



Wambui & another v Njogu (Suing as the Legal Administrator of the Estate of Caroline Kaigongi Kama) & 2 others (Civil Appeal 12 of 2019) [2023] KEHC 27421 (KLR) (10 August 2023) (Judgment)

Neutral citation: [2023] KEHC 27421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL 12 OF 2019
GL NZIOKA, J
AUGUST 10, 2023**

BETWEEN

MERCY WAIRIMU WAMBUI 1ST APPELLANT

FARAH AFTIN 2ND APPELLANT

AND

PURITY WAMUYU NJOGU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF CAROLINE KAIGONGI KAMA) 1ST RESPONDENT

JOHN WAINAINA MBURU 2ND RESPONDENT

ANDU ADAN 3RD RESPONDENT

(Being an appeal against the decision of Hon. Esther K. Kimilu Principal Magistrate (PM) dated 9th May, 2017 delivered vide Civil Case No. 102 of 2015 at the Chief Magistrate's Court at Naivasha)

JUDGMENT

1. The plaintiff (herein “the 1st respondent), being the legal representative of the deceased, filed a suit against the defendants (herein “the 2nd and 3rd respondents” and “the appellants”) arising from a fatal road traffic accident on, 17th March 2013 along the Naivasha – Nairobi road at Karai area.
2. The 1st respondents averred that the deceased was travelling aboard motor vehicle registration number KBT 923T Toyota Fielder which was involved in an accident with motor vehicle registration number KBP 964C Toyota Fielder. That, the accident was caused by the negligence of the driver of motor vehicle registration number KBT 923T.
3. Consequently, she sought for the judgment against the defendants jointly and severally for: -



- a. General damages under the *Law Reform Act*, Cap 26.
 - b. General damages under the Law *Fatal Accidents Act*, Cap 36.
 - c. Special damages of Kshs. 410,623.60
4. The case proceeded to full hearing and at the conclusion thereof the learned trial Magistrate entered judgment on 9th May 2017, in favour of the 1st respondent and stated as follows:

“ 8. In conclusion I wish to state that this court has been guided by the submission by the parties noting that the defendants submission on record and all issue raised. In summary I will enter judgment for the plaintiff against the defendants jointly and severally as follows:-

- i) Liability:30% (1st and 2nd defendants)
70% (3rd and 4th defendants)
- ii) Pain and suffering.....Ksh. 100,000/=
- iii) Loss of expectation of life.....Ksh. 100,000/=
- iv) Loss of dependency Ksh. 3,000,000/=
- v) Special damages Ksh. 410,623.60/=
- Total Kshs. 3,610,623.60/=
- vi) Costs and interests of the suit at court rates.”

5. However, the appellants being aggrieved by the judgment appeal against it on the following grounds: -

- a. That the learned trial Magistrate erred in law and in fact by delivering Judgment on liability and apportioning a greater percentage of liability upon the Appellants than was proportionate to the evidence adduced during trial.
- b. That the learned trial Magistrate erred in law and in fact by completely failing to consider, in her Judgment, or at all, the evidence on behalf of the Appellants thereby conferring more blame upon the Appellants than the justice and circumstances of the case demanded.
- c. That the learned trial Magistrate erred in law by delivering Judgment on liability and apportioning more blame upon the Appellants contrary to her own findings on point of impact of the concerned motor vehicles during the accident and contrary to the evidence adduced on behalf of the Appellants and/or the 1st Respondent.
- d. That the learned trial Magistrate erred in law and in fact by making awards that are excessive, inordinately high and that fail to pay due regard to the circumstances of the case and applicable precedent.
- e. That the learned trial Magistrate erred in law and in fact by paying undue regard to irrelevant factors and failing to consider relevant factors such as the fact that the Deceased had not cleared college as at the time of her demise and had, as a consequence, not secured employment therefore she had no earnings.
- f. That the learned trial Magistrate erred in law and in fact by founding her decision to award damages for loss of dependency, not on evidence, but rather on speculation that the Deceased



would have actually graduated and/or secured employment and/or earned a monthly salary of Ksh. 25,000.

