



**Manywanda & another (Suing as the Legal Representatives of the Estate of William Oduor) & 5 others v Tahmeed Transporters Ltd & 5 others (Civil Appeal E005, E006, E007, E008, E018, E019, E020 & E021 of 2023 (Consolidated)) [2025] KEHC 7535 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E005, E006, E007, E008, E018, E019, E020 & E021 OF 2023 (CONSOLIDATED)**

**JM NANG'EA, J**

**MAY 23, 2025**

**BETWEEN**

**RAEL NYANGASI MANYWANDA & PASCAL OKELLO ONYANGO (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF WILLIAM ODUOR) ..... APPELLANT**

**AND**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> RESPONDENT  
SALIM NASSIR ISSA ..... 2<sup>ND</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E006 OF 2023**

**BETWEEN**

**MUDAHO & ANTHONY OWINO OMUGO (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF GRACE LINET OMUNGO) ..... APPELLANT**

**AND**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> RESPONDENT  
SALIM NASSIR ISSA ..... 2<sup>ND</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E007 OF 2023**

**BETWEEN**



**JARED ABONYO OBIAYO & IRINE ADHIAMBO OPURO (SUING AS  
THE LEGAL REPRESENTATIVES OF THE ESTATE OF LINET ADHIAMBO  
OTIENO) ..... APPELLANT**

**AND**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> RESPONDENT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E008 OF 2023**

**BETWEEN**

**LILIAN ADHIAMBO & DOMINIC OTIENO SADIA (SUING AS THE  
LEGAL REPRESENTATIVES OF THE ESTATE OF DIDACUS OTIENO  
SADIA) ..... APPELLANT**

**AND**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> RESPONDENT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E018 OF 2023**

**BETWEEN**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> APPELLANT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FREDRICK OTIENO MUDAHO & ANTONY OWINO OMUNGO (SUING  
AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF GRACE LINET  
OMUNGO) ..... RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E019 OF 2023**

**BETWEEN**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> APPELLANT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> APPELLANT**

**AND**



**LILIAN ADHIAMBO & DOMINIC OUMA (SUING AS THE  
LEGAL REPRESENTATIVES OF THE ESTATE OF DIDACUS OTIENO  
SADIA) ..... RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E020 OF 2023**

**BETWEEN**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> APPELLANT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JARED ABONYO OBIAYO & IRENE ADHIAMBO OPURO (SUING AS  
THE LEGAL REPRESENTATIVES OF THE ESTATE OF LINET ADHIAMBO  
OTIENO) ..... RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E021 OF 2023**

**BETWEEN**

**TAHMEED TRANSPORTERS LTD ..... 1<sup>ST</sup> APPELLANT**

**SALIM NASSIR ISSA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**RAEL NYANGASI MANYWANDA & PASCAL OKELLO ONYANGO (SUING  
AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF WILLIAM  
ODUOR) ..... RESPONDENT**

*(Being appeals from judgement and decree of the Honourable BILDAD OCHIENG  
(CM) delivered on 15th December, 2022 in Nakuru CMCC No. E894 of 2021 as  
consolidated with Nakuru CMCC Nos. E874, E892, E895 and E1269, all of 2021)*

## **JUDGMENT**

1. The consolidated Appeals herein arise from the said Judgement delivered on 15<sup>th</sup> December, 2022 in Nakuru CMCC Nos. E874, E892, E894, E895 and E1269 all of 2021 (Consolidated) instituted by the Appellants in Appeal Nos. E005, E006, E007 & E008, all of 2023 (hereinafter referred to as “the main Appellants”) against the Appellants in Appeal Nos. E018, E019, E020 & E021, all of 2023 (“the cross Appellants”) seeking special damages of Kshs 597,710, general damages under the [Law Reform Act](#) and the [Fatal Accidents Act](#), costs and interest, following fatal injuries the subject deceased persons suffered in a road traffic accident involving the cross Appellants’ motor vehicle registration number KAY 756 H/ ZC 6426 that was allegedly carelessly driven as a result of which it knocked another motor vehicle registration number KBC 452 Z. The cross Appellants filed joint statements of defence in the



various lower court suits inter alia traversing all the material claims in the suits including the claim of negligence attributed to them.

2. Evidence before the trial court was recorded in Nakuru CMCC NO. E895 of 2021 and after full hearing of the suit the learned trial magistrate entered judgement as follows;

Liability – 100% against the cross Appellants in all the suits.

Damages under the *Law Reform Act*- Ksh. 100,000 and Ksh. 20,000 for loss of expectation of life and pain & suffering respectively in all the consolidated claims.

Loss of Dependency under the *Fatal Accidents Act*:

Nakuru CMCC NO. E874 of 2021- Ksh. 1,297.440, adopting the minimum wage of Ksh. 8,109 per month as multiplicand, and multiplier and dependency ratio of 20 years and 2/3 respectively.

