



**Bakar & another v Kiungu & another (Suing as the Administrators of the Estate of the Late Peter Kiugu Ngigi) (Civil Appeal E004 of 2024) [2025] KEHC 6360 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E004 OF 2024**

**A MSHILA, J  
MAY 16, 2025**

**BETWEEN**

**ABDIFARARI BAKAR ..... 1<sup>ST</sup> APPELLANT**

**ABDIFATAAH BAKAAL MOHAMED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOSEPH NGIGI KIUNGU ..... 1<sup>ST</sup> RESPONDENT**

**MIRIAM WANJIKU THECHE ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE PETER  
KIUGU NGIGI**

*(Being an appeal from the Judgment issued by Hon. P. M. Mugure (PM)  
on 29/11/2023 at Kikuyu Law Courts in CMCC No. E140 of 2022)*

**JUDGMENT**

**Background**

1. By a Plaintiff filed on 25<sup>th</sup> March, 2022, the Respondents herein being the Administrators to the estate of Peter Kiugu Ngigi [Deceased] sued the Appellants claiming compensation for the fatal injuries sustained by the deceased on or about the 17<sup>th</sup> day of July, 2020 when the deceased was lawfully driving his motor vehicle registration number KBT 059F along the Nairobi-Naivasha Road at Gatarama Area, when the appellants and/or their driver drove motor vehicle registration number KCW 096V so negligently that it was left stationary in the middle of the busy highway without any warning lights and/or indicators thus causing the deceased to ram into its rear thereby occasioning the deceased fatal injuries.
2. The Appellants filed their statement of Defence denying any liability for the accident. The particulars of negligence were all denied. Further, it was averred that the accident if any was as a result of an act of



Vis Major. Lastly, that the accident if any was contributed to by the negligence of the driver of motor vehicle KCV 601H.

3. The matter proceeded to a full hearing. The trial court found that the respondents had proved their case on a balance of probabilities and apportioned liability at 100% in favour of the respondents against the appellants.
4. On quantum, the Honourable Trial Magistrate entered judgment as follows:  
Pain and suffering Kshs. 100,000.00  
Loss of expectation of life Kshs. 200,000.00  
Loss of dependency Kshs. 5,200,000.00  
Special damages Kshs. 140,550.00  
Total Kshs. 5,640,550.00
5. The Appellants are dissatisfied with the lower Court's judgment and have preferred the present Appeal. In their Memorandum of Appeal, they have listed eight grounds of appeal namely:-
  - a. That the Learned Magistrate erred in relying on insufficient opinion evidence on the circumstances of the accident that occurred on 17<sup>th</sup> July, 2020.
  - b. That the Learned Magistrate erred in failing to hold the deceased liable for the accident that occurred on 17<sup>th</sup> July, 2020
    - i. Despite admission that he rammed into the Appellant's motor vehicle in the middle of the road and not in his lawful lane, the left side of the road; and
    - ii. Despite the deceased's failure to take reasonable steps to avoid colliding with the appellants' vehicle.
  - c. That consequently, the Learned Magistrate erred in holding the appellants 100% liable for the accident without any proof of negligence on their part.
  - d. That the learned magistrate erred in law by disregarding the principles applicable in awarding both general and special damages.
  - e. That the Learned Magistrate erred in law and fact in awarding damages for pain and suffering that were manifestly excessive in the circumstances.
  - f. That the Learned Magistrate erred in awarding the respondents inordinately high general damages in respect to loss of dependency against the principals of awarding the said damages.
  - g. That the Learned Magistrate erred in awarding the Respondent special damages that were neither particularized nor proved.
  - h. That the Learned Magistrate erred in failing to consider the Appellants' submissions and the numerous binding authorities cited by the appellants and in doing so, arrived at an erroneous conclusion.
6. The court directed the parties to canvass the appeal by way of written submissions.