- g. That the learned trial Magistrate erred in fact by using a multiplier of 30 years notwithstanding the fact that the Deceased, at 24 years, had neither graduated from college nor secured employment thereby failing to give consideration to the time required for those events to occur, if at all they would
 - h. That the trial Magistrate erred in law and in fact by failing to consider awards in comparable cases when she awarded Ksh. 100,000 as damages for pain and suffering which is excessive considering the painless state the Deceased was in before her demise.
 - i. That the learned trial Magistrate erred in law and in fact by awarding special damages of Ksh. 410,623.60 notwithstanding that this claim was not pleaded and/or proved strictly, or at all.
6. The appellants now seek the following orders:
- a. That this appeal be allowed with costs.
 - b. That the whole of the decision of Honourable Esther K. Kimilu, P.M delivered on 09/05/2017 in Naivasha CMCC No. 102 of 2015 be set aside and/or varied and in its place Judgment be entered apportioning a lower percentage of liability upon the Appellants and making lower awards of damages for pain and suffering, loss of dependency and special damages.
7. The appeal was disposed of by filing written submissions. The appellants submitted that the duty of the appellate court is to re-evaluate and reconsider the evidence adduced at the trial stage as contemplated by section 78 of the *Civil Procedure Act*, (Cap 21) Laws of Kenya. The appellant relied on the case of Peter M. Kariuki —vs- Attorney General [2014] eKLR where the Court of Appeal stated as follows: -
- “We have also, as we are duty bound to do as a first appellate court [to] reconsider the evidence adduced before the trial court and re-evaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence. see *Ngui-vs- Republic* [1984] Klr 729 And *Susan Muivyi -vs- Keshar Shani*, Civil Appeal No. 38 of 2002 (unreported).”
8. The appellants further argued that the trial court in reaching a decision that the appellants were substantially to blame for the accident, ignored the evidence they had adduced during trial, especially the investigation report dated; 14th April, 2013, the photographs of the motor vehicle KBP 964G and evidence of DW1 and DW2, all of which indicated the motor vehicle registration number KBT 923T veered to the wrong side. That, if at all there was any liability to be apportioned, then the same ought to have been 50:50% between KBT 923T and KBP 964G and not 30:70 as wrongly apportioned by the trial court.
9. Further the trial court erred in assuming that the deceased was a graduate without evidence in the form of academic certificates. That the trial court also erred when it adopted a multiplicand of Ksh. 25,000 yet there was no definite salary value for the unemployed deceased. Reliance was placed on the case of *Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another*, Nairobi HCCC No. 1638 of 1988 where the court held that: -

“The principles applicable to an assessment of damages under the Fatal Accidents Acts are all too clear. The court must in the first instance find out the value of the 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 purchase. 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. "

10. The appellant further relied on the case of Authur Nyarnwate Omutondi & Others vs United Millers Limited & 2 Others [2009] eKLR where the Court stated that:-

“Proof of income is basic to a claim of loss of dependency under the *Fatal Accidents Act* because one can only be supported financially by what was earned in hard pounds and cents. If income is not proved then no award of dependency can issue.”

11. It was further submitted that, where there is no definite salary, courts have adopted an acceptable practice of considering the minimum wage at the time of the deceased’s death. That in the present case, the minimum wage in March 2013 was; Ksh. 11,995, as stated. The appellants relied on the case of 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 held that: -

“(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. ”

12. Further, that the trial court erred in in apportioning damages for loss of dependency to the brother of the deceased contrary to the provisions of section 4 of the *Fatal Accidents Act* which states that "Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parents and child of the person, whose death was so caused..."

13. The appellants urged the court to interfere with the sum of; Kshs. 3,000,000 awarded as general damages as the same was arrived at in blatant disregard of the law and its principles and relied on the case of Alfarus vs. Lucy M Lavuta & Another Civil Appeal No. 47 of 1997 where the Court of Appeal held that: -

“The appellate Court interferes only if it is shown that there was absolutely no evidence or that the evidence that was there could not possibly support such a finding...Even if a Judge does not give his reasons for his finding the appellate Court can find the same in the evidence.”

14. Furthermore that, the judgment of the trial court does not enumerate the evidence produced by the respondents to strictly prove special damages pleaded in the plaint. That, the law is clear that special damages must be pleaded and proved before being awarded by the court. The decision of the Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [19851 KLR 716, at P. 717, and 721 was relied on where the court stated that: -

“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. "

15. The appellants urged the court to award them costs of this appeal based on Section 27(1) of the Civil Procedure Act and cited the case of Joseph Oduor Anode V Kenya Red Cross Society Nairobi High Court Civil Suit No. 66 of 2009; (2012) eKLR where the court held: -

"In matters of costs, the general rule as adumbrated in the aforesaid statute (the Civil Procedure Act) is that costs follow the event unless the Court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words where the court decides not to the general principle the court is enjoined to give reasons for not doing so..."

