



REPUBLIC OF KENYA



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Chepkorir & another (Suing as the Legal Representatives of the Estate of David Kipkurui Ngetich - Deceased) v Rotich & another (Civil Appeal E002 of 2023) [2025] KEHC 9686 (KLR) (7 July 2025) (Judgment)

Neutral citation: [2025] KEHC 9686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E002 OF 2023
JK NG'ARNG'AR, J
JULY 7, 2025**

BETWEEN

JUNITA CHEPKORIR 1ST APPELLANT

JOSEPH KIPKOECH NGETICH 2ND APPELLANT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DAVID
KIPKURUI NGETICH - DECEASED**

AND

ARON CHERUIYOT ROTICH 1ST RESPONDENT

RIFT CARS LIMITED 2ND RESPONDENT

(Being an Appeal from the Judgment of Principal Magistrate, Kibelion K. at the Principal Magistrate's Court at Bomet, Civil Suit Number 97 of 2019)

JUDGMENT

1. The Appellants (then Plaintiffs) as the Legal Representatives of the deceased David Kipkurui Ngetich, sued the Respondents (then Defendants) for general and special damages that arose when the deceased while aboard motorcycle registration number KMDY 136C, was fatally knocked down by motor vehicle registration number KCN 677R on 11th May 2019 along Kapsimotwo-Kapkwon Road.
2. The trial court conducted a hearing where the Appellants called one witness and closed their case. The Respondents closed their case without calling any witnesses.
3. In its Judgement delivered on 21st January 2023, the trial court awarded the Appellants a net award of Kshs 614,110/=



4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 25th January 2023 appealing against the award on damages.
5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Appellants' case.

7. Through their Amended Complaint dated 27th August 2019, the Appellants stated that the deceased David Kipkirui Ngetich was involved in a road traffic accident on 11th May 2019. That he was hit by motor vehicle registration number KCN 677R while aboard motorcycle registration number KMDY 136C along Kapsimotwo-Kapkwon Road. It was their further case that the 1st Respondent was the beneficial owner and the 2nd Respondent was the registered owner of the said motor vehicle.
8. It was the Appellants' case that the Respondents' driver was negligent in causing the accident. The particulars of the negligence were stated in paragraph 4 of the Complaint. That as a result of the accident, David Kipkirui Ngetich suffered fatal injuries.
9. The Appellants prayed for special and general Damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.
10. Through their written submissions dated 23rd March 2025, the Appellants submitted that the trial court wrongly determined the award on general damages. That under loss of dependency, the trial court erred in using Kshs 7,240/= as opposed to Kshs 12,522/= as the multiplicand. It was their further submission that according to the Regulation of Wages (General Amendment) Order 2018, the wage applicable for former municipalities such as Bomet was Kshs 12,522/=. They relied on *Nyamira Tea Farmers SACCO vs Wilfred Nyambati Keraita* (suing as the personal representative of Mary Nyaboke Keraita- deceased) (2011) eKLR.
11. It was the Appellants' further submission that the court's use of 8 years as the multiplier was erroneous and proposed the use of 20 years. They placed reliance on *Joseph Kingori & another vs Loise Karimi Nyaga & another* (2021) eKLR. Under pain and suffering, the Appellants submitted that this court increases the award of Kshs 20,000/= to Kshs 100,000/= and relied on *Kenya Red Cross vs IDS* (suing as the legal representative of the estate of MDR (deceased) (2020) eKLR. Under loss of expectation of life, the Appellants submitted that an award of Kshs 200,000 will be fair instead of the Kshs 100,000/= awarded by the trial court.

The Respondents'/Defendants' case.

12. Through their statement of defence dated 7th August 2019, the Respondents denied the occurrence of the accident on 11th May 2019 and further denied being the beneficial and registered owner of motor vehicle registration number KCN 677R.
13. It was the Respondents' case that if the accident occurred then it was caused by the negligence and carelessness of the deceased. The particulars of negligence were contained in paragraph 5 of the Defence.
14. Through their written submissions dated 6th May 2025, the Respondents submitted that the trial court did not err when it awarded Kshs 20,000/= for pain and suffering. That the deceased died on the spot



and there was no prolonged pain. They relied on *Yogi Krupa Enterprises Limited v Ogechi & another* [2025] KEHC 1117 (KLR). On the loss of expectation of life, the Respondents urged this court to uphold the award of Kshs 100,000/= and relied on *Chege & another v Jeremy & another* (Suing as the Legal Representative of the Estate of Jeremy Rukaria Maua – Deceased) [2025] KEHC 4055 (KLR).