Nakuru CMCC NO. E892 OF 2021- Ksh. 4,013,280, adopting the minimum wage of Ksh. 27,870 per month as multiplicand, and multiplier and dependency ratio of 18 years and 2/3 respectively.

Nakuru CMCC NO. 894/2021- Ksh.1,641, 360, adopting the minimum wage of Ksh. 20,517 as multiplicand and multiplier and dependency ratio of 10 and 2/3 respectively.

Nakuru CMCC NO. E895 of 2021- Ksh. 1,297.440, adopting the minimum wage of Ksh. 8,109 as multiplicand and multiplier and dependency ratio of 20 and 2/3 respectively.

And;

Nakuru CMCC NO. E1269 of 2021- Ksh. 480, 550 for material damage to motor vehicle registration number KBC 452 Z.

3. The Claimants were also granted the costs of the suits and interest.
4. Aggrieved by the judgement, the main Appellants by Memorandum of Appeal dated 10<sup>th</sup> January, 2023 urge the following two grounds :-
  - i. That the Learned Trial Magistrate erred in law and in fact by using the wrong multiplier and multiplicand in assessing loss of dependency under the *Fatal Accidents Act*, thus arriving at damages that are inordinately low;
- And;
- ii. That the Learned Trial Magistrate erred in law and in disregarding the Appellants' evidence and submissions resulting in wrong assessment of damages for loss of dependency.
5. The main Appellants therefore pray that their appeals be allowed; the awards of damages for loss of dependency under the *Fatal Accidents Act* be set aside and substituted with a new assessment enhancing the same, and that they be granted the costs of the appeals.
6. The cross Appellants too appealed the decision on the grounds that:
  - i. The Learned Magistrate erred and misdirected himself in law, principle and fact when he misapprehended and misunderstood the applicable principles and the law in assessing the quantum of damages, thereby arriving at an award that is so manifestly and inordinately high as to constitute an entirely erroneous estimate of the damages in the circumstances.
  - ii. The Learned Magistrate erred in fact and in law in assessing and awarding the general damages that are excessive in the circumstances.

And;



- iii. That the trial court erred in law and fact in failing to consider submissions filed.
7. The cross Appellants thus pray that the appeal be allowed; judgement of the Trial Court set aside; the award of general damages be revised and the costs incurred in both the Trial Court and the appeals be granted to them.
8. The court ordered consolidation of the appeals when the same came up for directions.

### **Main Appellants' submissions**

9. It is submitted that the general damages awards by the lower court are manifestly low. The trial court is faulted for not appreciating that retirement age in the private sector is not limited to 60 years as the case in the Public sector. The court is told that the deceased could have carried on their occupations up to the ripe age of 70 (see case law in Violet Jeptum Rahedi vs Albert Kubai Mbogori (2013) eKLR).
10. Regarding loss of expectation of life, I am urged to enhance the same, reference being made to the case of Violet Jeptum Rahedi supra in which a sum of Ksh. 150,000 was granted respect of the estate of a deceased person aged 44.
11. Counsel for the Cross Appellants retort that the trial court ought to have considered the vagaries or vicissitudes of life that could have shortened the life of the deceased persons. Counsel cite the case of Western Kenya Sugar Co. Ltd vs Falantina Adungosi Odionyi (Suing as the Legal Representative of the estate of Patrick Igwala Odionyi (Deceased) {2020} eKLR where it was underscored that this is a relevant factor in assessing a suitable multiplier.
12. The cross Appellants further submit that the trial court should have deducted the awards under the *Law Reform Act* from the sums granted for loss of dependency under the *Fatal Accidents Act* to avoid double compensation for the reason that the beneficiaries are the same under the two statutes. This legal position was articulated in {Transparency Kenya Ltd & Another vs SMM (Suing as the Legal Representative of the Estate of EMM (Deceased) (2015) eKLR} among other decisions cited and relied upon by Counsel.

### **Analysis and determination**

13. The Appeals are only on the quantum of damages. The Main Appellants do not appear to appeal the awards under the *Law Reform Act* as deduced from their Grounds of Appeal. Since, however, learned Counsel for all the parties submitted on these damages as well, I shall consider the same. All the Grounds of Appeal will be considered together.
14. The duty of this Court as a first Appellate Court is to evaluate the evidence adduced before the Trial Court afresh in order to arrive at its own independent conclusion on both matters of fact and law (See *Selle & Another vs Associated Motor Boat Co Ltd & Others* [1968] EA 123). The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and



- iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”

### Damages and the *Fatal Accidents Act*

15. Section 4 of the *Fatal Accidents Act* covers claims of loss of dependency and it provides thus:-

“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 judgement, shall find and direct...”