16. However, the 1st respondent in response submitted that, as regards liability, both the appellants and the 2nd and 3rd respondents adduced reports that sought to blame each other's driver for causing the accident. Further, the Police blamed both drivers for causing the accident.

17. That, the 1st respondent had urged the trial court to apportion liability at 50:50% between the appellants and the 2nd and 3rd respondents. However, the trial court considered the evidence on record and held that the appellants motor vehicle was the one that was overtaking and proceeded to apportion liability at 30:70%.

18. That, the appellants have not shown how the finding of fact was based on no evidence or misapprehension of evidence. Therefore the finding should not be interfered with. Reliance was placed on the case of Mwangi v Duncan Mwangi Wambugu [1984] eKLR where the Court of Appeal held that: -

"A court of appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

19. On quantum, the 1st respondent submitted that principles that guide the court in determining whether or not to disturb an award of damages by the trial court are well settled. That, the Court of Appeal in the case of Bashir Ahmed Butt -vs. Uwais Ahmed Khan (1982 88) KAR 5 stated that: -

"An Appellate court will not disturb and award of damages unless it is as inordinately high or low as to represent an entirely erroneous estimate. it must be shown that the Judge proceeded on wrong principles of that he misapprehended the evidence in some material aspect and so arrived at figure which was inordinately high or low."

20. That, the present suit was brought under the Law Reform Act and the Fatal Accidents Act and the manner of assessment of damages was clearly set out in the case of Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another Nairobi HCCC No. 1638 of 1988 (supra).

21. That the deceased passed away after eleven (11) days during which she must have undergone much pain and suffering. Further her death was as a result of the accident as evidenced by the medical evidence. In the circumstances the trial Magistrate awarded a global sum of Ksh. 100,000 which should be upheld.



22. The 1st respondent relied on the case of Sukari Industries Limited vs. Clyde Machimbo Juma Homa Bay HCCA NO, 68 of 2015 [2016] eKLR where it was held that: -

“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 before 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 hence I cannot say that the sum of Kshs 50,000 awarded under this head is unreasonable.”

23. Further, the deceased was twenty-four (24) years old when she died and the trial court awarded Kshs. 100,000 for loss of life expectation and urged this court to uphold the same.

24. On loss of dependency, the 1st respondent submitted that the appellants had suggested a multiplier of thirty (30) years and the trial court adopted thirty (30) years. That a multiplier of thirty (30) years has been adopted by the courts where a deceased is between 21 and 22 years old at the time of death. Reliance was placed on the cases of:

- a. White Water Ltd -vs- Joseph Kimani Kamau & Another (2017) eKLR, where the deceased, a nurse aged 21 years, the court adopted a multiplier of 30 years upon considering vagaries of life.
- b. Ruth Wangechi Gichuhi v Nairobi City County (2013) eKLR, where the court applied a multiplier of 30 years for the deceased aged 22 years at time of death.

25. It was further submitted that, the appellants proposal that the court ought to have awarded Ksh. 11,955 as the deceased did not have a definitive salary was untenable. That, the deceased had finalised her studies and was ripe for employment as evidenced by the letter from the African Institute and was to be a procurement officer. Further, the appellants appreciated the same and suggested a salary of Kshs. 20,000 in the trial court. That, in the case of Dismas Muhami Wainarua vs Supon Kasirimo Mranta (suing as administrator and or personal representative of the estate of Partinini Supon(deceased) Kajiado Civil Appeal no. 30 of 2019 the court declined to accept a proposed minimum amount of Ksh. 7,967.95 where the appellant had proposed Ksh. 11,831.

26. However, the 1st respondent conceded that as per section 4 of the *Fatal Accidents Act*, only the deceased mother qualifies as dependent and agreed that the deceased’s brother can be omitted as a dependent but observed that, the trial court did not apportion any benefits to the deceased brother and as the dependency ratio of 1/3 would suffice and should not be disturbed by the court.