## **Appellants' Submissions.**

7. The Appellant submits that he who alleges must prove. Reliance was placed on among other cases the case of *Alice Wanjiru Ruhiu v Messaic Assembly of Yahweh* [2021] eKLR. PW1's evidence was said to be hearsay as he did not witness the accident and in any case the said evidence was not corroborated. The evidence of the PW2 being the police officer was also said to be hearsay and insufficient expert testimony. Reliance was placed in the case of *Stephen Kinini Wang'onde v The Ark Limited* [2016] eKLR. Failure to procure the attendance of the investigating officer meant that the court failed to get a version of events from which the court could infer the Appellants' driver's negligence. Reliance was placed in the case of *Sally Kibii & another v Francis Ogaro* [2012] eKLR. The Respondent was said to have failed to adduce evidence showing that the accident was unavoidable despite his best efforts to avoid the same. Reliance was placed in the case of *Masembe v Sugar Corporation & another* [2002] 2 EA 434.
8. In regard to damages under pain and suffering, the award of Kshs. 100,000/= was said to be baseless. The Appellants proposed that an award of Kshs. 10,000/= would be sufficient. Reliance was placed in the case of *Wachira Joseph & 2 others v Hannah Wangui Makumi & another* [2021] eKLR. For loss of expectation of life, the award of Kshs. 200,000/= was said to be based on irrelevant factors as such an award of Kshs. 100,000/= was said to be conventional. Reliance was placed in the case of *Mercy Muriuki & another v Samuel Mwangi Nduati & another* [Suing as the Legal Administrator of the Estate of the late Robert Mwangi] [2019] eKLR.
9. For lost years/loss of dependency, the appellants submit that there is no proof of dependency as no birth certificates were produced to show that the dependants were below 18 years. Reliance was placed in the case of *Abdalla Rubeya Hemed v Kayuma Mvurya & another* [2017] eKLR.
10. In respect of proof of earnings, it was submitted that the respondents did not produce a partnership deed in proof of the allegation of his joint transport business with the deceased and the statement of accounts produced do not suffice as prove that the deceased earned Kshs. 50,000/=. Reliance was placed in the case of *Marko Mwenda v Bernard Mugambi & another* Nairobi HCCC No. 2343 of 1993. The global approach was said to have been awarded by the trial court instead of the multiplier approach.
11. In regard to special damages, the respondents were said to have produced only receipts of Kshs. 40,000/= and Kshs. 550/= for legal fees and copy of records and that no receipts were produced for Kshs. 100,000/= incurred for burial expenses as such only Kshs. 40,550/= should have been awarded as the claim for funeral expenses was not proved by way of receipts. Reliance was placed in the case of *Dorothy Naitore M'Inoti v Hitsh Kanji Damji & another* 2004] eKLR.

## **Respondents' Submissions**

12. The Respondents submit that the Appellants have not attached a copy of the decree in their record of appeal as such the appeal is fatally defective and should be dismissed. The Respondents contended that they relied on the doctrine of *res ipsa loquitur* which the Appellants did not counter. Reliance was placed in the case of *PGM* [Suing as the Legal representative of the estate of *KMG-Deceased*] v *Kimathi* [*Civil Appeal 98 of 2017*] [2022] KECA 76 [KLR]. The court was urged to take judicial notice that the contents of the OB and the police file are public documents which can be produced by any competent officers. The test of liability was said to be on a balance of probabilities and in this case it was proffered that the Appellants' vehicle was the cause of the accident after being left unmarked leading to the unfortunate death. The trial court was said to be correct in apportioning liability at 100%. In any case, the Appellants did not call any witness to counter the evidence produced by the respondents.



13. In regard to general damages, the award of Kshs. 100,000/= awarded for pain and suffering was said to be merited as the deceased endured excruciating pain prior to his death. Reliance was placed in the case of Premier Dairy Limited v Amarjit Singh Sagoo & anor [2013] eKLR. The award of Kshs. 200,000/= for loss of expectation of life was also said to be justified. Reliance was placed in among other cases the case of West Kenya Sugar Co. Limited v Philip Sumba Julaya [Suing as the administrator and personal representative of the estate of James Julaya Sumba [2019] eKLR. A multiplicand of 2/3 was said to be applicable the deceased's earnings having been computed by the trial court as Kshs. 50,000/= and the deceased's dependants having been provided as in the letter of the chief. This court was urged not to interfere with the findings of the trial court under damages for loss of dependency. Lastly it was submitted that funeral expenses are awarded even in the absence of receipts as was held in the case of David Kimani Githinji & Grace Mbaile, [Suing as the Administrator of the estate of Catherine Njeri Kimani] deceased v Mutai Hardware Stores Limited [2019] eKLR.

