Odera v Adoyo & another (Suing as the Legal Representatives of the Estate of Vincent Ochieng Adoyo - Deceased) (Civil Appeal 13 of 2020) [2023] KEHC 17962 (KLR) (30 May 2023) (Judgment)

Neutral citation: [2023] KEHC 17962 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CIVIL APPEAL 13 OF 2020

RL KORIR, J

MAY 30, 2023

BETWEEN

VINCENT OTIENO ODERA ..... APPELLANT

AND

WALTER AWUOR ADOYO ..... 1ST RESPONDENT

PAMELA ADOYO ..... 2ND RESPONDENT

SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF VINCENT OCHIENG ADOYO - DECEASED

(Being an Appeal from the Judgment of the Principal Magistrate, E. Muleka at the Principal Magistrate's Court at Sotik, Civil Suit Number 221 of 2018)

JUDGMENT

1. The Respondents (then Plaintiffs) as the Legal Representatives of the estate of the deceased, sued the Appellant (then Defendant) for General and Special Damages that arose when their son, the deceased was allegedly knocked down by Motor Vehicle Registration Number KCK 015L that allegedly belonged to the Appellant.

2. The trial court conducted a hearing where one witness (the Respondent) testified and produced exhibits in support of his case. On 3rd March 2020, the parties recorded a Consent on liability in the ration of 75:25 in favour of the Respondents (then Plaintiffs).

3. In its Judgment, the trial court awarded Kshs 1,935,000/= as General and Special Damages to the Respondents (then Plaintiffs).

4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 1st November 2021 and relied on the following grounds: -

   i. That the learned Magistrate erred in law in making a finding of excessive damages against the Defendant.

   ii. That the learned Magistrate erred in law and fact in holding that the Defendant was liable for the excessive damages so awarded or at all in the absence of any concrete evidence to demonstrate the same.

   iii. That the learned Magistrate erred in law and fact in failing to appreciate the impeccable defence of the defendant and thereby arriving at a wrong and erroneous conclusion condemning the Defendant to General Damages of Kshs 2,400,000/= without concrete evidence.

   iv. That the learned magistrate erred in law and in fact in holding the income of the deceased to be Kshs 10,000/= in contravention to the law applicable regarding minimum wage for unskilled labourers.

   v. THAT the learned Magistrate erred in law and fact by calling the Defendant to controvert the Plaintiff's evidence on income yet the law on the same is very clear in the absence of proof of income.

   vi. That the learned trial Magistrate erred in law and in fact by adopting a multiplier of 30 years for the deceased who was aged 22 years at the time of demise taking into account the vagaries of life and without any legal justification.

   vii. That the learned trial Magistrate erred in law and in fact in failing to appreciate the impeccable defence of the Defendant and thereby arriving at a wrong and erroneous conclusion of condemning the Defendant to net damages of Kshs 1,920,000/=.

   viii. That the learned trial Magistrate erred in law and in fact by failing to appreciate the long-established principle of stare decisis, precedent law thus bringing law into confusion and thereby deriving an erroneous finding/conclusion, in particular relating to damages.

   ix. That the learned trial Magistrate erred in law and fact in failing to appreciate as follows:

      i) That the Plaintiff's pleadings and the evidence tendered in support thereof was incapable of sustaining the excessive award of damages.

   x. THat the learned trial Magistrate erred in law and in fact in entering judgment in favour of the Plaintiffs against the Defendant inspite of the Plaintiffs miserable failure to establish their case more especially on quantum.

   xi. That the learned trial Magistrate erred in law and in fact by failing to appreciate the legal position to be considered. The court award is unsustainable and baseless in the circumstances.

5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR.

The Plaintiffs/Respondents case.

6. The Respondent stated that on 22nd June 2018, the deceased was hit by Motor Vehicle Registration Number KCK 015L as he walked along Sotik-Kisii road at a place called Chepilat.

7. The Respondent stated that the Appellant being the owner of Motor Vehicle Registration Number KCK 015L, was negligent in causing the accident and particularized the negligence in paragraph 4 of the Plaint. It was the Respondents further case that the deceased had dependants and the said dependants were listed in paragraph 6 of the Plaint.

8. It was the Respondents' case that at the time of the death of the deceased, he was aged 22 years and that he worked as an electrician earning approximately Kshs 20,000/= per month which he used to support his family. That his dependants fully depended on him and that the estate of the deceased had suffered great loss.

9. The Respondents' claim against the Appellant was for Special and General Damages under the *Law Reform Act* and *Fatal Accidents Act*.

