



**Terer & another (Suing as legal representatives of the Estate
of Leonard Kiprono Maritim (Deceased) v Jaoko (Civil Appeal
E024 of 2021) [2023] KEHC 21401 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E024 OF 2021**

JR KARANJA, J

JULY 27, 2023

BETWEEN

**GEOFFREY KIPKORIR TERER & ANOTHER (SUING AS LEGAL
REPRESENTATIVES OF THE ESTATE OF LEONARD KIPRONO MARITIM
(DECEASED) APPELLANT**

AND

CALEB ODHIAMBO JAOKO RESPONDENT

JUDGMENT

1. The deceased Leonard Kiprono Maritim, passed away on the July 9, 2018 at the age of thirty six (36) years as a result of a road traffic accident which occurred on that day along the Kericho – Nakuru road near Kedowa involving a motorcycle Registration No. KMEL 172X on which the deceased was lawfully aboard as a pillion passenger and a motor vehicle Registration No. KCB 253A belonging to the respondent and being driven at the time by his authorized driver, servant/agent or employee.
2. It was pleaded that the said motor vehicle was so negligently or recklessly driven such that it violently collided with the said motorcycle thereby occasioning fatal injuries to the deceased. The appellants therefore brought this suit against the respondent as the legal representatives of the estate of the deceased who was their brother. They claimed both special and general damages against the respondent under the *Law Reform Act* and the *Fatal Accidents Act* inclusive of costs and interest.
3. The respondent disputed the claim and contended in his statement of defence that if the accident occurred, then it was solely caused and/or substantially contributed to by negligence on the part of the deceased, the motorcycle rider and the owner of the motorcycle. He prayed for the dismissal of the suit with costs.



4. The hearing of the appeal proceeded by way of written submissions which were filed by the appellant through Messrs Kahn & Associates Advocates and by the respondent through Messrs Omwenga & Co. Advocates and which were given due consideration by this court against the grounds of appeal set out in the memorandum of appeal filed herein on 22nd July 2021.
5. In essence, the appeal is basically on the award of Kshs.600,000 made by the trial court in favour of the appellant on loss of dependency. The appellants contended that the amount was too low in the circumstances of the case. They submitted that even though they had no issue with the award being made on the basis of the global approach applicable. In assessment of damages for loss of dependency, the trial court erred by relying on wrong authorities in making the award thereby arriving at a figure which was too low in the circumstances.
6. The appellants further submitted that the deceased was 36 years old and a businessman by occupation and although unmarried he had dependants who depended on him for their upkeep. Therefore, the award of Kshs.600,000/= was too low and ought to be enhanced to Kshs.2.5 Million.
7. In opposing the appeal, the respondent submitted that the allegation that the deceased was a businessman earning a monthly income of Kshs.20,000/= was not proved as legally required and so was the fact of dependency. The respondent therefore implied that the trial court did not err in making the disputed award which in his opinion was sound compensation.
8. The parties having compromised the issue of liability at the ratio of 60% : 40% in favour of the respondent, the only issue that fell for determination by the trial court was the quantum of damages.

In that regard the trial court made the following award: -

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|----------------------------------|------------------|
| Pain | - Kshs.50,000/= |
| & Loss Suffering of | - Kshs.200,000/= |
| Loss expectation of | - Ksh.600,000/= |
| Special dependency damages | - Kshs.30,000/= |
| Total | - Kshs.880,000/= |
| Less | - Kshs.352,000/= |
| 40% Total contribution | -Kshs.528,000/= |

9. The award was seemingly acceptable to the appellants save for the award of Kshs.600,000/= for loss of dependency which was seemingly informed by the appellants pleading that the deceased earned a monthly income of Kshs.20,000/= as a businessman. The evidence in support thereof is that of the first appellant (PW1) but it fell short of establishing the alleged monthly earning as well as the fact of dependency. It was precisely for this reason that the trial court rightly settled for the global approach in the award of Kshs.600,000 for loss of dependency.
10. The amount was adequate and reasonable compensation for loss of dependency and may as well have been much lower or even unnecessary for want of proof of dependency and income.

The challenge to the award mounted herein by the appellants as may be deciphered from their submissions was unsupported by credible evidence. It was not enough to say that the award was too low without establishing the parameters for which it can reasonably be taken to be too low in the circumstances of this case.



11. In sum, this appeal is devoid of merit and is hereby dismissed with costs to the respondent.

Ordered accordingly

[DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF JULY, 2023.]

J. R KARANJA

JUDGE

