



REPUBLIC OF KENYA



East African Roadways Ltd v Mwangangi (Suing as the personal representative of the Late Kyalo Mukola) (Civil Appeal E002 of 2023) [2025] KEHC 10715 (KLR) (11 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E002 OF 2023**

TM MATHEKA, J

JULY 11, 2025

BETWEEN

EAST AFRICAN ROADWAYS LTD APPELLANT

AND

**WAYUA MWANGANGI (SUING AS THE PERSONAL REPRESENTATIVE OF
THE LATE KYALO MUKOLA) RESPONDENT**

(Being an Appeal from the Judgment of Hon. F. Makoyo (PM) in the Principal Magistrate's Court at Kilungu, Civil Case No.E102 of 2021, delivered on 13th December 2022)

JUDGMENT

Introduction

1. The Respondent Wayua Mwangangi (Suing as the personal representative of the late) Kyalo Mukola filed a suit in the lower Court seeking general damages under the Law Reform Act (LRA) and the Fatal Accidents Act (FAA) and special damages, costs of the suit and interest on behalf of the Estate of Kyalo Mukola pursuant to a fatal road accident on 03/12/2019 (material day) along the Nairobi-Mombasa Road Kibini-Sultan Hamud junction.
2. It was her case that the deceased was lawfully cycling along the said road when the Respondent's motor vehicle KCM 305X was driven/ managed/controlled so negligently that it lost control, collided with the deceased's bicycle as a result of which the deceased sustained fatal injuries.
3. The Appellant East African Roadways Ltd filed a statement of defence, denied each allegation of fact in the plaint and put the respondent to strict proof of the claim. It averred that any injuries or damages to the deceased were solely caused/ contributed to by the deceased's own negligence.
4. After the hearing the learned trial magistrate delivered judgment and found the Appellants 100% liable and awarded damages:



Loss of expectation of life.....kshs 100,000/=

Loss of dependency.....kshs 2, 000,000/=

Pain & suffering.....kshs 50,000/=

Special damages.....kshs 32,020/=

Total..... kshs 2,182,020/=

5. Aggrieved by the award, the Appellant filed this appeal on the following grounds;
- a. The learned trial magistrate erred in law and fact in finding that the Appellant was negligent or at all in the absence of any concrete evidence to demonstrate the same.
 - b. The learned trial magistrate erred in law and fact in failing to appreciate the contribution of the deceased to the accident and thereby arriving at an erroneous conclusion of condemning the Appellant to a 100% liability when no particulars of negligence had been proved.
 - c. The learned trial magistrate erred in law and fact in failing to find that the deceased contributed to the accident.
 - d. The learned trial magistrate erred in law and fact in awarding the Respondent kshs 2,182,020.00 in damages which award was manifestly excessive in the circumstances.
 - e. The learned trial magistrate erred in fact in failing to appreciate the long-established principle of stare decisis and arriving at an erroneous conclusion relating to liability and damage.
 - f. The learned trial magistrate erred by double awarding the Respondent's estate under both the Law Reform Act and Fatal Accidents Act.
6. Parties proceeded by way of written submissions.

The Appellant's Submissions

7. With regard to quantum, it was submitted that the trial magistrate failed to provide justiciable reasons as to why kshs 2,000,000/= was awarded under the global sum approach. That the trial court relied on *Ainu Shamsi Hauliers Ltd -vs- Moses Sakwa & Anor* [2021] eKLR which is distinguishable. That, in the said case, the deceased was married and had two children while in the present case, there was no proof of dependency. Reliance was placed on the case of *Frankline Kimathi Maariu & Anor -vs- Philip Akungu Mitu Mborothi* (2020) eKLR where the court stated;

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

8. It was conceded that the trial court did not err by using the global sum approach but contended that it erred by hinging quantum solely on the case of *Ainu Shamsi* (supra) where the deceased was 6 years younger than the deceased in our case and had three dependants aged 29, 4 and 4 years. That the deceased in this case had only one dependant aged 68 years. Reliance was placed on the case of *Moses Maina Waweru -vs- Esther Wanjiru Githae* [2022] eKLR where the court stated;

“Loss of dependency is a question of fact. The criteria to be used in determining an award for loss of dependency of a deceased who left behind dependants is the number of dependants, the age of dependants and the level of dependency. In my view, the award ought to be



higher where the dependants are young. The age at which the deceased died is also a relevant factor. The deceased herein left a widow and adult children. There was no evidence that the adult children were dependent on the deceased. It would appear that only the widow was dependent on the deceased. Looking at the case law cited in this appeal and taking into account the principle that comparable injuries ought to be compensated by comparable awards, I find that the sum of kshs 2,000,000 awarded by the trial court was inordinately high. I am of the view that the award in the case of China Civil Engineering & Construction Co. Ltd -vs- Mwanoyoha Kazungu & Mweni Kazungu where a sum of kshs 700,000/= was made is a proper guide in determining the proper estimate for an award in the age bracket that the deceased died at.”

