



**ASM & another (Both Suing as the Personal Representatives of the Estate of EIM, Deceased) v Aga Khan University Hospital Nairobi & another (Civil Case 154 of 2018) [2025] KEHC 11033 (KLR) (Civ) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 154 OF 2018**

**TW OUYA, J**

**JULY 24, 2025**

**BETWEEN**

**ASM ..... 1<sup>ST</sup> PLAINTIFF**

**BLK ..... 2<sup>ND</sup> PLAINTIFF**

**BOTH SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF  
EIM, DECEASED**

**AND**

**AGA KHAN UNIVERSITY HOSPITAL NAIROBI ..... 1<sup>ST</sup> DEFENDANT**

**OBWAKA JOAB ML ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By an amended plaint dated 23<sup>rd</sup> April, 2021, the plaintiffs sued the defendants seeking the following reliefs:
  - i. General damages for pain, suffering and loss of amenities with interest thereon at prevailing commercial rates until payment in full;
  - ii. General damages under Law Reforms Act and Fatal Accident Act;
  - iii. Damages for loss of dependency for EM for twenty-one (21) years;
  - iv. Special damages of Kshs. 18,185,331.50 as set out above with interest;
  - v. Costs of this suit with interest; and
  - vi. Any other relief that court may deem fit to grant



2. The plaintiffs in their amended plaint alleged that on or about the 15<sup>th</sup> of July, 2013, at around 11:15 PM, the deceased attended the 1<sup>st</sup> defendant's hospital in Parklands area, while she was pregnant suffering from headaches, blurred vision, dizziness and that the 1<sup>st</sup> defendant's agent and/or servant admitted her to their general maternity ward for observation and tests which revealed that her blood pressure was abnormally high.
3. That on 17<sup>th</sup> July, 2013, about two (2) days after the deceased was admitted at the general maternity ward of the 1<sup>st</sup> defendant hospital, the 2<sup>nd</sup> defendant together with the 1<sup>st</sup> defendant's agents and/or servants undertook an emergency caesarean section on the deceased and delivered a pre-term baby at 34 weeks, known as EM. However, the deceased's headache, dizziness, blurred vision and high blood pressure did not ease after the caesarean section and delivery of the pre-term baby, and she kept complaining of headache, blurred vision and dizziness while at the general maternity ward, and the defendants advised that she remain in hospital for continuous observation and treatment.
4. The plaintiffs alleged that the defendants were negligent in adequately controlling and managing the deceased condition, by failing to correctly diagnose the ailment she was suffering from at the time of admission into the 1<sup>st</sup> defendant's hospital; and as a result of professional and medical negligence by the defendants the deceased suffered kidney injury, permanent irreversible brain damage and several severe complications leading to her being in a vegetative state until her death. The particulars of the defendants' negligence were pleaded in paragraph 31 of the amended plaint.
5. In its statement of defence dated 22<sup>nd</sup> October, 2018, the 1<sup>st</sup> defendant denied the averments made in the plaint together with the particulars of negligence, injuries and damages and in the alternative, the 1<sup>st</sup> defendant averred that the deceased was at all times under the primary care of the 2<sup>nd</sup> defendant and that all its staff were at all material times under the instructions of the 2<sup>nd</sup> defendant, who is a qualified medical specialist with admitting and clinical privileges at its hospital.
6. The 1<sup>st</sup> defendant averred that the 2<sup>nd</sup> defendant maintained primary care of the deceased and handed her over on the 24<sup>th</sup> of July, 2013; and that from the time the 2<sup>nd</sup> defendant handed over care of the deceased to the hospital, the hospital handled the deceased professionally, as such, her condition was not caused by any act or omission on its part.
7. The 2<sup>nd</sup> defendant in his statement of defence dated 18<sup>th</sup> October, 2018, also denied the particulars of negligence, injuries and damages, and averred that he had no control over the management, treatment and care of the deceased, and it was the 1<sup>st</sup> defendant who managed her. The 2<sup>nd</sup> defendant averred that he had no role in the deceased being maintained in the ward after the delivery of her baby, as the 1<sup>st</sup> defendant had taken over.
8. The 2<sup>nd</sup> defendant alleged that the management and treatment that the deceased was given upon her admission resulted in the delivery of a healthy baby boy, and if indeed the diagnosis was inaccurate, there would have been a different outcome. The 2<sup>nd</sup> maintained that if there were any injuries sustained by the deceased, then the same was caused by negligence on the part of the 1<sup>st</sup> defendant, its agents and/or its servants, who were responsible for her treatment and care.
9. The 2<sup>nd</sup> defendant averred that the injuries sustained by the deceased were in no way connected to his actions or the actions of his authorized agents, as his role in the direct treatment and management of the deceased was in his area of specialization, and the complications that arose after delivery were handled by the 1<sup>st</sup> defendant.