The Appellant's/Defendant's case

10. The Appellant denied that he was the registered owner of Motor Vehicle Registration Number KCK 015L and further denied that the said Motor Vehicle was under his management and control. That at all times, the driver, agent or employee of Motor Vehicle Registration Number KCK 015L acted diligently and adhered to the road safety rules.

11. The Appellant denied the particulars of negligence levelled against him. That if any accident happened, it was caused solely by the negligence of the deceased. He particularized the negligence in paragraph 4 of his Defence.

12. The Appellant closed his case as soon as they recorded Consent on liability.

13. On 27th September 2022, I directed that this Appeal be canvassed by way of written submissions.

The Appellant's Submissions.

14. The Appellant submitted that the amount awarded by the trial court as General Damages was inordinately high and ought to be interfered with by this court. That damages must be within limits set out by comparable decided cases and also within the limits of the Kenyan economy. He relied on Stanley Maore vs Geoffrey Mwenda (Nyeri CA No. 147 of 2002).

15. It was the Appellant's submission that the Respondent only prayed for General Damages under the *Fatal Accidents Act*. That it was settled law that a party was bound by its own pleadings and the court could not grant what was not specifically pleaded. It was the Appellant's further submission that under pain and suffering, an award of Kshs 5,000/= was sufficient and he relied on Lucy M. Njeri v Fredrick Mbuthia & another [2006] eKLR.

16. Under the heading of loss of expectation of life, the Appellant submitted that the deceased died aged 22 and it could not be guaranteed how long he could have lived due to the contingencies and risks of modern life. That an award of Kshs 30,000/= would be sufficient. He relied on Leonard O. Ekisa & another v Major K. Birgen [2005] eKLR.

17. The Appellant submitted that loss of dependency was a question of fact that had to be proved by evidence. That the Plaintiffs did not prove that the deceased was their son or whether the deceased was

married. The Appellant further submitted that the Plaintiffs failed to prove that the deceased worked as an electrician. That in the alternative, should this court find that dependency was proved, then a ratio of 1/3 would be adequate. He relied on Section 4 (1) of the *Fatal Accidents Act* and Multiple Hauliers Co. Ltd v David Lusa [2012] eKLR.

18. On the issue of multiplier, the Appellant submitted that the court should adopt the multiplier of 30 years in view of the fact that life expectancy had been greatly reduced due to poverty, accidents and the vagaries of the AIDS epidemic and other terminal diseases. He relied on Alice Ombachi & another vs Jersuha Kemunto Mokaya & Joshua Ageta Mokaya (suing as legal representatives & administrators of the estate of Risper Nyaboke Mokaya - Deceased) [2019] eKLR.

19. It was the Appellant's submission that in the absence of proof of employment, this court should adopt Kshs 5,436/= as the minimum wage since the accident occurred within Sotik town and the aforementioned amount was the minimum wage within Sotik at the time of the accident.

20. With regards to Special Damages, the Appellant urged the court to only award the amounts that were specifically pleaded and proved. In summary, he proposed an award of Kshs 515,490/=

The Respondents Submissions.

21. The Respondents submitted that the present Appeal was incompetent for failure to include a copy of the Decree in the Record of Appeal. That this Appeal was filed in October 2020 and when the issue of the missing Decree was brought to the Appellant's attention, he was given a chance to file it in a Supplementary Record of Appeal but he failed to do so. They relied on Order 42 Rule 2 of the Civil Procedure Rules, Ndegwa Kamau t/a Sideview Garage v Fredrick Isika Kalumbo [2016] eKLR and South Nyanza Sugar Co. Ltd v Simeona A. Opola [2020] eKLR.

22. Under pain and suffering, the Respondents submitted that the deceased died in hospital while undergoing treatment and must have suffered a lot of pain before he succumbed. That the Kshs 10,000/= awarded by the trial court could not be said to be high compared to previous decisions with similar circumstances. They relied on David Kahuruka Gitau & another vs Nancy Ann Wathithi Gitau & another (2016) eKLR where the court upheld the award of Kshs 100,000/= where the deceased had died after 30 minutes.

23. Under the loss of expectation of life, the Respondents submitted that the award of Kshs 150,000/= by the trial court was reasonable and that it was supported by the case of Caroline Leah Awino vs Stephen Miheso Ashikoyo [2014] eKLR. The Respondents further submitted that the Appellant's proposal of Kshs 30,000/= was based on an award given in the year 2005.