27. Further, special damages were pleaded and strictly proved through the receipts tendered in court totalling to an amount of Ksh. 410,623.60 and the appellants contention should be rejected.

28. Lastly, the 1st respondent submitted that the appeal should be struck out as the record of appeal was incomplete as it lacked the typed proceedings, the respondents’ submissions, and the decree from the court. She placed reliance on Election Petition Appeal No. 3 of 2018 Elvis Anyimbo Sichenga v Orange Democratic Movement & 4 Others (2016) eKLR where the court held that: -

“What then am I saying about the failure by the appellant to attach a certified copy of the decree appealed from? I am saying that that omission is not a mere technicality for if it were so, the drafters of the rules would not have made its attachment a mandatory requirement. I



am therefore satisfied that the applicant has satisfied this court that the said omission is fatal to the petition and I so find.”

29. The 2nd respondent on his part, submitted that the trial court had an opportunity to see and observe the witnesses and considered all the evidence before reaching the conclusion that the appellants’ vehicle bore a greater liability.
30. That apportionment of liability is an exercise of judicial discretion and that this court cannot interfere with that exercise of discretion unless it can be demonstrated on evaluation of evidence on record that the trial court did not exercise the discretion judiciously. Reliance was placed on the case of Mbogo vs Shah [1968] E.A 93 where the court stated that: -

“I think it is well settled that this Court will not interfere with the exercise of its discretion is by an inferior Court unless it is satisfied that its decision is clearly wrong, or because it has misdirected itself or because, it has on matters on which it should not have acted or because it failed to take into consideration matters it should have taken into consideration and in doing so arrived at a long conclusion. It would be wrong for this Court to interfere with the exercise of trial Court’s discretion merely because this Court’s decision would have been different”.
31. Further reliance was placed on the case of Asnah bte ab Rahman vs Rijianlin [2016] 2 SLR 944 quote in Yakul H. Ganyo —VS- Auto Industries Limited & Ano. [2020] eKLR where the court held that:

“That it has been said that a finding of apportionment is a finding upon a question not of principle or a positive findings of facts or law but of proportions of balance and relative emphasis and of weighing different considerations emphasized by the Court of appeal were the relative causative potency of the Parties conduct and the relative moral blame worthiness of their conduct”.
32. That, where accidents occur and it is not possible to decide who is to blame due to factor such as a fatal accident where both drivers and passengers died, the lack of eye witness, or it is difficult to draw a sketch of what happened, courts tend to apportion liability on a 50:50% basis, however, where the court is able to apply its mind it can apportion liability accordingly. That, in the present case the court was able to apportion liability and therefore the same should not be disturbed. The 2nd respondent relied on the case of Platinum Car Hire & Tours Limited —VS- Samuel Araba Nyamasa & Ano. [2019] eKLR.
33. It was further submitted that the appellants are only aggrieved because the trial court gave higher damages than what they had submitted. That, in the trial court the appellants proposed a salary of Ksh. 20,000 but are now seeking that the court applies Ksh. 11,995 as the minimum wage.
34. Further the appellant submitted a multiplier of 32 years but the trial court used 30 years. Furthermore, the appellants proposed Ksh. 2,560,000 as loss of dependency but the trial court awarded KShs. 3,000,000 which is within acceptable parameters.
35. Finally, the 2nd respondent submitted that a brother is not a dependant, however, it is doubtful whether the removal of the brother from the beneficiaries list will reduce the award given by the trial Court.



36. That the law is settled that, the role of the first appellate court is to evaluate the evidence adduced afresh and arrive at its own decision as held in the case of; *Selle & Another vs Associated Motor Boat Co. Ltd. & Others* (1968) EA 123, where the Court of Appeal stated that: -

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and 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 judge’s 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 the demeanour of a witness is inconsistent with the evidence in the case generally.”

37. Having considered the appeal in the light of the material placed before the court and the arguments advanced vide submissions, I find that, the main issue is to determine is whether the learned trial court properly guided itself while determining liability and quantum in the subject matter.
38. Further, it is trite that the 1st appellate court will not interfere with the trial court’s discretion in assessing damages unless in exercising that discretion, the trial court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice (*Mbogo & another Vs Shah* (supra) and *Mkube -vs- Nyamuro* 1983 KLR 403.)
39. In the same vein, the Court of Appeal in *Loice Wanjiku Kagunda vs. Julius Gachau Mwangi* CA 142/2003 (unreported) stated that:

“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 V Musila* [1984] KLR 257).”