16. In the case of Njoroge (Suing as the Legal Administrator of the Estate of Francis Karanja Wainaina - Deceased) vs Ponderosa Logistic Ltd [2024] KEHC 1606 (KLR) my brother Mohochi J stated:-

“(31) When claiming under this head the Court considers the nature of employment, circumstances, terms and evidence produced in support of allegation of employment. If the deceased was employed and his salary is not determined, his income may be determined by reference to the government wage guidelines issued from time to time. Where the nature of employment is not clear, the Court exercises its jurisdiction and awards a global lump sum...”

17. Koome J. (as she then was) in the case of Albert Odawa vs Gichimu Gichenji [2007] KEHC 1358 (KLR) with approval cited the case of Mwanzia Ngalali Mutua vs Kenya Bus Services (Msa) Ltd & Another where Ringera J (Rtd) (as he then was) expressed himself thus;

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency - are knowable with undue speculation where that is not possible. To insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice must never do”.

18. Using the Minimum Wage Regulations as done by the lower court is acceptable in the circumstances. So is the global sum method since the multiplier approach is not the only formula for assessing such damages. The multipliers and multiplicands adopted are reasonable given the ages of the deceased persons and want of proof of income.

19. In the premises and considering the trend in the authorities alluded to above, I find no basis on which to disturb the discretion of the lower court in the various awards for loss of dependency.

- a. Damages under the *Law Reform Act*.



### **i. Pain and suffering**

20. In Catherine Mwendwa Mwirigi vs Lucy Nkoyai Karwamba (Suing as he legal administrator of the estate of Derrick Mugambi Mwimbi- Deceased) [2019] eKLR Kshs. 100,000 was assessed for pain and suffering , the deceased having passed on a day after injury.
21. Majanja J in Sukari Industries Limited vs Clyde Machimbo Juma Homa Bay [2016] EKLK observed that:
- “(5) ..... 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.”
22. I think the awards of Ksh. 20,000 under this head are on the lower side considering the ever present incidence of inflation. The awards are enhanced to Ksh. 50,000 for each of the main Appellants.

### **ii. Loss of expectation of life**

23. In West Kenya Sugar Co. Limited vs Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR it was observed that-
- “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. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.”
24. I find the sum Kshs 150,000 is reasonable in loss of expectation of life and the awards to the main Appellants under this head are accordingly enhanced. .

### **Whether or not to deduct the award under the Law Reform Act**

25. The cross Appellants argue that the awards under the Law Reform Act ought to be deducted from the sums allowed for loss of dependency, contending that awarding the Main Appellants under both the Law Reform Act and the Fatal Accidents Act amounts to double compensation.
26. Guidance in this regard is drawn from the Court of Appeal’s decision in the case of Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (deceased) vs Kiarie Shoe Stores Limited [2015] eKLR, where the Court did provide clarity to the confusion on the awards under the two Acts.The Court stated:-

“(20) This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the



deceased's estate under the Law Reform Act and dependants under the Fatal Accidents Act are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the Fatal Accidents Act should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under Law Reform Act, hence the issue of duplication does not arise.

(21) The confusion appears to have arisen because of different reporting of the Kemfro case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio decidendi. The same case, however, is more fully reported in [1987] KLR 30 as Kemfro Africa Ltd t/a Meru Express Services 1976 & Another -VS- Lubia & Another (No. 2) and the ratio decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia, that:-

6. An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act; it appears the legislation intended that it should be considered.
7. The Law Reform Act (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act. This therefore means that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death.
8. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4 (2) of the Fatal Accidents Act are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act, the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction."

27. Given the above explanation by the Court of Appeal which this Court and the Trial Court are bound by, it is clear that the Trial Court was not legally obliged to deduct the awards under the Law Reform Act from those assessed for loss of dependency. The court's judgement in this regard is not to be faulted.



### **Special damages**

28. None of the parties appear to challenge the special damages awards. They shall remain as determined by the lower court.

### **Final Determination**

29. The upshot is that orders issue as hereunder:

- a. All the consolidated appeals are dismissed with regard to the lower court's judgement on loss of dependency.
- b. The lower court's awards for pain & suffering and loss of expectation of life are enhanced to Ksh. 50,000 and 150,000 respectively in respect of each of the main Appeals and therefore the cross Appeals on these heads of damages are dismissed. The lower court's judgement is therefore set aside to this extent only.
- c. No order is made as to the costs of the consolidated Appeals while the costs of the suits in the lower court shall be as directed by that court.

**J. M. NANG'EA,**

**JUDGE.**

**JUDGEMENT DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF MAY, 2025 IN THE PRESENCE OF;**

Ms Sitati Advocate for the main Appellants

Ms Obura Advocate for the cross Appellants

**J. M. NANG'EA,**

**JUDGE.**