9. It was submitted that the following comparative authorities were considered in the Moses Maina Waweru case (supra);
 - a. Dora Mwawandu Samuel -vs- Shabir M. Hassan (2021) eKLR where a global award of kshs 400,000/= was made for a 59-year-old farmer.
 - b. Moses Wetangula & Anor -vs- Eunice Titika Rengetiag (2018) eKLR where a global award of kshs 500,000/= was made for a 42-year-old retired officer of the Kenya Defence Forces.
 - c. Rishi Hauliers Ltd -vs- Josiah Boundi Onyancha (2015) eKLR where a global award of kshs 500,000/= was made for a 50-year-old.
10. Further reliance was placed on Stanwel Holdings Ltd & Anor -vs- Rachel Haluku Emmanuel & Anor (2020) eKLR where an award of kshs 2,000,000/= for a 23-year-old deceased was reduced to kshs 1,000,000/= on appeal.
11. It was submitted that an award of kshs 500,000/= for loss of dependency is reasonable in this case.
12. On liability, it was submitted that the Appellant was not entirely to blame for the accident. That. According to DWI, there were three bumps at the scene and it was therefore impossible for him to overspeed. That it was also his testimony that his vehicle was hauling a trailer which fact was material in testing the veracity of PW1’s testimony which was found to be truthful by the trial court. This court was invited to consider the testimony of PW1 in which he said that he was a resident of Sultan Hamud where he operated a micro business but could not remember whether there were bumps. This court was also invited to take judicial notice that the speed limit of the suit motor vehicle is 80kph and to consider whether it is possible, reasonable or probable for a truck hauling a trailer to park at the speed of 50-60kph.
13. It was submitted that this court should determine whether the deceased was absolved of any/all duty while on the road especially in the context of the type of vehicle that forms the subject matter of the suit. It was submitted that the deceased had a duty to ride his bicycle off the road and not on the blind side of flowing traffic. Reliance was placed on Benard Kirui Kiptoo -vs- Esther Nyambura Mwangi (suing as the legal representative of the estate of Paul Kiratu) [2020] eKLR where the court stated;

“Flowing from the foregoing, I find that there was sufficient evidence before the trial court to establish on a balance of probabilities that the 1st appellant was driving the subject vehicle at the material time without due care and attention to other road users as a result of which he rammed into the deceased. The deceased also owed himself a duty of care which entailed taking reasonable precautions to ensure his own safety especially given his mode of transport. In the circumstances, am (sic) unable to fault the learned trial magistrate’s



apportionment of liability in the ratio of 70:30 in favor of the 1st respondents against the Appellants. The trial court's finding on liability is thus upheld.”

14. Consequently, it was submitted that liability should be apportioned in the ratio of 70:30 in favor of the Respondent.

15. The appellant began by reminding the court of the award by the subordinate court citing Paragraph 78 of the trial court's Judgment

The deceased herein was aged 46 years old at the time of his death. I believe he would have worked up to and beyond the retirement age of 60 years. The plaintiff did not produce proof of his earnings thus I shall adopt the global sum approach as suggested by the Plaintiff. I will assess the award under this head at Kshs. 2,000,000/-. I relied on the case of *Ainu Shamsi Hauliers Ltd v Moses Sakwa & Another* (Suing as the Administrators of the Estate of Ben Siguda Okach (Deceased) [2021] eKLR) where an award of Kshs. 2,000,000/- was upheld on appeal.

16. It was submitted for the appellant that the only issue for determination was whether there was good ground to disturb the Judgment of the subordinate court

17. On the assessment of damages the appellant relied on *Hellen Waruguru Waweru* on the principle upon which the appellate court will disturb an award by a trial court. It is argued that the trial court did not have any justiciable reason to make the award of Ksh 2,000,000. That the court relied on an authority that had distinguishable facts to this case

18. That in the case relied upon *Ainu Shamsi Hauliers Ltd v Moses Sakwa & Another* (Suing as the Administrators of the Estate of Ben Siguda Okach (Deceased) [2021] eKLR) the deceased was married with two children yet in this case there was no other dependant other than the mother of the deceased.

