



REPUBLIC OF KENYA



Chege & another v Jeremy & another (Suing as the Legal Representative of the Estate of Jeremy Rukaria Maua – Deceased) (Civil Appeal E340 of 2023) [2025] KEHC 4055 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEHC 4055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E340 OF 2023
F WANGARI, J
FEBRUARY 20, 2025**

BETWEEN

NAHASHON CHEGE 1ST APPELLANT

JULIUS NDUNGU WANJIKU 2ND APPELLANT

AND

DENNIS MUTHAURA JEREMY 1ST RESPONDENT

JOSEPHAT KIBAKI JEREMY 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JEREMY
RUKARIA MAUA – DECEASED**

*(Being an Appeal arising out of the Judgment and Decree of Hon.
D. O. Mbeja, Principal Magistrate in Mombasa Chief Magistrate’s
Court, Civil Suit No. E1950 of 2021 delivered on 16th November 2023)*

JUDGMENT

1. The Appeal is from a Judgment delivered on 16th November, 2023 by Hon. D.O Mbeja in the above mentioned matter.
2. The Appellants having been aggrieved by the said judgment, filed this appeal and preferred the following grounds:
 - a. That the learned trial magistrate failed to properly evaluate and analyze the evidence and oftenly misapplied the evidence it hence ended up making wrong findings of fact, not supported by evidence.



- b. That the learned trial magistrate erred in law and in fact in holding that the respondent had proved its case on negligence on a balance of probability.
 - c. That the learned trial magistrate erred in law and in fact in assessing damages by taking into account irrelevant factors and failing to consider relevant factors hence ended up making an award for damages that was inordinately high.
 - d. That the learned trial magistrate exercised his discretion in assessment of damages arbitrary and capriciously hence arrived at a wrong assessment of damages.
 - e. That loss of dependency was not proved as there were no legally recognized dependants pleaded.
3. They thus urged the Court to allow the appeal and order as follows:
- a. That the judgment be set aside and be replaced with an order dismissing the suit in the lower court with costs.
 - b. That in the judgment, negligence if sustained, the damages be assessed downwards for loss of dependency and/or claim for damages be dismissed for want of proof.
 - c. That the appellant be awarded costs of the proceedings in the lower court and in this court.
4. Directions were taken to have the appeal be disposed of by way of written submissions. Both parties complied by filing their rival submissions, which I have considered.
5. The role of the Appellate Court is now a matter of judicial notice for in the case of *Joyce Moraa Oyaró v Hussein Dairy Limited* [2016] eKLR recapped the grounds that the Appellate Court will interfere with exercise of discretion by the trial court when assessing damages laid down by the Court of Appeal in *Kangu v Manyoka* (1961 EA 705, 709, 713 and *Lukenya Ranching and Farming Cooperative Society Ltd v Kavoloto* (1979) EA that if the trial court;
- a) Took into account an irrelevant fact; or
 - b) Left out of account a relevant fact; or
 - c) The award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.
6. The Appellants aver that the trial magistrate's award was extremely high and was made without taking into account relevant factors resulting in an erroneous estimate. They asked the court to review the evidence and facts on record and the foregoing submissions, the law and case law cited herein to allow their appeal by setting aside the judgment and replacing it with an order of dismissing the suit with costs. That in any event, the damages be assessed downwards and/or claim for damages be dismissed for want of proof and they be awarded costs of the proceedings in the lower Court and this Court.
7. The issue for determination are:
- a. whether the trial court was right in its finding on liability; and
 - b. whether the trial court applied wrong principles in the award of damages.
8. I have perused the Memorandum of Appeal and the entire record of the Trial Court and I am alive to the fact that my task is to re-evaluate the evidence in order to establish whether or not the Trial Court erred in its findings. The appeal is on liability and quantum on damages.



9. In their Plaint dated 26/11/2021, the Respondents sought for judgment against the Appellants for General damages under the *Fatal Accidents Act* and the *Law Reform Act* and Special damages for Kshs. 63,500, costs of the suit and interest.

Liability

10. It was the Respondents evidence that the 2nd Appellant drove the accident vehicle negligently and knocked down the deceased who sustained fatal injuries. They called Patrick Kahindi Kakundi who adopted his recorded statement as his evidence-in-chief. He gave a detailed account on how he was driving his vehicle registration No. KCM xxxF, Toyota Probox along Makupa Causeway opposite China City Construction Company while heading to Changamwe. It was although it was around 1900 hours, the weather was dry with clear visibility though traffic was heavy with vehicles moving slowly.
11. When he reached China city Construction Company the accident vehicle suddenly overtook him at a high speed and as the 2nd Appellant attempted to overtake another vehicle ahead of him, he lost control of the vehicle and rammed into a pedal cyclist on the other lane. The witness testified that the accident would have avoided had he been patient and exercised due care and attention.
12. On their part, the Appellants blamed the deceased for causing the accident and his own death. The 2nd Appellant adopted his witness statement as his evidence-in-chief. He stated that the deceased who was a pedal cyclist swerved to his lane intending to cross the other side of the road leading vehicles towards Mombasa Island.
13. The deceased went to the 2nd Appellant's lane hitting him with the left front side of his vehicle, causing the deceased to be hurled to the windscreen before he fell on the road and died on the spot. Traffic police officers visited the scene where they took the necessary details then he took his vehicle to Makupa Police Station where it was detained for inspection and at the same time he recorded his statement.
14. Corporal John Oketch (PW1) from Makupa Police Station as he produced the police abstract testified that the deceased was cycling from left to right facing Changamwe when he was hit. landed on the concrete block on the dual carriage and since he suffered severe head injuries, he died on the spot.
15. Upon completion of the investigation, the file was forwarded to DPP who recommended that the 2nd Appellant to be charged with the offence of 'causing death by careless driving' and subsequently being charged in Mombasa Traffic Case No. 857 of 2020.
16. In cross examination he confirmed that the police abstract was issued when the file was still pending before the ODPP. It was based on all the above evidence that the trial magistrate relied on to make a finding that the appellants were 100% jointly and severally liable for the accident hence the death of the deceased.
17. It remains undisputed evidence that the accident occurred between 6.45pm and 7pm on 20th April 2020 when the 2nd Appellant was driving the accident vehicle while the deceased was a pedal cyclist. Further undisputed evidence is that both the deceased and the 2nd Appellant was cycling and driving towards the same directions and none of the parties alleged poor visibility on the road.
18. Further undisputed evidence is that it was during rush hour so the traffic was heavy. As analyzed above, the 2nd Appellant testified as to how the accident occurred from the point of impact until the deceased died and from all the above evidence, can the 2nd Appellant be said to have exercised vigilance and due care and attention when he drove through the said heavy traffic?