### **Trial Court's Evidence**

14. Joseph Ngigi Kiugu[PW1] the deceased's son wished to adopt his witness statement as his evidence in chief. He testified that he is in the transport and farming business which he was carrying out with the deceased and that their average income was Kshs. 150,000/= per month.
15. In cross examination he stated that he did not witness the accident and was informed by the police that a stationary lorry had broken down on the road and was without warning and that the driver of the lorry was blamed for the accident. He stated that all the dependants depended on the deceased.
16. NO. 58830 CPL. Abdulnazis Beko[PW2] based at Lari Police Station produced the abstract in regard to the accident herein. He stated that from the OB the deceased rammed into the rear of KCW 096V which had earlier been involved in an accident and was still on the road and had no warnings to other road users. That the deceased was pronounced dead upon arrival at the hospital

### **Issues For Determination**

17. Having read and considered the trial court record and the submissions by both parties, it is my opinion that the issues arising for determination are;
- i. Whether the trial court erred in apportioning liability at 100% as against the Appellants.
  - ii. Whether the trial court erred in the award of general damages
  - iii. Whether the trial court erred in the award under of special damages

### **Analysis**

18. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus

“...this Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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...”



19. In the case of *Butler v. Butler* [1982] KLR 277 it was observed that a Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion.

### **Whether the trial court erred in apportioning liability at 100% as against the Appellants.**

20. On the issue of liability, the trial court held that the defendants' driver was negligent as he did not warn other road users that the vehicle had stalled on the road as such they were held 100% vicariously liable for the accident.
21. The appellants submit that PW1 was not an eye witness as such his evidence was hearsay and that the police officer called to testify did not give sufficient expert evidence. Failure to call the investigating officer was said to have denied the court to get a version of events from which the court could infer the appellants' driver's negligence. The respondent was said to have failed to adduce evidence showing that the accident was unavoidable despite his best efforts to avoid the same.
22. The Respondent on his part pleaded the doctrine of *res ipsa loquitur*. The deceased was said to have rammed into a lorry which had stalled on the road and had no warning signs.
23. In the case of *Masembe v. Sugar Corporation and Another* [2002] 2 EA 434, it was held that:-  
“an apportionment of liability made by a Trial Court will not be interfered with on appeal save in exceptional cases as where there is some error of principle or the apportionment is manifestly erroneous.”
24. Having carefully analysed the trial court record, this court is satisfied with the trial courts finding on liability and finds no good reason to interfere with its decision.
25. Refer to the case of *Charles & another v Muia [Civil Appeal 59 of 2019]* [2023] KEHC 820 [KLR] [9 February 2023] [Judgment] where Muigai J. declined to disturb the trial court's finding on liability where the driver of a motor vehicle that had stalled on the road was held 100% to blame for the accident where there were no warning signs.

### **Whether the trial court erred in the award of general damages**

26. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* [1988] 1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -  
“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa 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.”
27. In regard to the award under pain and suffering, the trial court awarded Kshs. 100,000 as the deceased suffered a lot of pain. The Appellants dispute this award and propose an award of Kshs. 10,000/= as being sufficient. The Respondents agree with the trial court that an award of Kshs. 100,000/= is correct as the deceased endured excruciating pain prior to his death.