24. The Respondents submitted that their evidence that the deceased was an electrician was not controverted. That being an electrician was a skill which required training and therefore one could not be classified as an unskilled labourer. They relied on Richard Matheka Musyoka & another v Susan Aoko & another (suing as the administrators ad litem of Joseph Onyango Owiti (Deceased)) (2016) eKLR. The Respondents further submitted that even if the court was to resort to the regulation of wages, the applicable scale was the Regulation of Wages (General) (Amendment) Order 2018 and the deceased being an electrician would be classified as a graded artisan in areas not within municipalities and the wages would range between Kshs 18,845/= to Kshs 27,024/=. That the multiplicand of Kshs 10,000/= adopted by the trial court was below the minimum wage and could not be reviewed downwards any further.

25. It was the Respondents submission that the Appellant had conceded to the multiplier of 30 years that the trial court adopted.

26. The Respondents submitted that even though the deceased was not married, there was evidence that much of the deceased's income would go towards supporting his parents and siblings therefore the ratio of 2/3 was justified. They relied on Simon Babu Mogi v Kipkurui Bernard Cheruiyot & another [2020] eKLR. The Respondents further submitted that the Appeal lacked merit and urged the court to dismiss it with costs.

27. I have gone through and carefully considered the Record of Appeal dated 1st February 2021, the Supplementary Record of Appeal dated 9th December 2021, the Appellant's Written Submissions dated 31st October 2022 and the Respondent's Written Submissions dated 9th March 2023 and I sieve two issues for my determination as follows: -

    (i) Whether the Appellant's failure to include a certified copy of the Decree in his Record of Appeal was fatal

    (ii) The appropriate amount of quantum payable to the Respondent.

i) Whether the Appellant's failure to include a certified copy of the Decree in his Record of Appeal was fatal

28. It was the Respondents' submission that failure by the Appellant to attach a certified Decree to the Record of Appeal was fatal to his case. A look at the Record and Supplementary Record of Appeal clearly shows that a Decree had not been attached thereto.

29. Order 42 Rule 2 of the Civil Procedure Rules provides as follows: -

    Where no certified copy of the decree or order appealed against is filed with the Memorandum of Appeal, the Appellant shall file such certified copy as soon as possible and in any event within such a time as the court may order, and the court need not consider whether to reject the Appeal summarily under Section 79B of Act until a copy is filed.

30. Order 42 Rule 13(4) of the Civil Procedure Rules provides as follows: -

    Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—

    (a) the memorandum of appeal;

    (b) the pleadings;

    (c) the notes of the trial magistrate made at the hearing;

    (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;

    (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;

    (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:

    Provided that—

    (i) a translation into English shall be provided of any document not in that language;

(ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).

31. The Respondents submitted due to the lack of the certified copy of the Decree, the Appeal was incomplete and ought to be struck out. In the case of Mukenya Ndunda v Crater Automobiles Limited [2015] eKLR the Court of Appeal emphasized that:-

> " The power to strike out an appeal or a notice of appeal on account of failure by an appellant to follow the rules of procedure requires to be exercised carefully and only in cases where it is shown that the party at fault flagrantly or deliberately or flippantly or recklessly failed to follow the rules."

32. I have gone through the Supplementary Record of Appeal and I note that the Appellant attached the Judgment. In my view, a Decree for purposes of an Appeal is an extract of the decision appealed against which is the Judgment. While it may be improper for a litigant to attach the Judgement appealed against and omit the Decree, I do not find such an omission fatal. I am inclined to agree with the findings in Nyota Tissue Products vs Charles Wanga Wanga & 4 Others (2020) eKLR where the court held that: -

> " The rule applicable to the appeals to the High Court makes provision under Order 42 rule 13 (f) of the Civil Procedure Rules for the filing of a copy of the "judgment, order or decree appealed from" and does not make it mandatory to attach the judgment and the decree. The Record of Appeal herein attached the Judgment of the trial court according to the requirements of Order 42 rule 13 (4) (f) of the Civil Procedure Rules, and in my respectful view, I would agree with the Court in Silver Bullet Bus case on the point, that it would be too draconian to strike out the appeal in these circumstances."

33. Similarly, I am persuaded by Kemei J. in CWW (Suing as personal representative of the estate of PWK v Mark Kahenya & another [2020] eKLR, where he stated that: -

> " I also note that the mentioned Order 42 Rule 13(4) of the Civil Procedure Rules provided that the record of appeal ought to contain "(f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal." This means that firstly the decree or order need not be certified as contradistinguished from the Court of Appeal rules and secondly that either judgement, order or decree can serve and not the order or decree only. A perusal of the record indicates that there is the judgement of the trial court on the record of appeal meaning the challenge posed by the respondent collapses and I find that the appeal is not incompetent for failing to include a certified copy of the decree or order."

