



**Kaume & 2 others v Mbugua & another (Suing as the Administrators  
the Estate of Simon Mbugua Mburu (Deceased)) (Civil Appeal  
E093 of 2023) [2025] KEHC 7836 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7836 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E093 OF 2023  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**KITT BARRACKSON KINOT KAUME ..... 1<sup>ST</sup> APPELLANT  
ALLIANCE LEASING LIMITED ..... 2<sup>ND</sup> APPELLANT  
GEOFFREY MUGAMBI KIMATHI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**DAVID KIANDO MBUGUA ..... 1<sup>ST</sup> RESPONDENT  
MARIAM NJOKI NJURU ..... 2<sup>ND</sup> RESPONDENT  
SUING AS THE ADMINISTRATORS THE ESTATE OF SIMON MBUGUA  
MBURU (DECEASED)**

*(Being an appeal from the judgment and decree of the Principal Magistrate's Court at  
Baricho (Hon. D.M. Irevi, PM.) delivered on 13th October 2023 in SPMCC NO. 177 of 2022)*

**JUDGMENT**

1. In their plaint dated 8<sup>th</sup> November 2022, the respondents averred that they are the administrators of the estate of the late Simon Mbugua Mburu. The suit was lodged pursuant to the [Fatal Accidents Act](#) and the [Law Reform Act](#). The 1<sup>st</sup> and 2<sup>nd</sup> respondents were the registered owners of motor vehicle registration number KCZ 081J that was driven by the 3<sup>rd</sup> respondent on 24<sup>th</sup> March 2021. At around 3:30 p.m., the deceased was lawfully driving motor vehicle registration number KBR 753M along the Karatina Sagana road. On reaching Kibingoti area, the 3<sup>rd</sup> appellant drove the motor vehicle so negligently that he collided with the deceased and as a result, the deceased lost control, violently overturned and rolled several times leading to his death. Particulars of negligence and injuries were set captured in the plaint.



2. The respondents averred that the deceased died leaving seven dependents as follows: Mariam Njoki Njuru – 54-year-old wife, Benson Mburu Mbugua – 32-year-old son, Antony Njuguna Mbugua – 29-year-old son, David Kiando Mbugua – son aged 27 years, Victor Muiruri – 24-year-old son, Brian Ng'ang'a Mbugua – son aged 22 years and FWM – his 17-year-old daughter. The deceased was of good health and lived a happy life. He was a driver come manager earning Kshs. 1,500.00 – Kshs. 2,000.00 daily. He contributed substantially to the dependents' sustenance.
3. For the above reasons, the respondents prayed for damages under the *Fatal Accidents Act* and *Law Reform Act*, special damages for Kshs. 164,050.00, damages for loss of consortium, costs and interests. In its judgement dated 13<sup>th</sup> October 2023, the trial court entered liability in the ratio of 85: 15 in favor of the respondents as against the appellants pursuant to a consent order dated 16<sup>th</sup> August 2023. The respondents were awarded Kshs. 1,500,000.00 for loss of dependency, Kshs. 100,000.00 for loss of expectation of life, Kshs. 50,000.00 for pain and suffering and Kshs. 800,000.00 for loss of consortium. The respondents were also awarded Kshs. 164,050.00 in special damages. Taking into account liability apportionment, judgment was entered in favor of the respondents in the sum of Kshs. 2,221,942.00 with costs and interest at court rates.
4. The 1<sup>st</sup> and 3<sup>rd</sup> appellants are aggrieved. They filed their memorandum of appeal dated 7<sup>th</sup> November 2023 that raised four grounds disputing the findings of the learned magistrate. In summary, the learned magistrate erred in awarding loss of consortium; that loss of dependency was excessive; and the trial court failed to consider their written submissions in arriving at an erroneous assessment. For those reasons, they prayed that the appeal be allowed by setting aside the awards on loss of dependency and loss of consortium. They further prayed for costs of this appeal.
5. The appeal was disposed of by way of written submissions. The appellants' written submissions dated 17<sup>th</sup> July 2024 argued that the global sum award of Kshs. 1,500,000.00 for loss of dependency was excessive. This is because the deceased was 57 years old and left a widow and adult children. They submitted that no evidence was adduced to demonstrate that the adult children depended on the deceased. They urged this court to award Kshs. 500,000.00 placing reliance on the authorities in *Dora Mwawandu Samuel (suing on her behalf and on behalf of the estate of Samuel Muweliani Jumamosi (deceased) v Shabir M. Hassan* [2021] eKLR, *Joseph Maina Kimura v Ann Nkirote Mwaniki (sued as the legal representative and administrator of the estate of Silvan Mwaniki Nyamburano – deceased)* [2020] eKLR, *Chania Shuttle v Mary Mumbi* [2017] eKLR and *Rishi Hauliers Limited v Josiah Boundi Onyanacha* [2015] eKLR.
6. Turning to loss of consortium, the appellant submitted that the award was not available for recovery of damages in a fatal claim and was therefore unsupported. They invited this court to uphold that submission by relying on the cases of *Innocent Keti Makaya Denge v Peter Kipkore Cheserek & another* [2015] eKLR and *Karimba (suing as the legal representative of the estate of Christopher Mutahi Mwangi deceased) v Murigu & another* [2023] KEHC 20680 (KLR). They prayed that their appeal be allowed.
7. Opposing the appeal, the respondents filed their joint written submissions dated 8<sup>th</sup> November 2024. Summarizing the facts and evidence at trial, the respondents submitted that the award on loss of dependency was sound and laudable. They further noted that while at the trial court the appellants' prayed that the sum of Kshs. 173,782.80 was the proper award, they changed tact in urging this court to award Kshs. 500,000.00. In their view, the appellants were introducing new material not placed at trial and were therefore abusing the appellate process. They thus urged this court to disregard their submissions on this issue. In any event, the authorities cited by them were distinguishable from the present facts.



