



Okiro & another v Mandere & another (Suing as the Personal Representatives and Legal Representatives of the Estate of Samwel Mandere Matonga – Deceased) (Civil Appeal E008 of 2024) [2025] KEHC 8622 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E008 OF 2024
WA OKWANY, J
JUNE 19, 2025**

BETWEEN

BENARD BOSIRE OKIRO 1ST APPELLANT

MOTOROLOGY LIMITED 2ND APPELLANT

AND

JOSEPHINE KWAMBOKA MANDERE 1ST RESPONDENT

AMISI OYUNGE MANDERE 2ND RESPONDENT

**SUING AS THE PERSONAL REPRESENTATIVES AND LEGAL
REPRESENTATIVES OF THE ESTATE OF SAMWEL MANDERE MATONGA –
DECEASED**

*(Being an Appeal from the Judgment and Decree at the Chief
Magistrate’s Court in Nyamira CMCC No. 160 of 2022 delivered by
Hon. B.O. Okong’o, Resident Magistrate on 30th November 2023)*

JUDGMENT

1. The Respondents herein, who were the Plaintiffs before the trial court, sued the Appellants/ Defendants through the Plaint dated 9th September 2022 seeking the following orders: -
 - a. Special Damages as per paragraph 6 of the Plaint.
 - b. General Damages under the *Fatal Accidents* and *Law Reform Act*.
 - c. Cost of the suit and interests
 - d. Interests on a, b and c at court rates.



- e. Any other reliefs that the court may deem fit.
2. The Plaintiffs' case was that on or about the 28th February 2022, the deceased, Samwel Mandere Matonga, was a lawful passenger aboard Motor Vehicle Registration No. KCZ 828V travelling along Kisii - Kericho road when at Nyabioto area, the said motor vehicle collided with motor vehicle Registration No. KAR 424B ZC 0473 thereby causing an accident in which the deceased suffered fatal injuries. The Plaintiff attributed the accident to the negligence of the Appellant's driver/agent.
 3. The 1st Defendant filed his Statement of Defence dated 29th September 2022 in which he denied the contents of the Plaint and attributed the accident to the negligence of the deceased.
 4. The matter was thereafter set down for hearing. The Respondents presented the evidence of No. 33327 PC Justus Kipkoech who produced the Police Abstract (P.Exh 1) and Amis Oyunge Mandere (PW2) who adopted his witness statement as his evidence-in-chief and produced a bundle of documents (P.Exh 2-9) as follows: -
 1. Post Mortem Report
 2. Receipts for funeral expenses in the sum of Kshs. 94,450/=
 3. Death Certificate
 4. Grant from Nyamira CMCC No. E062 of 022 and a receipt for Kshs. 30,000/=
 5. Copy of the Chief's Letter
 6. Copies of Birth Certificates
 7. Copy of Motor vehicle records and receipt for Kshs. 550/=
 8. Copy of Demand Letter
 5. The Defendants did not call any witnesses to support their case and in a judgment delivered on 30th November 2023, the trial court entered judgment for the Respondents as follows: -

Liability at 100% against the Defendants

Damages under the Law Reform Act: -

 - i. Loss of Expectation of Life – Kshs. 100,000/=
 - ii. Pain and Suffering – Kshs. 10,000/=

Damages under the Fatal Accidents Act:-

 - i. Loss of Dependency Global Sum – Kshs. 1,500,000/=

Special Damages – Kshs. 125,550/=

Total Award – Kshs. 1,735,550/=
 6. Aggrieved by the trial court's said decision, the Appellants filed the present Appeal *vide* Memorandum of Appeal dated 2nd April 2024. The Appellants seek orders to set aside the judgment of the trial court on quantum of damages and to replace it with its own assessment of damages. The Appellants also pray for the costs of the Appeal. The Appellants Memorandum of Appeal has the following grounds of appeal: -
 1. That the Learned Trial Magistrate erred in law and in fact and misdirected himself when he failed to consider the Appellant's submissions on both points of law and facts.



2. That the Learned Trial Magistrate’s decision was unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 3. That the Learned Trial Magistrate erred in law and misdirected himself when he failed to consider the provisions set out in the *Insurance Motor Vehicle (Third Party Risks) (Amendment) Act* of 2013, Cap 405.
 4. The Learned Magistrate erred in law and in fact in awarding the Estate of the deceased a sum of Kshs. 1,500,000/= of loss of dependency that was excessive as to amount to an erroneous estimate of loss or damage suffered by the Estate of the deceased.
 5. That the Learned Trial Magistrate erred in law and in fact in addressing the issue of age discrepancy which was noted during the trial.
 6. The Learned Trial Magistrate erred in law and in fact by overly relying on the Respondent’s submissions which were not relevant and without addressing his mind to the circumstances of the case.
 7. The Learned Trial Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
7. The Appeal was admitted for hearing on 10th February 2025 after which parties took directions to canvass it by way of written submissions which I have considered.
8. The duty of a first appellate court was explained in the case of *Kamau v Mungai & Another* 1200611 1LR 150 where the Court of Appeal held thus: -
- “This being a first appeal it was the duty of the Court of Appeal to re-evaluate the evidence assess it and reach its own conclusions remembering that it had neither seen nor heard the witness and hence making due allowance for it..
- A Court on Appeal will not normally interfere with a finding of fact by the trial Court in a civil or criminal case unless it is based on evidence or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did...”
9. I have considered the grounds of Appeal and the parties’ rival submissions. I find that since the trial court’s findings on liability was not contested, the only issue for determination is whether the trial court arrived at the correct finding on quantum of damages.