34. When discussing whether a litigant ought to attach both a Judgment and a Decree, Nyakundi J. in Paul Lawi Lokale vs Auto Industries Limited & another [2020] eKLR, stated that: -

> " To my mind, the use of the conjunction "or" suggest that litigants are not mandatorily obliged to attach both the judgement and the decree."

35. Guided by the aforementioned authorities, I find that it would be too draconian to strike out the Appeal for the lack of a certified Decree. I also find that the Appeal is competent for determination.

ii)The appropriate amount of quantum payable to the Respondent.

36. The principles upon which an appellate court may alter an award by the trial court have been long settled. In the case of Johnson Evan Gicheru vs Andrew Morton & another [2005] eKLR, the Court of Appeal stated that: -

> " In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the court of appeal should be convinced that either the judge acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the appellant was entitled".

37. It is also a principle of law that awards must be reasonable and comparable to awards in similar cases. In the case of Tayab v Kinanu [1983] eKLR, the Court of Appeal gave guidance as follows:-

> " I would commend to trial judges the following passage from the speech of Lord Morris of Borth-y-Gest in the case of West (H) & Son Ltd v Shephard [1964] AC 326 at 345:
>
> "But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional."

38. As earlier noted, the parties entered into a Consent on 3rd March 2020, where liability was entered in the ratio of 75:25 in favour of the Respondents (then Plaintiffs).

39. In regard to the pain and suffering, the trial court awarded Kshs 10,000/=. The trial court stated that the basis of the award was that the Respondent testified that the deceased died on the spot. The Appellant submitted that since the deceased died on the spot, an award of Kshs 5,000/= would be sufficient. On the other hand, the Respondents submitted that the award of Kshs 10,000/= could not be considered high and that it could not be lowered any further. In the case of West Kenya Sugar Co. Limited vs Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR , Njagi J observed that:-

> " The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident."

40. In the case of Sukari Industries Limited v Clyde Machimbo Jumba [2016] eKLR Majanja J. stated: -

> " On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring

immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged after death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years....."

41. I have gone through the trial court proceedings and it is not true that PW1 testified that the deceased died on the spot. In fact, he testified to the contrary. He stated that the deceased did not die on the spot but was taken to Kapkatet where he died after 30 minutes. He produced a Death Certificate and a Post Mortem Report which indicated that the deceased died on 23rd June 2018, which was a day after the accident. The Respondents did not controvert the evidence tendered by PW1. It is therefore my finding that the award of Kshs 10,000/= was insufficient in the circumstances of the case and I substitute it with the reasonable amount of Kshs 50,000/=.

42. On the issue of the loss of expectation of life, I am persuaded by 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 where Muchemi J. stated: -

> " 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".
>
> (See also Hyder Nthenya Musili & Another v China Wu Yi Limited & Another [2017] eKLR).

43. The courts have overtime adopted the figure of Kshs 100,000/= for loss of expectation of life. The Appellant proposed a sum of Kshs 30,000 under this heading and the Respondents submitted that the award of Kshs 150,000/= awarded by the trial court was reasonable. Guided by the aforementioned case law, I reduce the award under loss of expectation of life from Kshs 150,000/= to Kshs 100,000/=.

44. On the issue of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows:-

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death 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 cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

45. The claim for loss of dependency constitutes the multiplicand, the dependency ratio and the multiplier. (See Melbrimo Investment Company Limited v Dinah Kemunto & Francis Sese (Suing as Personal Representative of the Estate of Stephen Sinange alias Reuben Sinange (Deceased) [2022] eKLR).

46. PW1 testified that the deceased worked as an electrician and would earn Kshs 20,000/= per month. I have gone through the trial court proceedings and there was no evidence on record to ascertain what the deceased actually earned and therefore the deceased's income was unknown. In such circumstances, courts are minded to use the minimum wage as the base income when calculating the loss of dependency.

47. The Court of Appeal in the case of Isaack Kimani Kanyingi & another (Suing as the legal representative of the Estate of Loise Gathoni Mugo (Deceased) v Hellena Wanjiru Rukanga [2020] eKLR held that a minimum wage ought to be adopted as a multiplicand where monthly income could not be ascertained. It stated: -

> " We find that the learned judge misdirected herself and abdicated her responsibility in failing to assess the deceased's net income as she was expected to assess the income as best as she could, using the little evidence available. The minimum wage of Kshs.11,995/- was an appropriate place to begin....."