28. The evidence on record shows that the deceased was pronounced dead upon arrival at the hospital having rammed at the rear of a stalled lorry at the middle of the road. There is no doubt that the deceased experienced a lot of pain. To this end this court relies on the case of Bidii Muimi & Another versus Patricia Munanie Mutemi & Another 2020 e KLR, where an award of Ksh 100,000/= was made and upholds the sum of Kshs. 100,000/= as awarded by the trial court.
29. The trial court awarded Kshs. 200,000/= for loss of expectation of life. The Respondents contend that the award is justified while the Appellants contend that the conventional award under this limb is Kshs. 100,000/= which was submitted to be fair.
30. This court in upholding the award of Kshs. 200,000/= relies in the case of Kanyi & another v GWS [Suing as a legal representative of the Estate of MNW - Deceased] [Civil Appeal 200 of 2019] [2023] KEHC 18837 [KLR] [15 June 2023] [Judgment], where Mulwa J maintained a sum of 200,000/= for loss of expectation of life.
31. With respect to the award for loss of dependency, the trial court allowed the award as submitted by the Respondent where a multiplier of 13 years was said to be reasonable. With the court adopting Kshs. 50,000/= as the deceased's earnings and a multiplicand of 2/3. The Respondents do not find error in the tabulation of damages under this head. On the other hand, this award is faulted by the Appellants as there is no proof of dependency showing that the dependants were aged 18 years and below. The Appellants also allege that there was no proof of earnings as the statement of accounts produced do not prove a monthly income of Kshs. 50,000/= by the deceased. The trial court was said to have erred in adopting the multiplier approach instead of the global sum.
32. After due consideration of the evidence, this Court finds no good reason to interfere with the trial court's decision on the multiplier but with regard to the deceased's dependants, this Court finds that the court erred in adopting the dependency ratio of 2/3 where there was no proof that the deceased took care of all the listed dependants as they were adults and instead adopts a dependency ratio of 1/3.
33. Refer to the case of Wafula [Suing as a Legal Representative and Administrator of the Estate of Anthony Wafula Mwoko] & another v Vallary Linnet Ogolla t/a Quick Shuttle [Civil Appeal E061 of 2023] [2024] KEHC 7172 [KLR] [29 May 2024] [Judgment] where Ougo J. declined to interfere with a dependency ratio of 1/3 where the dependants were adults.
34. The court held as follows in regard to the dependency ratio:-

“That brings us to the issue of dependency ratio, the multiplier and earnings. On dependency ratio, the applicants argued that the 2/3 ratio was on the higher side. They argued that a ratio of 1/3 would be appropriate. I agree. It must be clear that dependency is a question of fact to be proved unless the court could take judicial notice depending on the circumstances of each case. There were only two dependants and therefore there was no way the deceased would have spent two thirds of earnings on them.”

Whether the trial court erred in the award under funeral expenses

35. Lastly, the Appellants faulted the trial court for awarding Kshs.100,000/= for funeral expenses when the same was not proved by way of receipts. On the other hand, the Respondents contend that the same are awarded even in the absence of receipts as a burial took place and expenses were incurred although no receipts are produced.
36. This Court finds that the trial court did not err in awarding the claim for funeral expenses as there is no doubt that the deceased was involved in a road traffic accident which caused his death and a burial



took place and expenses were incurred. The award of Kshs. 100,000/= is found to be reasonable and as such, this Court does not wish to interfere with the same.

37. Refer to the case of Jacob Ayiga & Anor v. Simion Obayo [2005] eKLR, where the court awarded funeral expenses despite lack of proof by way of receipts, on grounds that funeral expenses must be incurred in every case where someone died

### **Findings And Determinations**

38. For the foregoing reasons this Court makes the following findings and determination.
- i. The appeal is found to be partially with merit
  - ii. The judgment of the lower court is set aside and substituted with a judgment as follows:-
    - a. Liability upheld
    - b. Pain and suffering Kshs.100,000.00 [upheld]
    - c. Loss of expectation of life Kshs.200,000.00 [upheld]
    - d. Loss of dependency Kshs.[50,000 x 13 x 12 x 1/3]  
Kshs.2,600,000.00
    - e. Special damages Kshs.140,550.00 [upheld]
    - f. Costs and interest at court rates on the appeal and lower court.  
Total Kshs.3,040,550.0

Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of:-

Sanja – Court Assistant

Njanjo for the Appellant

Ngigi Karomo for the Respondents