Analysis and Determination

10. The circumstances under which an appellate court can interfere with the assessment of damages by a trial court were aptly stated in the case of *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 where the Court of Appeal held thus: -

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some



relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

11. In *Stanley Maore v Geoffrey Mwenda* [2004] eKLR the Court of Appeal stated: -

“Having so considered we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

12. Damages under the *Law Reform Act* which include compensation for pain and suffering and loss of expectation of life. 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 the court observed that: -

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

13. I have perused the Post Mortem Report (P.Exh2) which indicates that the deceased died on the spot as a result of the fatal injuries that he sustained in the accident in question. I therefore find that the trial court’s award of Kshs. 100,000 for pain and suffering was fair and in line with the set legal principles. I find no reason to interfere with the said award.

14. I have also considered the award under the *Fatal Accidents Act* for loss of future earnings or loss of dependency. I note that the trial court employed a global sum approach and awarded the Estate of the deceased the sum of Kshs. 1,500,000/= under this heading. The question that arises is whether the trial court erred in applying the global sum approach as opposed to the multiplier method.

15. Courts have taken the position that the multiplier approach in assessment of damages for loss of dependency is only applicable where the earnings of a deceased can be ascertained with certainty. In other words, where the multiplicand cannot be ascertained with precision, the court will adopt the *Global Sum approach*. In *Gammel v Wilson* (1981) 1 ALL ER 578 Lord Scarman spoke held as follows:

“The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in Gammell’s case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a ‘conventional’ award in a case of alleged loss of earnings for the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach a mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a ‘conventional’ award should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime age of



five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell's case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessable claim. In the case of a young man, already in employment (as was young Mr Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man well established in life, like Mr Picket, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it. (see page 593).”

16. In the present case, I note that the deceased's Death Certificate (P.Exh 4) reveals that he was aged 42-years old at the time of his death. The Respondents' case was that the deceased enjoyed robust health and had normal expectation of life. They also stated that he was a farmer earning a monthly income of about Kshs. 30,000/=. There was however no documentary evidence to support the alleged earnings. In the absence of proof of income, I find that the trial court correctly employed the Global Sum approach, which this Court hereby adopts.
17. I have considered other comparable cases where the deceased persons were farmers and died at the ages 42 years : -
 - a. In *Gilbert Kimatare Nairi & another (suing as personal representatives of the Estate of Lemayian Richard Kimatare (Deceased) v Civiscope Limited* [2021] eKLR Mwita J. upheld the trial court's award of Kshs. 600,000/= for loss of dependency for the Estate of a farmer who died at 42 years of age.
 - b. In *Moses Wetangula & Another v Eunice Titika Rengetiang* [2018] eKLR, the court awarded Kshs. 500,000/= to the Estate of a 42-year old deceased.
18. Having regard to the above cited comparable awards, I find that the trial court's award of Kshs, 1,500,000 for loss of dependency was on the higher side. Taking into account the age of the above authorities and the current inflationary trends, I find that an award of Kshs. 800,000/= would be appropriate compensation under this heading.
19. Turning to Special Damages, I note that the Respondents pleaded as follows at paragraph 6 of the Plaint: -
 - a. Coffin and Transport Expenses – Kshs. 45,000/=
 - b. Catering Services – Kshs. 30,000/=
 - c. Tents, chairs and Public Address System – Kshs. 20,000/=
 - d. Letters of Administration Ad Litem – Kshs. 30,000/=
 - e. Copy of Motor Vehicle Records – Kshs. 550/=Total – Kshs. 125,550/=
20. In *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* [2016] eKLR, the court outlined the principle governing the award of Special Damages thus: -

“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. However, the claim herein did not fall in that class.”

21. I have perused the trial record and I note that it contains receipts that correspond with the expenses incurred for the deceased’s funeral. I am satisfied that Special Damages were specifically pleaded and proved. I therefore uphold the award for special damages.

22. In the final analysis, I find that the Appeal is merited, albeit only in part, to the extent of damages awarded under the *Fatal Accidents Act* for loss of dependency. I therefore make the following final orders: -

Liability at 100% against the Appellants

Damages under the *Law Reform Act*:-

- i. Loss of Expectation of Life – Kshs. 100,000/=
- ii. Pain and Suffering – Kshs. 10,000/=

Damages under the *Fatal Accidents Act*:-

- i. Loss of Dependency Global Sum – Kshs. 800,000/=
- Special Damages – Kshs. 125,550/=
- Total Award – Kshs. 1,035,550/=

23. I award the Respondent interest on the above amount at court rates until payment in full.

24. I make no orders as to the costs of this appeal.

25. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 19TH JUNE 2025.

W. A. OKWANY

JUDGE