40. On liability, I note that the deceased was a passenger in motor vehicle registration number KBT 923T. The deceased was not one of the drivers of the motor vehicles involved in the accident. The issue of apportioning liability rested on the court. The court has clearly indicated it relied on the evidence adduced, I further note that the appellants did not adduce any evidence in the trial court and therefore cannot challenge evidence by the 1st respondent. I shall not interfere with the finding on liability.
41. Indeed, the general principle is that nominal sum is awarded for pain and suffering if death followed immediately after the accident and conventional award ranges from Kshs 10, 000 to Kshs 100,000. The consideration by the court for an award for pain and suffering has been well discussed in the judgment. In the matter of *Hyder Nthenya Musili & another v China Wu Yi Limited & another* [2017] eKLR the court stated that:-

“As regards damages awarded under the *Law Reform Act*, 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.



42. Similarly in the case of Mercy Muriuki & Another vs. Samuel Mwangi Nduati & Another (Suing as the legal Administrator of the Estate of the late Mwangi) 2019 eKLR it was observed that:

“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 award range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.”

43. In the instant case, there is no dispute that the deceased was a passenger in motor vehicle KBT 923T and that she sustained injuries that led her to being admitted in hospital for eleven (11) days after which she succumbed to her injuries. I find that the award of Ksh. 100,000 is reasonable and I see no reason to interfere with the same.

44. As regards the issue of loss of dependency, the deceased was twenty-four (24) years old. She was a graduate although she was not yet employed. That she was survived by her mother and brother. The trial court considered the above factors and award Ksh. 3,000,000 calculated as follows: $30 \times 12 \times 1/3 \times 25,000 = 3,000,000$.

45. I note that the appellants on their part had proposed a sum of Ksh. 2,560,000 calculated as $20,000 \times 32 \times 12 \times 1/2$. The 1st respondent had proposed Ksh. 5,000,000 calculated as follows $30 \times 25,000 \times 1/3 \times 12$. Against these proposals, the appellants have submitted that the trial court erred in holding that the brother of the deceased was a dependant of the deceased. Section 4 of the *Fatal Accidents Act* (Cap 32) Laws of Kenya outlines who dependents are for purposes of a suit under the Act and states: -

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:

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. (emphasis added)

46. I therefore concur with the submissions by the appellants that a brother is not a dependent under the *Fatal Accidents Act* and is expunged and find that the only dependant is the mother. However, even the multiplier of 1/3 would be applicable even if it is the mother who is a dependent.

47. Furthermore, the appellants have opposed the amount of Ksh. 25,000 adopted as the salary the deceased would have earned and are proposing the sum of Ksh. 11,995 being the minimum wage at the time of the deceased death. This is a total shift from the amount of Ksh. 20,000 they had proposed in the trial court.

48. Furthermore, the evidence that the deceased was a graduate was not being rebutted. That even though the deceased was not employed she was not an unskilled worker. The trial court considered the



appellants proposal and adopted Ksh. 25,000 which amount this court finds to be very reasonable for a graduate.

49. On the multiplier, the appellant had proposed 32 years but the trial court adopted 30 years which actually works in favour of the appellants and I so no reason to interfere with the same.

50. In the premise I see no reason to interfere with the award of Ksh. 3,000,000 by the trial court. The upshot is that, I confirm the award of the trial court as follows:

- a. Liability:.....30% (1st and 2nd defendants)
.....70% (3rd and 4th defendants)
- b. Pain and suffering.....Ksh. 100,000/=
- c. Loss of expectation of life.....Ksh. 100,000/=
- d. Loss of dependency.....Ksh. 3,000,000/=
- e. Special damages.....Ksh. 410,623.60/=
- Total.....Kshs. 3,610,623.60/=

51. The respondent shall have costs and interest on the sum awarded from date of the judgment in the trial court until payment in full.

52. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 10TH DAY OF AUGUST 2023.

GRACE L. NZIOKA

JUDGE

In the presence of:

N/A for the appellant

Mrs. Gatheca for the 1st respondent

Mr. Kamonjo Kibiru for the 2nd respondent

Ms. Ogutu: court assistant