8. Turning to the award on loss of consortium, the respondents submitted that the award was properly anchored in law and evidence. They relied on the decisions in *Martha Muthoni Ndege* (appealing as the legal representative of the estate of Stanley Ndege Gichuki v Anthony Kamau Kambiriri [2018] eKLR, Kwamboka (suing as a dependant and personal representative of the estate of Albert Nyabongoye Onchiri) v Okiro & another [2024] KEHC 8442 (KLR), *Onik Enterprises Limited v Sara & another* (both suing on behalf of the estate of Richard Weire deceased) [2024] KEHC 9009 (KLR), *Salvatore De Luca v Adbdullahi Hemed Khalil & another* [1994] eKLR, *Chege Kimotho & others v Maria Vesters & another* [1988] eKLR and *Mbaaruru & another v Kenya Bus Services Limited also known as Stage Coach Bus International & another* [2024] KECA 432 (KLR).
9. Finally, on the claim that the appellants' submissions were not considered, the respondents reproduced excerpts of the impugned judgment to demonstrate that the argument was wrong and must accordingly fail. The respondents' evidence was uncontroverted and the findings of the trial court were proper. They prayed that the appeal be dismissed with costs.
10. I have considered the memorandum of appeal, examined the submissions of the parties as well as record of appeal and analyzed the law. This is an appeal on quantum and the principles enunciated are well settled. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR the Court of Appeal laid down the following yardstick:

“It is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”
11. The respondents were the only party that adduced oral testimony for purposes of assessing quantum. PW1 MARIAM NJOKI, a co-administrator of the deceased's estate, testified before his death, the deceased earned Kshs. 1,500.00 daily as a driver. She produced a letter from the deceased's employer and a copy of his driving licence in support of that evidence. She further confirmed that the last two children, that is Brian Ng'ang'a Mbugua and FWM, were in college and preparing to join nursing college respectively. In support of special damages, PW1 produced the mortuary bill and receipts as well as the burial permit. She further claimed loss of consortium on account of the fact that following the death of her husband, she lost love, care and companionship.
12. In awarding damages under the pain and suffering head, the trial court considered the submissions of both parties and awarded Kshs. 50,000.00. That amount was correctly awarded. In awarding damages for loss of expectation of life, the trial court properly awarded the conventional sum of Kshs. 100,000.00. Taking the said awards into account under these heads, I now move to the award on loss of dependency.
13. In considering damages under this head, the trial magistrate correctly found that the deceased's employment was not proved on a preponderance of the evidence adduced. In finding that the respondents were entitled to damages under this head, the trial magistrate reasoned that the global sums approach rather than the multiplier approach was preferred. That was a proper finding. Though the appellants agree with the trial court to this extent, their submission is that the damages awarded were excessive. They cited several authorities before me urging that damages be revised to Kshs. 500,000.00.



14. As rightly pointed out by the respondents, the appellants introduced a fresh proposition that was not considered in trial. I find that in so doing, the appellant was attempting to steal a march from the respondents. That is not proper procedure. Since their proposals in this appeal was not considered by the trial magistrate, I will accordingly disregard those submissions on this issue. The trial magistrate relied on the case of Jecinta Ruguru v Beatrice Muthoni Muthike (suing as the legal representative of the estate of the late Isaac Muthike Nyaga [2021] eKLR to award a global sum of Kshs. 1,500,000.00.
15. I have had the opportunity to look at that case. In it, it was established that the deceased was 57 years at the time of his death and that he had four dependents who included three minors aged 9, 13 and 17 years respectively. The deceased was not working as a public servant and therefore the mandatory retirement age of 60 years was not necessarily applicable to him. The High Court took into account his age, the time of demise and the length of his children's expected dependency to award a sum of Kshs. 1,300,00.00.
16. While the authority is certainly comparable to the facts surrounding this case, it is instructive to note that it was only proved that two of the deceased's children were in school. They were children undertaking their tertiary education and were therefore reaching an age where they would soon not need his dependency if their evidence is anything to go by. Taking that into account, coupled with the deceased's age of 57 years, and his expectancy to have worked beyond the age of 60 years, this court sees the need to interfere with the award under this head. In setting aside the award made by the learned trial magistrate, I will substitute the same with an order that the respondents are entitled to a sum of Kshs. 1,000,000.00.
17. On loss of consortium the trial court held as follows:

“The same is a general damage claim and it is pleaded at paragraph 8 of the plaint. The Court of Appeal in Salvatore De Luca v Abdullahi Hemed Khalil & another (1994) eKLR held as follows thus:

“So far as consortium is concerned, there is evidence that the appellant loved his wife and so did their children. The appellant has not re-married. No doubt, he had lost his wife's companionship. There is, moreover, an impairment in the social life of the appellant and his young children who, too, have lost love, care and devotion of their mother. The learned Judge clearly erred, in our view, in failing to award any damages for loss of consortium and servitium.”

The claim was not challenged during cross examination of the 1<sup>st</sup> plaintiff (deceased's wife). The 1<sup>st</sup> plaintiff herein lost a husband. She led evidence that she has lost love, affection, comfort and companionship which evidence was not controverted. I am satisfied that she is entitled to the claim.

The 1<sup>st</sup> and 3<sup>rd</sup> defendants referred to a High Court decision in Wasilwa Saul & another v David Waswa Simiyu & Gladys Nelima Misiko (Both suing as the legal representatives of the estate of Paul Wafula Simiyu [2022] eKLR but this court will adopt and rely on the Court of Appeal decision in Salvatore De Luca v Abdullahi Hemed Khalil & another person (supra) in support of the 1<sup>st</sup> plaintiffs claim.

In PBS & another v Archdiocese of Nairobi Kenya Registered Trustees & 2 others (2016) eKLR, Kshs. 800,000/= was awarded as damages for loss of consortium.



The 1<sup>st</sup> plaintiff is hereby awarded a lump sum of Kshs. 800,000.00 under the sub-heading subject to the agreed ratio on liability.”

