



Korir v Rotich & another (Suing as the Legal Representatives of Joseph Kiprotich Ngeno (Deceased)) (Civil Appeal 12 of 2020) [2025] KEHC 5628 (KLR) (7 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL 12 OF 2020
JK NG'ARNG'AR, J
MAY 7, 2025**

BETWEEN

KEN KIPKOECH KORIR APPELLANT

AND

GIDEON KIPTOO ROTICH 1ST RESPONDENT

ESTHER CHEPNGETICH 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF JOSEPH KIPROTICH NGENO
(DECEASED)**

*(Being an Appeal from the Judgment of Senior Resident Magistrate, Omwange
J. at the Magistrate's Court at Sotik, Civil Suit Number 219 of 2018)*

JUDGMENT

1. The Respondents (then Plaintiffs) as the Legal Representatives of the deceased Joseph Kiprotich Ngeno, sued the Appellant (then Defendant) for general and special damages that arose when the deceased was fatally knocked down by motor vehicle registration number KCM 103M on 29th April 2018 along Litein-Kamanamsim road.
2. The trial court conducted a hearing where the Respondents called two witnesses and the Appellant closed his case after recoding a consent on liability.
3. In its Judgment delivered on 1st September 2020, the trial court awarded the Respondents a net award of Kshs 1,129,020.15/=.
4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 30th September 2020 appealing against the award on damages.



5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR).
6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Respondents' case.

7. Through their Complaint dated 1st December 2018, the Respondents stated that the deceased Joseph Kiprotich Ngeno was involved in a road traffic accident on 29th April 2018. That he was hit by motor vehicle registration number KCM 103M while walking along Litein-Kamanamsim road. It was their case that the Appellant was the registered owner of the said motor vehicle.
8. It was the Respondents' case that the Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 4 of the Complaint. That as a result of the accident, Joseph Kiprotich Ngeno suffered fatal injuries.
9. The Respondents prayed for special and general Damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.
10. Through their written submissions dated 23rd October 2024, the Respondents submitted that the award of Kshs 100,000/= on pain and suffering and Kshs 100,000/= on loss of expectation of life was just, fair and sufficient. It was their further submission that the trial court was correct in adopting Kshs 12,926.55/= as the multiplicand as it relied on the minimum wage under the Regulation of Wages (Amendment) Order. They relied on *Nyamira Tea Farmers Sacco vs Wilfred Nyambati Keraita & another* (2011) eKLR.
11. It was the Respondents' submission that the trial court was correct in adopting the multiplier of 10 years and the dependency ratio of 2/3 as most of the deceased's income would normally go to the upkeep of his wife and children. It was their further submission that the Appeal lacked merit and ought to be dismissed.

The Appellant's/Defendant's case.

12. Through his statement of defence dated filed on 5th February 2019, the Appellant denied the occurrence of the accident on 29th April 2018 and further denied being the registered owners of Motor Vehicle Registration Number KCM 103M.
13. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the deceased. The particulars of negligence were contained in paragraph 4 of the Defence.
14. Through his written submissions dated 27th February 2023, the Appellant submitted that the award on general damages was excessive. That on the issue of the multiplicand, the trial court ought to have adopted Kshs 7,240.95/= as the minimum wage of the deceased in accordance to the Regulation of Wages (General) (Amendment) Order, 2018 for unskilled labour.
15. On the issue of the multiplier, the Appellant submitted that the deceased died aged 58 years old and that the trial court ought to have adopted the multiplier of 3 years and further consider that life expectancy had greatly diminished due to vagaries of life. He relied on *Eston Mwirigi Ndege & another vs Damaris*



- Kairiari (suing as the Legal Representatives of the estate of Felix Kibiti (Deceased) (2018) eKLR. He further submitted that the trial court was correct in adopting the dependency ratio of 2/3. The Appellant proposed an award of Kshs 173,782.80/= as a sufficient award under loss of dependency.
16. The Appellant proposed an award of Kshs 100,000/= under loss of expectation of life and an award of Kshs 10,000/= under pain and suffering where he relied on Kenya Pipeline Company Limited vs Lucy Njoki Njuru (suing as the legal representative of the estate of John Wamae (Deceased) (2016) eKLR.
 17. I have gone through and carefully considered the Record of Appeal dated 9th March 2021, the supplementary Record of Appeal dated 9th December 2021, the Appellant's written submissions dated 27th February 2023 and the Respondents' written submissions dated 23rd October 2024. The only issue for my determination was whether the damages awarded were inordinately high.
 18. Before I commence my analysis of the evidence, it is salient to note that the trial court's apportioning of liability was not contested in this Appeal as the parties recorded a consent of 85:15 in favour of the Respondents.
 19. With regard to the award on damages, the trial court awarded the Respondents Kshs 1,129,020.15/= as general and special damages.
 20. The principles upon which an appellate court may alter an award by the trial court have been long settled. In the case of Johnson Evan Gicheru v Andrew Morton & another [2005] KECA 16 (KLR), the Court of Appeal stated that: -