10. In response to the averments made by the defendants in their statements of defence, the plaintiffs filed a reply to the defendants' statements of defence, wherein they reiterated the averments made in their amended plaint.
11. On 12<sup>th</sup> September, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered into a consent on liability, whereby it was agreed that liability would be apportioned at the ratio of 50:50 between the defendants. The said consent was adopted as an order of this court on 15<sup>th</sup> October, 2024. The parties were thereafter directed to file their submissions on quantum.
12. In their written submissions dated 31<sup>st</sup> October, 2024, the plaintiffs submitted that a sum of Kshs.300,000 would be adequate compensation for damages under the head loss of expectation of life, owing to the fact that the deceased who died at the age of 41 years went into a vegetative and paraplegic state from when she was 34 years old and while admitted at the 1<sup>st</sup> respondent's facility, a condition that she never recovered from. They submitted that the deceased did not have the opportunity to see her child after giving birth and that she was working and earning a salary, as such a sum of Kshs.300,000 would be adequate compensation given the inflation tendencies.
13. Regarding general damages under the head pain and suffering, the plaintiffs proposed a sum of Kshs.5,000,000 as compensation, on grounds that the deceased sustained serious injuries and was in a vegetative and paraplegia state for more than 7 years after she left the 1<sup>st</sup> defendant's facility. They submitted that the deceased went through prolonged pain and suffering before her demise; considering that she lost urine and stool control and suffered total and permanent paralysis as well as sensation of body parts.
14. On loss of dependency, the plaintiffs submitted that the deceased was employed by Bollore Africa Logistics (K) Ltd, wherein she was earning a salary of Kshs.154, 349.93 per month inclusive of house and car allowance; and that the deceased who was 34 years at the time she was admitted at the 1<sup>st</sup> defendant's facility, would have worked for another 26 years before her retirement. The plaintiffs submitted that the deceased left behind a minor who was seven years at the time of her death, and her elderly parents who were dependent on her; as such a ratio of  $\frac{3}{4}$  of her salary would have been gone to her dependants. They submitted that a sum of Kshs. 36, 117, 790, calculated as follows,  $154, 349.53 \times 26 \times \frac{3}{4} \times 12 = 36, 117, 790$ , would be adequate award for loss of dependency.
15. On special damages, the plaintiffs submitted that they have specifically pleaded for a sum of kshs.18,185,331, which they have supported by receipts.
16. The 1<sup>st</sup> defendant in his written submissions contended that the general accepted principle in determining an award under the head loss of expectation of life, is that very nominal damages will be awarded under this head, if the deaths followed immediately after the accident; and considering also that the conventional award for damages under this head is kshs. 100,000, the plaintiffs should be awarded kshs.100,000 as damages under this head. The 1<sup>st</sup> defendant further contended that a sum of kshs.500,000 would be adequate compensation for general damages under the head pain and suffering.
17. Regarding damages for loss of dependency, the 1<sup>st</sup> dependant submitted that the multiplicand for loss of dependency is derived from the net pay which includes the basic pay plus allowances less tax liability. The 1<sup>st</sup> defendant further submitted that the deceased died at the age of 41 years, earning a net salary of Kshs. 108,000.
18. The 1<sup>st</sup> defendant contended that the plaintiffs did not prove that they were dependent on the deceased at the time of her death, however, considering that she left behind a minor, a dependency ratio of  $\frac{2}{3}$  should be adopted by this court; and that a multiplier of 15 years would be reasonable, taking into



account the uncertainties of life. The 1<sup>st</sup> defendant proposed a sum of kshs.12,960,000 as adequate compensation for damages under the head loss of dependency.

