



REPUBLIC OF KENYA



**Cheruiyot (Suing as the Legal Representative of the Estate of Julius Kimeli Laboso - Deceased)
v Mbote (Civil Appeal E116 of 2022) [2025] KEHC 7987 (KLR) (6 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E116 OF 2022**

EN MAINA, J

JUNE 6, 2025

BETWEEN

**DENNIS CHERUIYOT (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF JULIUS KIMELI LABOSO - DECEASED) APPELLANT**

AND

MUTISYA MBOTE RESPONDENT

*(Being an appeal from the Judgment/Decree by Hon. M. Otindo (PM) at the Chief
Magistrate's Court at Machakos in Civil Case No. 76 of 2020 delivered on 21 st April, 2022)*

JUDGMENT

1. Vide a Complaint filed on 19th February 2020, the cause of action arose on or about 7th December 2018 at about 6.00 pm where the plaintiff was a lawful passenger onboard motor vehicle KCS 135 T at Konza City area along Nairobi Mombasa Highway when the defendant and /or his authorized driver carelessly and or negligently managed, drove the motor vehicle KCQ 611 E and collided with Motor vehicle KCS 135 T that it lost control, veered off the road thereby occasioning the plaintiff several injuries and died as a result.
2. The Plaintiff claimed special damages of Kshs.155,650, general damages under the Fatal Accident Act and Law Reform Act, costs of the suit and interest.
3. The Defendant filed a defence dated 12th March, 2020 denying the contents of the Complaint and stated that of the accident occurred, it was caused by the contributory negligence of the driver of the motor vehicle KCS135T He prayed that the suit be dismissed with costs.
4. On 24th November 2021, the parties by consent agreed that liability be entered for the Plaintiff against the Defendant in the ratio of 80: 20% and file submissions on quantum.



5. The court below awarded damages as follows: Pain and suffering Kshs. 30,000/- Loss of expectation of life Kshs. 150,000/- Special damages Kshs. 105,000/- Loss of dependency Nil Costs of the suit Interest
6. Being dissatisfied by the judgment the Appellant filed Memorandum of Appeal dated 29.06.2022 seeking to have the judgement on quantum set aside and the court re assess the damages under the fatal accident Act and the Law Reform Act. The Appeal is founded on the grounds that;
 - a. The learned trial magistrate erred in law and in fact by making an award of Kshs 30,000 for pain and suffering which was inordinately on the lower side in view of the fact that the deceased succumbed due to the pain and suffering he was going through and the fact that he passed on the same day, the same did not happen at the scene of the accident but rather while undergoing treatment thereby presenting a miscarriage of justice.
 - b. The learned trial magistrate erred in law and in fact by awarding Kshs 150,000 for loss of expectation of life which was inordinately on the lower side in view of the fact that the deceased was snatched of a chance to live a long healthy life
 - c. The learned trial magistrate erred in law and in fact by failing to make an award for loss of dependency despite the plaintiff having provided evidence in support of the same.
 - d. The learned trial magistrate erred in law and in fact in failing to consider the appellant's submissions and authorities on damages under the Fatal Accident Act and the Law Reform Act thereby arriving at an erroneous figure on damages under the Fatal accident act and the Law Reforms Act.
 - e. The learned trial magistrate erred in law and in fact by failing to consider the conventional awards for damages in cases of similar facts and awarded damages for pain and suffering and loss of expectation of life which were very low.
 - f. The learned Trial magistrate erred in law and in fact in awarding Kshs 10,000 as legal fees paid by the plaintiff to obtain the limited grant despite the plaintiff having produced a receipt for Kshs 60,000 to that effect.
 - g. The learned trial magistrate erred in law and in fact by disregarding all the documents presented by the appellant in court to prove his case.
 - h. The learned trial magistrate erred in law and in fact when making an award by failing to consider the passage of time and incidence of inflation.

Appellant's submissions

7. The Appellant filed submissions on 6th February, 2023 and submitted the trial court erred in law and in fact by awarding Kshs. 105,650/= as special damages when the appellant had provided receipts amounting to Kshs. 155,650/=. Further. the court erred in law and in fact by failing to give an award for funeral expenses when the appellant had made convincing case for the same.
8. It was submitted that the deceased endured a lot of pain and suffering and thus an award of Kshs. 30,000/= is on the lower side as the same was given on the belief that the deceased died on impact and therefore urged the court to set the said award of Kshs. 30,000/= and substitute the same with Kshs. 300,000/= for pain and suffering endured by the deceased prior to her death.
9. Reliance was made on the case of Jemimmah Wambui Njoroge vs Philip Mwangi [2001] eKLR Civil Case no 242 of 1999 wherein the court awarded Kshs. 120,000/= for pain and suffering as fair reflection of the injuries the deceased had sustained as a result of the accident that took away his life.