“In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the court of appeal should be convinced that either the judge acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the appellant was entitled”.
 21. It is also a principle of law that awards must be reasonable and comparable to awards in similar cases. The Court in Odinga Jactone Ouma v Moureen Achieng Odera [2016] KEHC 2922 (KLR) held: -

“.....In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed in Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 [2014] eKLR thus:
The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”
 22. In regard to the pain and suffering, the trial court awarded the conventional figure of Kshs 100,000/=. The Appellant stated that this award was excessive and proposed an award of Kshs 10,000/= while the Respondents stated that the award was just and fair. In Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] KEHC 9014 (KLR), Muchemi J. stated: -

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

23. Gideon Kiptoo Rotich (PW1) produced a death certificate as P. Exh1. The Death Certificate indicated that the deceased died on the material day (29th April 2018) at Kapkatet Hospital. This meant that the deceased did not die on the spot after he was hit but died later on in hospital. I therefore find that the deceased suffered some pain before he died. I am thus satisfied with the trial court’s award of Kshs 100,000/= under this head.
24. Both parties were agreeable to the award of Kshs 100,000/= under the head of loss of expectation of life. I therefore uphold the award of Kshs 100,000/= under this head.
25. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death 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 cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.
26. The trial court awarded the Respondents Kshs 1,034,124/= by using a monthly wage of Kshs 12,926.55/=:, a multiplier of 10 years and a ratio of 2/3.
27. I have considered the evidence and it was stated by the deceased’s son, Gideon Kiptoo Rotich (PW1) that the deceased was a business man and a farmer who used to earn Kshs 50,000/= per month. The same was pleaded in the Pleint.
28. There was no proof of income from the exhibits that the Respondents produced in court. With respect to the trial court, I find that the safest way to make an award under this head where there is no ascertainable proof of income would be to go the global sum way. In *Frankline Kimathi Baariu & another v Philip Akungu Mitu Mborothi (suing as the Administrator and Personal Representative of Antony Mwititi Gakungu Deceased)* [2020] KEHC 5897 (KLR), the court stated: -

“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.

The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

29. Similarly in *Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased))* [2016] KEHC 5958 (KLR), Ngaah J. held as follows: -

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make



a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

30. The Appellant proposed an award of Kshs 173,782.80/= under this head while the Respondents submitted that the trial court did not fall into error when it awarded Kshs 1,034,124/= as loss of dependency.
31. In determining an award under this head, I have considered the parties’ proposals under this head, the fact that the deceased died aged 58 years old and the fact that the deceased was survived by a widow and four children. Having considered the above, it is my finding that the award of Kshs 1,034,124/= was slightly on the higher side given the multiplicand applied. I will therefore be guided by the global award approach and make an award of Kshs 700,000/=.
32. With regard to Special Damages, the Respondents stated that they had incurred the following: -
- i. Legal fees Kshs 20,000/=
 - ii. Motor Vehicle Search Kshs 550/=
33. I have gone through the receipts that were produced by the Respondents in the trial court. I have found the receipt for Legal Services marked as P. Exh 2b for Kshs 20,000/= There was no receipt for the Motor Vehicle Search and as such that claim is dismissed. I therefore find the trial court’s award of Kshs 20,000/= as special damages to be proper and I uphold the same.
34. The Respondents also sought to be refunded funeral expenses. Section 6 of the *Fatal Accidents Act* makes provision for funeral expenses as follows: -
- In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection (1) of section 4, damages in respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought.
35. The Court of Appeal, in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* [2016] KECA 56 (KLR) stated that: -
- “We do not discern from our reading of this decision a departure from the time-tested principle that special damages should not only be specifically pleaded but must also be strictly proved ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc....”
36. Guided by the above authority, it is my finding that the trial court’s award of Kshs 174,135/= for funeral expenses as proper and I uphold the same.
37. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court’s award on general and special damages. This then translated the final award as:-
- General Damages Kshs 700,000/=
- Add special damages Kshs 194,135/=
- Kshs 894,135/=
- Less 15% Contribution Kshs 134,120/=



Kshs 760,015/=

38. In the end, the Appeal dated 30th September 2022 is allowed. Each party to bear their own costs in this Appeal. The costs of the main suit shall remain as awarded by the trial court.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 7TH DAY OF MAY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of Mose for the Appellants, Ogweno for the Respondents. Siele/Susan (Court Assistant).