15. It was the Respondents' submission that the trial court's use of Kshs 7,240/= under the Regulation of Wages (General Amendment) Order 2018 was appropriate. That the Appellants did not adduce evidence to show how much the deceased was earning. They relied on *Catholic Diocese of Kisii v Peter O. Isaboke & another* [2019] KEHC 9005 (KLR) et.al. On the issue of multiplier, the Respondents submitted that the trial court correctly adopted the use of 8 years. They relied on *Munuhe & another* (Suing as the Legal Representative of the Estate of Peter Maina Ndegwa) v *Mutua* [2024] KEHC 10944 (KLR) et.al. It was their further submission that the statutory retirement age of 60 years was key in computing the most appropriate multiplier and they urged this court to maintain the adoption of 8 years.
16. I have gone through and carefully considered the Record of Appeal, the supplementary Record of Appeal dated 27th February 2023, the Supplementary Record of Appeal dated 30th January 2025, the Appellants' written submissions dated 30th March 2025 and the Respondents' written submissions dated 6th May 2025. The only issue that I have sieved for my determination was whether the trial court erred in its findings on quantum.

Quantum

17. In regard to the pain and suffering, the trial court awarded the Appellants Kshs 20,000/=. The Appellants stated that this award was low and proposed an award of Kshs 100,000/= while the Respondents stated that the award was just and fair. In *Mercy Muriuki & another v Samuel Mwangi Nduati & Anor* (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] KEHC 9014 (KLR), Muchemi J. stated: -

“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”.

18. Kipkoech Ngetich (PW1) produced a Post Mortem Report and Death Certificate as P. Exh 2 and P. Exh 3 respectively. The Death Certificate (P. Exh 2) indicated that the deceased died on the material day (11th May 2019) at Longisa Hospital. This meant that the deceased did not die on the spot after he was hit but died later on in hospital. I therefore find that the deceased suffered some pain before he died. It is my finding therefore that the trial court's award of 20,000/= for pain and suffering was inordinately low. I hereby vacate the award of Kshs 20,000/= and substitute it with an award of Kshs 100,000/=.
19. On the loss of expectation of life, I uphold the award of Kshs 100,000/=.
20. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death 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 cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

21. The trial court awarded the Respondent Kshs 463,360/= by using a monthly wage of Kshs 7,240/=:, a multiplier of 8 years and a ratio of 2/3.
22. I have considered the evidence and it was stated by Kipkoech Ngetich (PW1) that the deceased worked as a rider and an event organiser within Bomet town and that he used to earn Kshs 50,000/= per month. The same was pleaded in the Plaint.
23. I have gone through the record and I have note that there was no proof of income from the exhibits that the Appellants produced in court. With respect to the trial court, I find that the safest way to make an award under this head where there is no ascertainable proof of income would be to go the global sum way. In *Frankline Kimathi Baariu & another v Philip Akungu Mitu Mborothi (suing as the Administrator and Personal Representative of Antony Mwiti Gakungu Deceased)* [2020] KEHC 5897 (KLR), the court stated: -

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.

The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

24. Similarly, in *Maina v Njuguna & another (Suing as Legal Representatives of the Estate of Julius Kamande Muchoki - Deceased) & another* [2023] KEHC 21128 (KLR), the court held: -

“.....in the absence of a particular monthly income by the deceased, this court is not persuaded that the trial magistrate erred in adopting a global sum approach as opposed to the multiplier approach. The global sum approach was the appropriate in determining the award under the head loss of dependency.”

25. The Appellants proposed that this court use a multiplicand of Kshs 12,522/=:, a multiplier of 20 years and a dependency ratio of 2/3 which would bring the amount under loss of dependency to Kshs 2,003,520/=:. On the other hand, the Respondents submitted that this court should maintain the trial court’s award under loss of dependency which was Kshs 463,360/=:
26. In determining an award under this head, I have considered the parties’ proposals under this head, the fact that the deceased died aged 50 years old and the fact that the deceased was survived by four dependants. Having considered the above, it is my finding that the award of Kshs 463,360/=: was low. I will therefore be guided by the global award approach and make an award of Kshs 1,000,000/=:.
27. The Appellants did not challenge the award on special damages and in the circumstances thereof, I uphold the award of Kshs 30,750/=: under this head.
28. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court’s award on general damages. This then translates the final award as: -
Pain and suffering Kshs 100,000/=:



Loss of expectation of life Kshs 100,000/=

Loss of dependency Kshs 1,000,000/=

Add special damages Kshs 30,750/=

Total Kshs 1,230,750/=

29. In the end, the Appeal dated 25th January 2023 is allowed. Each party shall bear their own costs in this Appeal while the costs of the main suit shall remain as awarded by the trial court.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 7TH DAY OF JULY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of Kadet for the Appellant, Migiro for the Respondent. Siele and Susan (Court Assistants)