19. As regards special damages, the 1<sup>st</sup> defendant submitted that the plaintiffs have not proved the special damages pleaded in their plaint, and that if this court is amenable to awarding the plaintiffs special damages, then a sum of kshs.10,000,000 would be adequate compensation.
20. The 2<sup>nd</sup> defendant on the other hand submitted that an award of kshs. 100,000 would be adequate compensation for damages under the head loss of expectation of life, as this is the conventional award made under this head; and that a sum not exceeding kshs.1,000,000 should be awarded as general damages for pain and suffering.
21. As regards compensation for loss of dependency, the 2<sup>nd</sup> defendant submitted that a sum of kshs. 7, 869, 504 would be sufficient compensation under this head. the 2<sup>nd</sup> defendant submitted that in calculating damages under this head, this court should adopt a net salary of Kshs.81,924, a multiplier of 12 years and a dependency ration of 2/3. On special damages, the 2<sup>nd</sup> defendant submitted that the plaintiffs claim for Kshs. 18, 185, 331, should be scrutinized to ensure that the same has been specifically pleaded and strictly proved.
22. Having carefully considered the pleadings as well as the rival written submissions by the parties on quantum, I find that the only issue for determination in this suit is the quantum of damages the plaintiffs are entitled to.
23. On loss of expectation of life, it is trite that a plaintiff whose expectation of life has been cut short or diminished as a result of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. This position was restated by the court in Hyder Nthenya Musili & another versus China Wu Yi Limited & another (2017) eKLR; as follows:

“ 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 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.”

24. In this case, there is evidence on record that the deceased died aged 41 years, and left behind a minor who was 7 years at the time of her death. It is also not in dispute that the deceased never got an opportunity to interact or care for her child from the period that she delivered the said child until her demise. There is also evidence on record to show that had the deceased condition been properly managed, she would have been expected to live a healthy life had her life not been cut short.
25. The plaintiffs in this case had suggested that a sum of kshs. 300,000 would be adequate compensation for damages under this head. However, both the 1<sup>st</sup> and 2<sup>nd</sup> defendants were of the view that a sum of Kshs. 100,000 would be adequate compensation.
26. On my part, I find that an award of kshs. 200,000 would be adequate compensation under this head. To this I rely on the following cases:

Cromwell Mzame versus Zablon Mwanyumba Lalu (Suing as Administrator of the estate of Allen Warito Lalu (Deceased) & another (2022) eKLR; where the court awarded a sum of Kshs. 200,000 as general damages for loss of expectation of life for a 30-year-old deceased.



Mwaura versus Asingu & Yugu (Suing as Administrator and Personal Representative of the Estate of Maurice Oketch Asingu - Deceased) (Civil appeal E88 of 2022) [2024] KEHC 7842 (KLR) (27 June 2024) (Judgment); the court awarded the plaintiff a sum of Kshs. 200,000 as damages for loss of expectation of life for a 47-year-old deceased.

Similarly, in West Kenya Sugar Co. Limited versus Philip Sumba Julaya (Suing as the administrator and personal representative of the estate of James Julaya Sumba [2019] KEHC 6121 (KLR)); the court found that an award of Kshs. 200,000 is not excessive for damages under the head loss of expectation of life.

27. On general damages for pain and suffering, it is a well settled principle in law, that damages for pain and suffering are determined by the length of time that the deceased endured pain and suffering before his demise. This principle was restated in the case of West Kenya Sugar Company Limited versus Philip Sumba Julaya, Civil appeal no. 7 of 2017; as follows:

“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. 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.”