19. The Respondents availed an independent eye witness blaming the 2nd Appellants for causing the fatal accident that claimed the life of their father. In addition, the 2nd Appellant was also charged in the aforesaid case with the offence of causing death by dangerous driving.
20. Although the trial Court was not informed of the outcome or status of that case, the impact at the time of the accident as described by 2nd Appellant suggests that he was driving at a high speed despite the heavy traffic. As a driver, he threw caution to the wind for failing to be alert. Therefore, it is my finding that the trial court was correct in assessing 100% of the liability to the appellants.

Quantum

21. For this I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held as follows;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

22. It remains undisputed evidence that the deceased died at the age of 50 years and was a security guard at the time of his death leaving behind his sons, the Respondents.
23. Both his death certificate and the post mortem report proved that the cause of his death was severe traumatic head injury with subdural hematoma as a result of a road traffic accident. Although the Appellants submitted there was no evidence adduced as to the deceased's good health, I make reference to the post mortem report produced herein which stated that the deceased's health was good and so was his nutrition and physique.
24. For pain and suffering, the trial magistrate in his judgment stated the evidence availed suggested that deceased passed on immediately or soon after the accident thus awarding the respondents Kshs.100,000/- under this head. I find no reason to interfere with the trial Court's award as the Court in the case of *Sukari Industries Limited v Clyde Machimbo Juma* Homa Bay HCCA No 68 of 2015 [2016] eKLR 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 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 that the sum of Kshs.50,000/- awarded under this head is unreasonable.”

25. For the loss of expectation of life, the trial Court awarded the respondents the conventional amount of Kshs.100,000/-. I do rely on the case of *Mosonik & Another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased)* (Civil Appeal 113 of 2019) [2022] KEHC 11823 (KLR) (29 July 2022) (Judgment) where the court observed that:

“...I note that *Benedeta Wanjiku Kimani v Changwon Cheboi & Another* [2013] eKLR, Hon Emukule J, reasoned that:...In common law jurisprudence of which Kenya is part, the courts have evolved two principles, loss of expectation of life and pain and suffering by the deceased,



for award of damages under the *Fatal Accidents Act* for pain and suffering determined what is commonly referred to as a conventional sum which has increased over the years from Kshs.10,000/= to Kshs.100,000/= currently. The basis of the increase has basically been based upon the increase of life expectancy from 45 years to run 60 years currently, that life itself was, until cut short by the accident worth something to the estate. The generally accepted principle is that very nominal damages will be awarded on this head claim if death followed immediately after the accident. Higher damages will be awarded if the pain and suffering was prolonged before death....”

26. In this case, it was not disputed that the deceased was 50 years old and the sum of Kshs.100,000/- would be most appropriate under this head.
27. On loss of dependency, it was not in dispute that the deceased was 50 years old and a security guard. That he left behind 2 children as confirmed by the chief’s letter. The trial Court stated that since there was no evidence suggesting he was of ill health, he thus enjoyed robust health and his life was cut short by the accident. Further, it was not in doubt that he used to support his family and the court awarded the Respondents a lump sum of Kshs.1,000,000/-.
28. It cannot be disputed that the occupation of a security guard has its risks. The court in *South Sioux Farms Ltd & 2 Others v Selina Robi Mwita (suing as legal representative of the Estate of the Late Julius Bonare Chacha* [2021] eKLR considering the multiplier for a security guard who died at the age of 28 had this to say:

“I note that the deceased died at the age of 28 years, the court applied a multiplier of 30 years taking into account that he had 32 years to attain age of 60 which is the statutory retirement age. Whereas I agree that the deceased’s nature of work would allow him to work beyond 60 years, it is important to consider the fact there are risks involved in the work of security guard besides other vulgarities of life which include illness and there are chances that a person may die before attaining the age of 60 or may be alive but unable to engage in active employment. In my view award of 30 years as multiplier is on the higher side and I am inclined to reduce to 22 years.”

29. Therefore, I find no reason to interfere with the trial Court’s award on loss of dependency.
30. On special damages of Kshs. 63,500/- the Appellants did not challenge the award, hence the award shall not be disturbed.

Determination

31. The upshot of the foregoing is that the court renders itself as hereunder: -
 - a. The appeal herein is devoid of merit and the same is hereby dismissed.
 - b. Costs are hereby awarded to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20TH DAY OF FEBRUARY, 2025.

F. WANGARI

JUDGE

In the presence of;



Mr. Kioko Advocate for the Appellant

N/A by the Respondents

Ms. Salwa, Court Assistant