19. Citing *Frankline Kimathi Maariu & Another vs Philip Akungu Mitu Mborothi* (suing as the administrator and the personal representative of Antony Mwiti Gakungu (deceased) [2020]eKLR) the appellant argues that the application of the global sum approach depends on the special circumstances of each case. The appellant continued to distinguish the facts of the *Ainu* case from those of this case. That in *Ainu* the dependents were aged 29, 6 and 4 years respectively, yet in this case there was only one aged 68 years old.

20. The appellant referred the court to *Moses Maina Waweru vs Esther Wanjiru Githae* (suing as the personal representative of the Estate of the late David Githae Kiririo Taiti) [2022]eKLR where the court on appeal substituted the award of Ksh 2,000,000 with one of Ksh 800,000 on the ground that loss of dependency is a matter of fact . That the determination on the award is guided by the number of dependants, the age of the dependants and the level of dependency. That the younger the dependents the higher the award ought to be and the age at which death occurred. The court found that the dependent were all adults , and there was no evidence of dependency. Relying on *China Civil Engineering and Construction Company (K) Limited vs Mwanoyoha Kazungu Mweni & Mweni Kazungu Mweni* the court reduced the award to Ksh 700,000.

21. The appellant relied on cases cited in the *Moses Waweru* case where the courts awarded Ksh 400,000 in 2021 for a 59 year old farmer, Ksh 500,000 for a 42 year old retired military officer in 2018 and Ksh 500,000 for a 50 years old.

22. In the circumstances the appellant urged the court to be guided by *Stanwel Holdings Limited & Another v Racheal Haluku Emanuel & Another* [2020]eKLR where the court allowed a global sum



of Ksh 1000,000 where the deceased was aged 23 years old . In that case the court opined that the sum of Ksh 800,000 to 1000,000 proposed by the appellant and 2000,000 by the respondent in that case were at variance with justice considering the circumstances of the case. The appellant submits that the sum of Ksh 500,000 will be reasonable in the circumstances of this case.

23. On liability the appellant argues that the learned trial court erred in failing to consider the evidence on record to find that the deceased had contributed to the accident. The appellant referred the court to *Benard Kirui Kiptoo & Another vs Esther Nyambura Mwangu (Suing as the legal representative of the Estate of Paul Kiratu (Deceased) [2020] eKLR* where the court stated that the deceased also owed himself the duty of care by taking reasonable precaution to ensure his own safety especially given his mode of transportation. The court is urged to find liability at 70:30 in favour of the respondent.

The Respondent's Submissions

24. Relying on sections 107, 109 and 112 of the *Evidence Act*, it was submitted that the initial burden of proof lies with the plaintiff but it may shift to the defendant depending on the circumstances of the case. Reliance was placed on the case of *Evans Nyakwana -vs- Cleophas Bwana Ongaro [2015] eKLR* where it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden...is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

25. With regard to what amounts to proof on a balance of probabilities, reliance was placed inter alia on the case of; *William Kabogo Gitau -vs- George Thuo & 2 others [2010] I KLE 526* where the Court stated that:

“In ordinary civil cases, a case may be determined in favor of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

26. It was submitted that determination of liability in a road traffic case is not a scientific affair and reliance was placed on the case of *Stapley -vs- Gypsum Mines Ltd (2) (1953) AC 663* at p. 681 which was quoted by the Court of Appeal in *Michael Hubert Kloss & Anor -vs- David Seroney & 5 others [2009] eKLR* as follows;

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as



having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally. . .

27. It was submitted that from the evidence of the Appellant’s driver, it is clear that he was not keen while driving and did not know exactly how the accident happened. That, it was only the eye witness called by the Respondent who could give a true account of what happened. Reliance was placed on the case of *Mary Nieri Murigi -vs- Peter Macharia & Another* [2016] eKLR where the court opined that:

“A person who is driving a vehicle is under a duty of care to other road users. The vehicle is a lethal weapon and due care is expected of the driver who is in control thereof.”

28. It was submitted that the Appellant’s driver owed the deceased a duty of care which he breached and as a result the deceased lost his life.

29. With regard to quantum, it was submitted that the only issue is on the award for loss of dependency. It was submitted that an appellate court will not interfere with an award of general damages by a trial court unless; the trial court acted under a mistake of law or where the trial court acted in disregard of principles or where the trial court took into account irrelevant matters or failed to take into account relevant matters or where the trial court acted under a misapprehension of facts or where injustice would result if the appellate court does not interfere or where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage.

