Owino & another v Kipchoge & another (Suing as the Administrators to the Estate of Esther Jepkorir Meres) (Civil Appeal E014 of 2021) [2025] KEHC 1390 (KLR) (19 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1390 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAPSABET

CIVIL APPEAL E014 OF 2021

JR KARANJA, J

FEBRUARY 19, 2025

BETWEEN

JORAM OWINO ..... 1ST APPELLANT

KUKHU SACCO ..... 2ND APPELLANT

AND

PAUL KIPCHOGE ..... 1ST RESPONDENT

SABET AYUMA AMBEYI ..... 2ND RESPONDENT

SUING AS THE ADMINISTRATORS TO THE ESTATE OF ESTHER JEPKORIR MERES

(Being an appeal arising from the Decree and Judgment of the Principal Magistrate Mr. D.A. Ocharo in Kapsabet CMCC No. 126 OF 2022 OF Paul Kipchoge Seurei and Sabet Ayuma Ambeyi suing as Administrators to Esther Jepkorir Vs. Joram Awino & Kukhu Sacco)

JUDGMENT

1. The appeal is against the judgment of the Principal Magistrate in Kapsabet CMCC No. 126 of 2019 delivered on 24th June 2022 wherein the Appellants as the Defendants were found liable to the Plaintiff/ Respondent in the total sum of Kshs. 614,750/- being general and special damages arising from a road traffic accident which occurred on 25th October 2016 at Chebarbar along the Eldoret – Kapsabet Road involving the Appellant's Motor Vehicle Registration No. KCF 835W which was at the time being driven in a reckless and negligent manner such that it knocked down and occasioned fatal injuries upon the deceased Esther Jepkorir Meres who was lawfully walking along the road.

2. There are six [6] grounds of appeal contained in the memorandum of appeal filed herein on 5th July 2022, challenging at most the award of damages made in favour of the Respondents against the Appellant.

   It is therefore the Appellant's prayer that the judgment be set aside and there be a re-assessment of the damages by this court.

   The appeal was canvassed by written submissions and was opposed by the Respondents.

   A closer look at the memorandum of appeal erroneously indicates that the Appellant is one Hellen Mwango rather than the two Appellant, Joram Owino and Kukhu Sacco. The error appears to be typographical and may be disregarded.

3. Suffice to hold that the appeal is basically on quantum of damages as reflected in the grounds of appeal and the written submissions. In that regard the principles set out by the Court of Appeal in Kemfro Africa Limited t/a Meru Express Services Vs. Lubia & Another [1983-88] IKAR777 become handy.

4. It was therein stated as follows: -

   > " The principles to be observed by an Appellate Court in deciding whether it is justified in dismissing the quantum of damages awarded by a trial judge were held by the former Court of Appeal for Eastern African to be that: -
   >
   > It must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

5. The question of liability was not really the main feature in this appeal, but was nonetheless addressed by both parties in the submissions. In that regard, this court having revisited the evidence availed before the trial court was of the view that the occurrence of the accident and the Appellants' culpability in the same were factors which were not at all or substantially disputed.

6. In any event, there was sufficient evidence from PC Kosgey [PW1] and Paul Seurei [PW2] that the deceased was walking on the side of the road towards Chebarbar Shopping Centre or Namgoi when the Appellant's motor vehicle suddenly veered off the road and knocked down the deceased who sustained serious injuries for which she succumbed while undergoing treatment at the Kapsabet Referral Hospital.

7. There was no evidence from the Appellant to show that the pedestrian deceased was responsible for the accident or that she contributed to its occurrence in one way or the other. The trial court's finding that the Appellants were fully liable for the accident was therefore correct and is hereby affirmed.

8. On the question of quantum of damages, the deceased's son who is the First Respondent herein and the First Plaintiff at the trial court and the Second Plaintiff's witness [PW2] during the hearing indicated that the deceased was at the material time aged seventy eight [78] years and was a business lady earning about Kshs. 30,000/- per month with which she assisted her family.

9. It was pleaded that the deceased was survived by eight children including the Respondents. The evidence showed that all these children were adults as at the time the deceased passed on as a result of the injuries sustained in the accident. Her son [PW2] produced necessary documentary evidence to establish the expenses incurred by her estate following her demise. However, he did not produce documentary evidence to establish the alleged earnings Kshs. 30,000/- per month.

10. In the amended plaint date 19th October 2019, the Respondents claimed special damages in the sum of Kshs. 114,750/- and these were correctly awarded by the trial court on the basis of the undisputed documentary evidence tendered by the Respondents/ Plaintiffs.

    In general damages, the Plaintiff/Respondents asked for damages under the Law Reform and *Fatal Accidents Act*.

11. As regards pain and suffering and loss of expectation of life under the *Law Reform Act*, the trial court considered the evidence and made an award of Kshs. 50,000/- under each of the two heads. This came to a total of Kshs. 100,000/-.

    As regards, loss of dependency under the *Fatal Accidents Act*, the trial court noted that due to the absence of evidence to establish the claimed earnings and dependency, it would be inappropriate to apply the multiplier approach in determining the award for loss of dependency. Instead, the trial court opted for the global approach and awarded a sum of Kshs. 600,000/- subject to a deduction of the damages awarded under the *Law Reform Act* [i.e. Kshs. 100,000/-].

12. This court does not think that the trial court applied wrong principles in arriving at its decision on the quantum of damages under the Law Reform and Fatal Accident Act.

    the Appellant did not persuade this court to arrive at a different conclusion and re-assess the damages.

13. Nothing has come out of this appeal to show that the trial court in assessing the damages took into account an irrelevant factor or left out of account a relevant factor. Neither did the Appellant demonstrate that the award was so inordinately high that it must be a wholly erroneous estimate of the damages.

14. In sum, this appeal is wanting in merit and is hereby dismissed in its entirety with costs to the Respondents.

    Ordered accordingly.

DELIVERED AND DATED THIS 19TH DAY OF FEBRUARY, 2025.

HON. J. R. KARANJAH,

JUDGE