10. According to the Appellant, on loss of life, it was evident that the deceased died at an age of 44 years old. She was in good health and would have lived a full life ahead of her had the accident not occurred.
11. The deceased together with her family have been deprived of companion and love from each other by the accident herein and thus he proposes Kshs 4,800,000/= would suffice under the head. The Plaintiff therefore prays that damages be awarded in the sum of Kshs. 4,800,000/= for the loss of life and dependency.
12. Reliance was made to the case of *Midland Media limited & another v Pauline Naukot Aule* (Suing as the legal Representative of the Estate of the late Esinyon Esokon Ekai) [2020] relied on the Court of Appeals reasoning in *Joyce Mumbr-Mugi Vs. The Co-operative Bank of Kenya Ltd & 2 Others*, the deceased was 51 years old. A multiplier of 11 years was found reasonable.
13. The Appellant submitted that that the deceased in this instant case died while aged 44 years, we submit that a multiplier of 16 years would suffice and as such the sum of Kshs.4,800,000/= would be appropriate as damages for loss of dependency.

Respondent's Submissions

14. The Respondent submitted that the Learned Honourable Magistrate in awarding the sum of Kshs. 30, 000.00 for pain and suffering considered that the Deceased who was aged 44 years at the time of death died one day after the accident. The award awarded was therefore within the acceptable range of awards issued in similar circumstances. The award of pain and suffering of Kshs. 300, 000.00 suggested by the Appellant would have been overtly excessive and out of touch with the precedents guiding the trial court.
15. While relying on the case of *Ainu Shamsi Hauliers Limited v Moses Sakwa & another* (suing as the Administrators of the Estate of the Ben Siguda Okach (Deceased) [2021] eKLR, the court in upholding the award of Kshs. 30, 000.00 observed as follows:

“I am therefore guided by the death certificate which indicates that the deceased died at Coast General Hospital. From the foregoing, it is evident that the deceased did not die immediately after the accident happened but endured pain and suffering before he lost his life.”
16. It was submitted that the Appellant had a burden of proof to prove dependency as this was a core requirement under the *Fatal Accidents Act* for an award to be made.
17. Reliance was made to the case of *Chania Shuttle v Mary Mumbi* [2017] eKLR, *Karanja Ndirangu v Wilson P Kariuki* (Administrators of the Estate of Lilies Gathumbi [2019] eKLR, *Martha Muthoni Ndege* (Appealing as the legal representative of Stanley Ndege Gichuki - (Deceased) v Anthony Kamau Kambiriri [2019] eKLR, *National Council for Persons With Disabilities v Philister Achieng Awuor & another* [2021]eKLR to buttress the limb that the Appellant as an adult child had to prove direct dependency on the deceased.
18. The Respondent urged the Court not to disturb the findings of the trial court on the claim for loss of dependency under the *Fatal Accidents Act*.
19. The Respondent finally submitted that the appeal be dismissed with costs to the Respondent and the judgment delivered by the lower court and the decree thereto be upheld and that the interests on the said awards to apply from the date of the judgment herein.



Determination

20. The principles that should guide this court in an appeal of this nature are set out in a long line of precedents. In the case of *Shabani -vs- City Council of Nairobi* Civil Appeal No. 52 of 1984 [1985] KLR 516, for instance, the Court of Appeal held as follows:-

“(1) 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 based on some wrong principle or on a misapprehension of the evidence”

21. An appellate court cannot interfere with the award of the lower court simply because it could have awarded a higher amount had it assessed the damages itself. See the case of *Kilo -v- Omar & Another* – Civil Appeal No. 49 of 1984 [1986] KLR 284 where the Court of Appeal stated:

“(1) Before an award for general damages can be set aside, it must be shown that there was an error in assessing the award and it is not sufficient merely to show that the court would have made a somewhat higher award.”(emphasis mine).

22. It is also trite that whereas each case is to be determined on its own merits, similar injuries ought to attract similar awards. In other words there must be consistency in the manner that the courts award damages.

23. For pain and suffering, it was held in 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, 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. The learned magistrate awarded Kshs.30,000/- for pain and suffering on the basis that the deceased died while undergoing treatment at the hospital. However, whereas the accident occurred on 7th December 2018, according to the death certificate the deceased died on the 9th December 2018 which is two days after the accident. I therefore, find that the award of the learned magistrate was inordinately low as what was awarded is what is usually awarded in cases of immediate or instant death. In my view an award for Kshs.100,000/- is more reasonable and accordingly the award for Kshs.30,000/- is set aside and substituted with one of Kshs.100,000/-.

