



**Oyondi v Okanga (Suing as administrator and personal representative
of the Estate of Victor Changaya - Deceased) (Civil Appeal
12 of 2017) [2023] KEHC 3761 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 12 OF 2017
WM MUSYOKA, J
APRIL 28, 2023**

BETWEEN

STEPHEN OLIEKA OYONDI APPELLANT

AND

**EMMANUEL ASWANI OKANGA (SUING AS ADMINISTRATOR AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF VICTOR CHANGAYA -
DECEASED) RESPONDENT**

*(Appeal from judgment and decree of Hon. BS Khapoya, Senior Resident
Magistrate, SRM, in Kakamega CMCCC No. 127 of 2015, of 19th January 2017)*

JUDGMENT

1. The appellant had been sued by the respondent, at the primary court, for compensation arising out of the death of the deceased, following a traffic road accident on July 22, 2013, along Mumias-Bungoma Road. The deceased was a pedestrian, and was knocked down by motor vehicle registration mark and number KBQ 368N, said to have belonged to the appellant, and liability was attributed on the appellant on account of negligence. The appellant filed a defence, denying the accident, and everything else pleaded in the plaint. In the alternative, the appellant pleaded that, if any accident occurred, it must have been due to negligence on the part of the respondent and the deceased, or they contributed to it, or it was beyond the control of the appellant.
2. Liability was agreed upon at 80:20 against the appellant. A trial was conducted on quantum, and the court found in favour of the respondent, and awarded damages totaling Kshs 300, 000.00 under the *Law reform Act*, Cap 26, Laws of Kenya, Kshs 1, 360, 000.00 under the *Fatal Accidents Act*, Cap 32, Laws of Kenya, and Kshs 59, 835.00 special damages.



3. The appellant was aggrieved, hence the appeal. He has raised several grounds: that the trial court did not appreciate the evidence tendered; the award of damages was excessive; and the wrong principle was applied in assessment of loss of dependency under the *Fatal Accidents Act*; among others. He sought the setting aside of the judgment and decree, and a re-assessment of the quantum of compensation.
4. On May 22, 2022, directions were given, for canvassing of the appeal by way of written submissions. Both parties filed written submissions.
5. On pain and suffering, the appellant argues that, as there was evidence that the deceased died at the scene of the accident, a minimal award should have been made, of Kshs 10, ,000.00. On loss of expectation of life, he cites *Chen Wembo & 2 others vs IKK & another (suing as the legal representatives and administrators of the estate of C R K (Deceased) [2017] eKLR (Meoli, J)*, to urge that an award of not more than Kshs 80, 000.00 should have been awarded, given the minority of the deceased. On loss of dependency, it is argued that since the deceased was a minor, who had no income, the trial court should have adopted a global figure, and awarded nothing more than Kshs 400, 000.00.
6. On his part, the respondent argues that the figures awarded by the trial court, under the *Law Reform Act*, were justifiable. In any event they were deducted from the award under the *Fatal Accidents Act*, with the result that it is as if they were not awarded in the first place. On loss of dependency, he submits that the result would be the same, as the conventional figure should be around Kshs. 1, 300, 000.00, for a minor of the age of the deceased herein
7. The appeal turns on the awards under the *Law Reform Act* and the *Fatal Accidents Act*, on whether they were excessive.
8. The courts conventionally award sums ranging from Kshs 10, 000.00 to Kshs. 100, 000.00, for pain and suffering, depending on whether the deceased died on the spot or instantaneously or not. Where death was instantaneous, the award would be in that range. See *Sukari Industries Limited vs. Clyde Machimbo Juma [2016] eKLR (Majanja, J)*. Where he died later, an award above Kshs 100, 000.00 would suffice. In this case, the respondent was not present when the accident happened, but said, in his witness statement, that he went to the scene, and did not find the deceased, as he had been removed to hospital. When he got to hospital he found him dead, and was informed that he died while being taken to there. It meant that he did not die on the spot, and he must have experienced some pain and suffering. The award of Kshs 100, 000. 00 was, therefore, not unreasonable. See *Beatrice Mukulu Kang'uta & Another vs. Silverstone Quarry Limited & Another (2016) eKLR (Nyamweya, J)* and *Caleb Juma Nyabuto vs. Evance Otieno Magaka & another [2021] eKLR (Wendoh, J)*.
9. For loss of expectation of life, Kshs 100, 000.00 seems to be the conventional figure, and Kshs 200, 000.00 was on the higher side. However, what was awarded under the *Law Reform Act* was deducted from the award under the *Fatal Accidents Act*. That would mean that it would not matter either way whether I reduce the award to Kshs 100, 000.00 or not. I agree with the respondent, there is no law which compels the deduction, and it should not have been made in the first place. See *Omar Sharif & 2 others vs Edwin Matias Nyonga & Maxwell Musungu (Suing as legal representatives and administrators of the Estate of Enos Nyonga Deceased [2020] eKLR (Mwongo, J)*. I shall, however, not interfere with the deduction, as the respondent has not cross-appealed.
10. On loss of dependency, I note that the deceased was a school-going child. It would be pretty difficult to calculate dependency for someone who had no income, and for whom it would be difficult to gauge what he would have grown to become. It would have been more reasonable to work with a global award, and the figure in the region of Kshs. 1, 300, 000.00 would not have been unreasonable. See *Stanwel*



Holdings Limited & another vs Racheal Haluku Emanuel & another [2020] eKLR (Nyakundi, J).The figure, that the trial court arrived at under this head, was reasonable, and I would not interfere with it.

11. Overall, I find no merit in the appeal. I hereby dismiss it. The respondent shall have the costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28TH DAY OF APRIL 2023

W MUSYOKA

JUDGE

Mr Erick Zalo, Court Assistant.

Appearances

Mr Kurgat, instructed by Mose & Mose, Advocates for the appellant.

Mr Mwebi, instructed by CM Mwebi & Company, Advocates for the respondent.