48. Similarly, in Frankline Kimathi Maariu & Another vs Philip Akungu Mitu Mborothi (suing as Administrator and Personal Representative of Antony Mwiti Gakungu deceased (2020) eKLR where the court dealt with a similar issue stated:-

> " 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.
>
> 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."

49. PW1 stated that the deceased worked as an electrician, so I will use the Regulation of Wages (General) (Amendment) Order, 2018 which came into force on 1st May, 2018. The Appellant proposed the amount of Kshs 5,436/= as the multiplicand and the Respondents stated that the multiplicand should range between Kshs 18,845/= to Kshs 27,024/=.

50. I find that the deceased being an electrician, he was classified under Artisan Grade 3 in the Regulation of Wages (General) (Amendment) Order, 2018. It is unknown where the deceased worked but from the pleadings, the deceased's parents hailed from Migori County and further the accident happened in Chepilat in Bomet County, both areas being former municipalities. Doing the best I can, I find the appropriate multiplicand to be Kshs 21,175.15/=

51. The trial court used a multiplier of 30 years. The Appellant urged this court to adopt a multiplier of 30 years while the Respondents simply stated that the Appellant conceded to the trial court's application of 30 years. I will also use the multiplier of 30 years.

52. On the issue of the dependency ratio, I agree with the Respondents that the ratio be 1/3. The only listed dependants of the deceased on the Plaint are his father and mother. It is a reasonable assumption that since the deceased was a young man with no wife or children, he would spend 1/3 of his earnings to take care of his parents. I am persuaded by Njagi J. in the case of Rodgers Kinoti vs Linus Bundi Murithi & another (2022) eKLR, where he said: -

> " With the hard economic times that we are living in, I fear that young men of today do not have that strong commitment to spend a large portion of their income on their parents as used to happen in the past. Majority of them only provide the basic needs. In the premises, I am of the view that the dependency ratio of ½ adopted by the trial court was on the higher side. I consider a dependency ratio of 1/3 to be more reasonable."

53. In summary therefore, the loss of dependency comes to Kshs 21,175.15 X 12 X 30 X 1/3= Kshs 2,541,018/=

54. With regard to Special Damages, the Respondents stated that they had incurred Kshs 20,000/= as legal fees to procure the Letters of Administration ad litem. They produced the receipt and the same was marked as P. Exh 1(b). I find that the Respondents have proved this expenditure.

55. The Respondents testified that they had incurred Kshs 150,000/= as funeral expenses. They also stated that they could not keep the receipts because they were bereaved. Section 6 of the *Fatal Accidents Act* makes provision for funeral expenses as follows: -

In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection (1) of section 4, damages in respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought.

56. In the case of Premier Dairy Limited vs Amarjit Singh Sagoo (2013) eKLR , the Court of Appeal stated that:-

> " We do take judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with the issue of record keeping when their primary concern is that a close relative has died".

57. Similarly, in the case of Jacob Ayiga vs Simon Obayo (2005) eKLR, the court held that;

> " We agreed and the courts have always recognized that a reasonable award ought to be made in respect of reasonable and legitimate funeral expenses. But when such a large sum is claimed for such expenses then there ought to be proof of what the money was spent on. We however must not be understood to be laying down any law that in subsequent cases Kshs 60,000 must be given as reasonable funeral expenses. Those items are and must remain subject to proof in each and every case and the Kshs 60,000 awarded herein apply strictly to the circumstances of this case".

58. Guided by the precedents above, it is my finding that the award of Kshs 100,000 for funeral expenses by the trial court was reasonable. In total, it is my finding that the Special Damages awardable are Kshs 120,000/=

59. In light of the foregoing, the amount awarded to the Respondents is as follows: -

(i) Pain and Suffering Kshs 50,000

(ii) Loss of expectation of life Kshs 100,000

(iii) Loss of dependency Kshs 2,541,018

Kshs 2,691,018

Less 25% Contribution Kshs 672,754.50

Kshs 2,018,263.50

Add Special Damages Kshs 120,000

Total Kshs 2,138,263.50

60. The Appeal dated 6th October 2020 fails as the amount awarded to the Respondents is increased from Kshs 1,935,000/= to Kshs 2,138,263.50/=

61. Each party to bear their own costs in this Appeal while the costs in the suit remain as awarded by the trial court.

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH DAY OF MAY, 2023.

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr.Wesonga for the Appellant, Mr.Kusa for the Respondent and Siele (Court Assistant)