and found that it was an accident and the victim was her husband. That he was lying off the road on the right side and the vehicle was also off the road on the pedestrian path on the right side. That the people at the scene confirmed that the driver was on high speed and caused the accident on the pedestrian path.
32. PW3 testified as an eye witness. He recounted that on that day of the accident, the motor vehicle was driving at high speed while trying to join the Magana road junction when it lost control and hit a pedestrian who was lawfully walking on the pedestrian lane. He stated that he saw the person flying in the air and fell on the side of the road. During cross-examination, PW3 reiterated that the vehicle was speeding and that the deceased had already completed crossing the road when he was knocked.
33. The defence only called one witness, Police Constable Joseph Muthui who stated that he was stationed at Kikuyu Police station and that according to him the pedestrian was crossing the road from the right to the left side when the accident occurred. He blamed the pedestrian for the accident. During cross-examination DW1 stated that he was not the investigation officer. He stated that there was no eye witness to the accident. The defence did not call the driver as a witness yet his evidence would have been integral in the determination of the issue of liability.
34. In the absence of any evidence contradicting the only eye witness (PW3) on how the accident occurred, the trial court ought to have relied on his evidence to determine who was liable for the accident as it did not find his evidence unworthy of credit. From his evidence, the deceased was a pedestrian who already by the road side at the time he was knocked by the vehicle.
35. The evidence given from the defence was what was contained in the OB extract which stated that the deceased was hit as he crossed the road and blamed the deceased for the accident. Nevertheless, it transpired from cross-examination of DW 1 that this was information that was provided by the driver who was never called to substantiate that fact. This information could thus not displace the direct eye-witness account of PW 3 and the observation by PW 2 who immediately rushed to the scene and found the deceased by the road side only a short moment after the accident
36. The Respondent's evidence as to how the accident occurred was not controverted at all. It squarely put the blame on the Defendant's driver. He was driving at high speed, failed to control the vehicle as he tried to enter a junction and veered off the road knocking down the deceased who was walking by the roadside.
37. With or without the sketch map; there is ample evidence to demonstrate that the Appellant was solely responsible for the accident. The driver did not testify to indicate whether he made any efforts to prevent or avoid the accident and that cannot be assumed in the absence of the evidence.
38. I find that the Appellant was to blame for the accident. There was no evidence or basis provided to hold that the deceased liable in the light of the evidence on record. I find that the trial court erred in apportioning liability in absence of any evidence. I set aside that finding and hold that the Appellant was 100% liable. He knocked the appellant to death as a result of high speed, failing to control the vehicle and veering off the road onto where the deceased was by the roadside. This evidence was



uncontroverted. There was no evidence of any contribution for the accident made by the deceased tendered at the trial.

39. On the second issue, the Trial Court awarded Kshs 150,000 for the loss of expectation of life.
40. In the case of *Benham vs Gambling, (1941) AC 157* it was further held that only moderate awards should be granted under this head for the following reasons:

' In assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not f loss of future pecuniary prospects.'

41. In the case of *Mercy Muriuki & another v Samuel Mwangi Nduati & Anor* (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] eKLR, the Court held thus on the issue of loss of life expectancy:

' The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death. In the present case it is evident that the deceased died instantly. The awards of Kshs 10,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life were therefore reasonable and in order, and are upheld.'

42. The deceased was a young man aged 29 years with a daughter of a tender age and a young wife. He must have hoped to see his young daughter mature under his fatherly care and guidance but all those hopes were ruined by the cruel hand of death arising from this accident. There was no evidence that he had any history of bad health, hence I believe he was a bubbly healthy man whose prospective happiness on earth with his young family was abruptly cut short. I find no reason to interfere with the trial Court's award of a sum of Kshs 150,000 under this head.

43. The appellant contended that the Magistrate was wrong to apply the multiplier approach when there was no proof of the salary of the deceased to allow the use of minimum wage. He thus vouched for the global award method and proposed a figure of Kshs 700,000/-citing the case of *Ann Kanja Kithinji & (2018) ECLR* and *Gilbert Kimatare Naire (2021) ECLR*.

44. The Respondent on the other hand argued that the Appellant did not raise the issue of the method to use before the lower court hence this was a new matter that was being introduced at the appellate level which ought to be rejected.

45. The question therefore becomes, did the trial court err by using the multiplier approach instead of the global award method in the circumstances of this case?



46. Njagi J, dealing with the question of which method was more appropriate held as follows in [*Kakamega HCCA 10/2017 Chitabhadhiya Enterprises & Another Vs Gladys Butali*](#);

' Some High Court Judges hold the view that both approaches are proper as exemplified by the following holding of Joel Ngugi J in Kenya Power & Lighting Company Limited Vs EKO & Another, Kiambu HCCA No 169 of 2016 (2018) eKLR where he said that:

'It thus emerges that superior court are split on whether it is appropriate to use the multiplier method when assessing loss of dependency for a minor child. It was in my view therefore upon the discretion of the learned trial magistrate to use the multiplier method in this case. This court cannot review that decision merely because it would have used the global assessment method advocated by other High Court decisions. The learned trial magistrate did not proceed on wrong principles for merely choosing to use the multiplier method and then choosing the minimum wage as the multiplicand.'