25. My so saying finds support in the case of *Hyder Nthenya Musili & Another v China Wu Yi Limited & Another* [2017] eKLR, where the court stated:

“As regards damages awarded under the *Law Reform Act*, 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.... 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.”

26. Under the head of loss of dependency, in the case of *Albert Odawa vs. Gichimu Gichenji Nakuru* HCCA No. 15 of 2003, [2007] KEHC 1358 (KLR) it was held that:-

“On the issue of loss of dependency, no evidence whatsoever was adduced before the trial court on the deceased’s earnings and thus the multiplicand of Kshs. 8,100.00 was without basis. In the absence of evidence of actual earnings of the deceased, the correct approach would have been to assess the deceased’s income by applying the basic salary, which is paid to unskilled workers, and this would also have been difficult, as the age of the deceased was not stated. So the best option would have been to apply the global award. So an award of Kshs. 400,000.00 awarded.”

27. In *Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988* (unreported) held at page 248 as follows:-

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchases. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature.”

28. Still on this head of damages in the case of *Chunibhai J. Patel and Another v P. F. Hayes and Others* [1957] EA 748, 749 the court stated that:

“The court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependents, the net earning power of the deceased (i.e his income less tax) and the proportion of his net income which he would have made available for his dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying by a figure representing so may years purchase. The multiplier will bear a relation to the expectation of the earning life of the deceased and the expectation of life and dependency of the widow and children. The capital sum so reached should be discounted to allow for the possibility or probability of the re-marriage of the widow and, in certain cases, of the acceleration of the receipt by the widow of what her husband left her, as a result of his premature death. A deduction must be made for the value of the estate of the deceased because the dependants will get the benefit of that. The resulting sum (which must depend upon a number of estimates and imponderables) will be the lump sum that the court should apportion among the various dependants”. [Emphasis mine].

29. The Appellant’s contention is that the deceased was a business lady earning Kshs.50,000/- per month. However, from the record, there is no proof that the deceased was in fact a business lady. The Appellant did not produce any documentary evidence to prove the business that was being undertaken by the deceased or the income earned therefrom. I therefore find that a global award



was the safest in the circumstances and accordingly award a global sum of Kshs.1,000,000/- having taken all the circumstances of the case and the issue of inflation into account. My conclusion finds support in the case of Rishi Hauliers Limited vs Josiah Boundi Onyancha [2015] eKLR where the court awarded a global sum of Kshs. 500,000/-for a deceased who was 50 years old and the case of Dora Mwawandu Samuel (Suing on her behalf and on the behalf of the Estate of Samuel Muweliani Jumamosi (Deceased) vs Shabir M. Hassan [2021] eKLR where the court awarded a 59 year old farmer a global sum of Kshs. 400,000/-.

30. Further in the case of Moses Maina Waweru v Esther Wanjiru Githae (Suing as the personal representative of the Estate of the late David Githae Kiririo Taiti [2022] eKLR where the court awarded a global sum of Kshs.800,000/- for a 68-year-old farmer cum businessman and there was evidence of the deceased being a business man.
31. As regards special damages, it is trite law that the same must be strictly pleaded and proved. In this case the Plaintiff pleaded Kshs.155,650/- but the court awarded only Kshs.105,650/- which I find was an error as the whole amount had been proved. The proviso in Section 6 of the *Fatal Accidents Act* provides that;

“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.” (emphasis mine)

32. The award on special damages is accordingly set aside and substituted with that of Kshs.155,650/-.
33. Consequently, the Appeal succeeds and damages are awarded as follows: -

- a. Liability 80:20% In favour of the Plaintiff
- b. Damages
 - i. Pain and suffering Kshs 100,000/-
 - ii. Loss of expectation of life Kshs 150,000/-
 - iii. Loss of dependency Kshs 1,000,000/-
- c. Special damages Kshs 155,650/-
- d. Less 20% Contribution Kshs 281,130/-
Total Kshs 1,124,520/-
- e. Costs and interest

It is so ordered.

RULING SIGNED, DATED AND DELIVERD VIRTUALLY ON THIS 6TH DAY OF JUNE 2025.

E.N. MAINA

JUDGE

In the presence of:

Mr. Kerio for the Respondent

No appearance for the Mr. Kaburu for the Appellants