18. The appellants’ contention was that this award was not known in law and was not provided in the relevant statutes. The appellant relied on several decisions of this court urging me to disturb the award and set it aside completely. However, those decisions are not binding to this court. The trial magistrate properly and correctly relied on the decision of the Court of Appeal in *Salvatore De Luca v Abdullahi Hemed Khalil & Another* (supra) which held that an award for loss of consortium is indeed applicable but would depend on the facts and circumstances of his case. Similarly, the Court of Appeal in *Mbaaruru & another v Kenya Bus Services Limited also known as Stage Coach Bus International & another* (supra) held as follows:

“This Court in the case of *Salvatore De Luca v Abdullahi Hemed Khalil & Another* [1994] eKLR awarded loss of consortium in a fatal accident claim; the Justices of Appeal held thus:

“So far as consortium is concerned, there is evidence that the appellant loved his wife and so did their children. The appellant has not re-married. No doubt, he had lost his wife’s companionship. There is, moreover, an impairment in the social life of the appellant and his young children who, too, have lost love, care and devotion of their mother. The learned judge clearly erred, in our view, in failing to award any damages for loss of consortium and servitium. Bearing in mind the fact that each case should be judged on its own facts, we would think that an award of Shs.40,000/= is a fair measure for this head of damages and we award the appellant this sum with interest from the date of judgement in the superior court until payment in full.”

71. We cite the above case to show that loss of consortium is a recognised claim in law, and to show the principles that apply. We know that the award in the cited case was granted in a fatal accident case. The instant case was not a fatal accident. It is nevertheless an appropriate case for such an award. The principles to be considered include proof that the appellant loved the spouse before the accident. Loss of consortium means loss of any or all of the following; companionship, love and affection, comfort, mutual services and sexual intercourse.”

19. Gathered from the above binding authorities, it is inescapable that the 1<sup>st</sup> respondent was entitled to the claim for loss of consortium. She testified that she lost love, affection, comfort and companionship which evidence was not controverted. The trial court adopted the award given in *PBS & another v Archdiocese of Nairobi Kenya Registered Trustees & 2 others* (supra), Kshs. 800,000.00. However, she did not lay a basis for the same and in the circumstances, I see reason to interfere with the award on damages under this head.
20. In *Mbaaruru & another v Kenya Bus Services Limited* (supra), the deceased therein left a spouse and 3 children and the court made an award of Kshs. 300,000.00 for loss of consortium. In *West Kenya Sugar Co Ltd & another v Wanjiah* (Suing as Widower and legal representative of the Estate of Mercy Nelima Simiyu - Dcd) & another [2025] KEHC 2609 (KLR) this court set aside the trial magistrate’s award of Kshs 950,000.00 and awarded Kshs 200,000.00. Taking these authorities into account, and the fact that the deceased left seven children, I find that loss of consortium awarded by the trial magistrate in the sum of Kshs. 800,000.00 is excessive. I set it aside and substitute it with a sum of Kshs. 400,000.00.



21. The award on special damages was pleaded and proved. I will therefore not interfere with those findings. Finally, the totality of the evidence and the analysis of the trial magistrate revealed that the trial court considered the appellants' submissions at length. The ground that their submissions were not considered accordingly fails and is dismissed.
22. In light of my analysis, I find that the appeal partially succeeds in the following terms:
  1. The award on loss of dependency entered by the trial court in the sum of Kshs. 1,500,000.00 is set aside and substituted with an award of Kshs. 1,000,000.00;
  2. The award on loss of consortium of Kshs. 800,000.00 is set aside and substituted with an award of Kshs. 400,000.00.
  3. The award herein shall take into account the apportionment of liability.
  4. Since the appeal partially succeeds, each party shall bear its own costs of the appeal.

It is so ordered.

30 days stay of execution

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JUNE 2025  
IN THE PRESENCE OF;**

Masudi for the Appellants

Mutua for the Respondents

Siele /Mark (Court Assistants)

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**J. NG'ARNG'AR**

**JUDGE**