47. Further, in [*Wesley Cheptoo Arap Chelagat & Alex Cheptoo \(suing on behalf of Estate of Mark Too deceased\) 2020 EKR*](#), the Court faced with the issue stated:

' In my mind, both methods are fraught with misgivings. In the multiplier one, the Court has to form an opinion based on facts before it that this person could have lived and worked for a number of years, the person would have earned so much money and supported them to a certain extent. Similarly, with global approach, the court again is expected to form an opinion as to value placed on life lost. In each, the Court has no way of knowing what vicissitudes that life would have been faced with. Neither is better than the other, all depends on facts.'

48. Guided by the above decisions, it thus imperative that there is no fixed method that must be applied in assessment of damages for loss of dependency. The trial court thus had the discretion to decide which approach appropriate in the case. Indeed, as correctly pointed out by the Respondents, even the appellant submissions before the lower court were based on the multiplier approach. I do not find any reason to interfere with assessment based on the approach made as none of them is a prescription of the law.

49. The Appellant contended that apart from the driver's license produced by the Plaintiffs in the trial court (page 26 of the Record of Appeal), no other evidence was provided to confirm that the deceased was indeed working as a driver. Indeed, the lack of proof of employment was the major ground that caused him to change tact at the appellate level and root for computation of damages using the global award approach. Although the Respondent insisted that the deceased worked as a driver no proof or the said employment or the monthly pay of Kshs 20,000/- was provided other than a word of mouth. Having a driver's license does not necessarily translate into employment yet proof of regular income flow is very critical in determining the multiplicand.

50. In the case of [*Leonard Ekisat & Another vs Major Kibingen 2005 eKLR*](#) the Court held as follows:

' The principles applicable to an assessment of damages under the [*Fatal Accidents Act*](#) are all too clear. The court must in the first instance find out the value of annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years' purchases. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the



deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature'

51. Clearly, from the evidence it is obvious that the deceased had a young family which he was supporting. In the absence of proof of employment, the proper approach would be to infer that he earned a living as a general labourer hence his earnings can be computed under the Regulation Of Wages (General Amendment) Order, 2015 where the minimum wage for a casual labourer in Municipalities was Kshs 10,107.10 since at the time of his death evidence shows that the deceased was based at Regen which is outside City of Nairobi and is within Limuru municipality.
52. On the issue of the multiplicand, the trial court used a multiplier of 25 years which I maintain. According to the post mortem report, the deceased died aged 29 years. He had no known impediment to his health that could have tampered with his earnings. I would also consider that he was spending 2/3rd of his income on his young family. Consequently, the loss of dependency would be as follows:
Kshs 10,107.10 x 2/3 x 25 x 12= Kshs 2,021,420
53. Nevertheless, to guard against double compensation owing to the fact that damages under the *Fatal Accidents Act* and damages awarded under the *Law Reform Act* are received by the same beneficiaries, it is now accepted principle that awards made under the *Law Reform Act* be discounted from those made under the *Fatal Accidents Act*.
54. In *Mutegi Njeri & Anor Vs Stanley M'Mwari M'Atiri Civil Appeal Number 237 of 2004*,
The Court of Appeal explained:
'As regards failure of Superior Court to take into consideration the award under *Fatal Accidents Act* when arriving at the award under the *Law Reform Act*, the principle is that the award under *Law Reform Act* has to be taken into account when considering awards under *Law Reform Act* for simple reason that the dependants under *Law Reform Act* are same beneficiaries of the estate of the deceased in the later Act.'
55. Applying the above principle, I consider that the damages awarded under the *Law Reform Act* in this appeal are as follows:
- a. Pain & Suffering- Kshs 30,000/-
 - b. Loss of expectation of life Kshs 150,000
56. Discounting the award made the Law Reform from the *Fatal Accidents Act* to guard against double compensation, the amount available to the dependants will be as follows (2,021,420-180,000) Kshs 1,841,420/-
57. The consequence therefore is that both the appeal and cross-appeal partly succeed as follows:
- a. Special damages Kshs 120,400
 - b. Loss of dependency Kshs 2,021,420/= (less damages under *Law Reform Act*- Kshs 150,000 for loss of expectation of life & Kshs 30,000 for Pain and suffering) = Kshs 1,841,420
Total recoverable/payable Kshs 1,961,820/-
58. Each party shall bear their own costs of the appeal and cross-appeal while the Respondent (Plaintiff in the trial court) is awarded the costs in the trial court.



DATED, SIGNED AND DELIVERED AT BUSIA THIS 31ST DAY OF MARCH 2023.

L.N MUGAMBI

JUDGE

In presence of:

CORAM (ON-LINE)

Before L.N. Mugambi, Judge

Appellant- absent

Respondent- absent

Advocate for Appellant- absent

Advocate for Respondent- absent

Court Assistant- Etyang

Court

This Judgement be transmitted digitally by the Deputy Registrar to the Advocates for the Parties on Record through their respective email addresses.

L.N. MUGAMBI

JUDGE