28. In this case, the plaintiffs proposed an amount of kshs. 5,000,000 as damages for pain and suffering. The 1<sup>st</sup> defendant on the other hand proposed a sum of Kshs. 500,000, whereas the 2<sup>nd</sup> defendant was of the view that an award under this head should not exceed kshs.1,000,000.
29. In Peter Mule Muthungu (Suing as the administrator and personal representative of the estate of Jane Mueni Ngui versus Kenyatta National Hospital [2020] KEHC 7803 (KLR)); the court awarded the plaintiff a sum of Kshs. 2,000,000 as general damages for pain and suffering for a deceased who spent 15 days in ICU and was unconscious for a period of 5 months before her demise as a result of medical negligence.
30. In this case, it is not in dispute that the deceased died on 30th July, 2020, which is a period of about 7 years since she went into a vegetative and paraplegia state while admitted at the 1st defendant's facility. It can also be discerned from the treatment notes from the 1st defendant that the deceased underwent a lot of pain during her treatment for the 7-year period that she was in a vegetative state, as part of her treatment included a gastronomy tube and nasogastric tube being inserted in her to enable her feed, drink and take medication. It is also on record that the deceased went through surgeries as part of her treatment.
31. Guided by the above authority, and considering also the indices of inflation, the purchasing power of the Kenyan shilling, and the pain and suffering that the deceased went through before her demise, I am of the view that an award of kshs. 3,000,000 would be adequate compensation as damages for pain and suffering.
32. Turning now to damages for loss of dependency, the plaintiffs had proposed a sum of Kshs. 36, 117, 790, the 1<sup>st</sup> defendant had proposed a sum of Kshs. 12,960,000 whereas the 2<sup>nd</sup> defendant a sum of kshs.7,869,504.



33. Although the plaintiffs had suggested that a gross salary should be used while calculating damages for loss of dependency it is clear from decided caselaw, that what the court considers in calculating damages under this head is the net salary as opposed to the gross salary.
34. This position was restated by the court in *Alexander Okinda Anagwe (suing as the administrator of the estate of Patricia Kezia Anagwe deceased) v Reuben Muriuki Kahuha, City Hopper Ltd, Michael A. Craig & Rueben Kamande Mburu* [2015] eKLR; which has been relied on by the 1<sup>st</sup> defendant in their written submissions. In that case, the court stated as follows:
- “In determining the multiplicand, 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 the plaintiff would have worked bearing in mind the expectation of earning life of the deceased and also the vicissitudes of life.”
35. In this case, it is evident from the payslips adduced by the plaintiffs that the deceased was earning a net pay of kshs. 108,000. It is also not disputed that at the time of her demise the deceased had left behind a minor aged 7 years. The plaintiff had also died at the age of 41 years, meaning that she had about 19 years left before her reaching the retirement age of 60 years. I am of the view that a multiplier of 17 years would be reasonable in this case given the uncertainties of life.
36. Given the above I am of the view that an award of kshs.14, 688,000, calculated as follows:  $108,000 \times 12 \text{ months} \times 17 \text{ years} \times 2/3 = 14,688,000$ , would be adequate compensation under this head.
37. On special damages, the plaintiffs had in their amended pleadings, specifically pleaded kshs.18,185,331.50 as special damages. I have carefully perused the receipts the plaintiffs have relied on in their claim for special damages, and I have found that they were only able to prove a sum of kshs.7,157, 672.48, which were payments for medical expenses for the 7 years, including nursing and homecare expenses as well as funeral expenses.
38. Whereas the plaintiffs had attached receipts for school fee, rent, water and electricity bills, I am of the view that the same do not qualify as special damages.
39. Flowing from the foregoing, the damages payable to the plaintiff are as follows:
- i. Liability between the 1<sup>st</sup> and 2<sup>nd</sup> defendant: 50:50%
  - ii. General damages for pain and suffering: kshs. 3,000,000
  - iii. Loss of expectation of life: kshs. 200,000
  - iv. Loss of dependency: kshs. 14, 688,000
  - v. Special damages: kshs. 7,157,672.48
  - vi. Costs of the suit.
  - vii. The award of general damages will attract interest at court rates from date of judgement until payment in full while the award of special damages will earn interest from date of filing of suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> JULY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Plaintiff .....Ms Ajiambo



For 1<sup>st</sup> Defendant.....Mureithi HB Ms Ondimu

For 2<sup>nd</sup> Defendant.....Waweru

Court Assistant.....Brian