30. Relying on section 4 of the *Fatal Accidents Act*, it was submitted that an action brought under the Act is for the benefit of the wife, husband, parent or child of the person whose death was caused. Reliance was placed on the case of *Eliud Mwale Lewa & Another -vs- Paka Towers Ltd & Another*; Mombasa High court Civil Appeal No. 89 of 2009 where court stated;

“When a child dies the parents do suffer a quantifiable loss. It is established custom in both African and Asian communities that children are educated and raised in the expectation that they will in turn provide for their Parents in their old age. There are several instances where court have indeed proceeded to make award for lost years under the fatal accidents Cap 32 Laws of Kenya”

31. It was submitted that the deceased’s beneficiary was his mother hence the award for loss of dependency is in order as she falls within the definition of a dependent under the FAA.

32. It was submitted that in the case of *Jacob Ayigo -vs- Simon Obayo* (2005) eKLR the Court of Appeal reaffirmed the various variables to be taken into account on proof of income and employment when it comes to the question whether one has to produce bank statements, book of accounts, receipts and testimonials as the safest way to determine the parameters that one was in active employment or his income earnings. The court stated;

“We do not subscribe to the view that the only way to Prove the profession of a Person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can Prove these things. In this case, the evidence of the



respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed"

33. It was submitted that according to the circumstances of this case, the multiplier approach was not proper and that the trial court was right in using the global sum approach.
34. The Respondent relied on the following cases to support the award on loss of dependency;
 - a. MNM & Anor -vs- Solomon Karanja Githinji (2015) eKLR where the court awarded a lump sum of Kshs 3,000,000/= for loss of dependency where the deceased died at 45 years while in good health.
 - b. David Mbuba & Anor -vs- Victoria Mwangeli Kimwalu & Anor (2018) eKLR where the court awarded a global sum of Kshs. 2,500,000/= for a deceased business man aged 46 years.
 - c. Buyala -vs- Amwayi (*Suing as the Legal Representatives in the Estate of Shem Kokonya – Deceased*) (Civil Appeal 63 of 2022) [2024] KEHC 618 (KLR) (19 January 2024) (Judgment) the court upheld an award of Kshs. 2,000,000 for loss of dependency for 49 years old deceased business man who dealt with selling of omena and cabbage but with no proof of income.
35. In conclusion, it was submitted that there was no error in the use of the global award approach and that the award is not exorbitant or manifestly too high.

Duty of Court

26. It is now settled that the duty of a first appellate Court is to analyze and re-evaluate the evidence on record in order to reach its own conclusions bearing in mind that it did not have the benefit of seeing or hearing the witnesses.
36. I have considered the grounds of appeal, the submissions and entire record. The following issues arise for determination;
 - a. Who was to blame for the accident and to what extent?
 - b. Should the quantum of damages be disturbed?

Who was to blame for the accident and to what extent?

Evidence on Liability

37. PW1 was Charles King'ola and he adopted his statement dated 25/03/2022 as his evidence in chief. He stated that he was a resident of Sultan Hamud and recalled that on 03/12/2019 at around 6.30am, he was riding a boda boda heading to Sultan Hamud junction from the side of Kibini (Maasaini) which joins the Nairobi-Mombasa highway. Upon joining the highway, he saw a trailer registration number KCM 305X which was being driven along Nairobi-Mombasa Highway and was heading to the direction of Mombasa.
38. As it approached another junction on the left side of the highway, it started hooting on the vehicles on the right side of the lane and started to approach the lane as if it was going to park on the right side of the highway and its speed was relatively high for a vehicle intending to cross onto the other lane to park. The deceased was cycling ahead of PW1 along the Nairobi-Mombasa highway beside the trailer and as the trailer tried to approach the other lane on the right side of the highway, he was hit by the trailer which had occupied both lanes of the highway and he was thrown under the rear wheels which crushed his head.



39. Upon the driver parking the trailer on the right-hand side of the highway, he realized that he had caused an accident and fled. A large crowd gathered around and later the police officers arrived and collected the body.
40. In his further evidence in court, he testified that there was mist and it was still dark hence visibility was not clear. The motor vehicle's speed was relatively high and could not have been 20kph.
41. On cross-examination, he said that he didn't know the deceased and was staying in Sultan Hamud at the time of the accident. He had never recorded another statement other than the one he adopted in court. He was at the scene of the accident and observed what happened. He gave his number to the investigating officer but was never called. He did nothing at the scene and didn't go to the police station. He was going the same direction as the deceased and was about 50 meters behind him. There were other people there. The trailer was from Nairobi to Mombasa. PW1 was from umasaini junction joining Mombasa highway. The trailer moved to the right as if it was going to park off the road and knocked down the deceased. The trailer covered both sides of the highway.
42. The deceased was on his lawful lane and PW1 saw him moving to the left side of the road trying to avoid the collision. His body lay on the left side of the highway. PW1 was riding a motor cycle and had a licence but could not remember the number and his identity card number is 35493626. It was dark and misty as the sun rises at 8am in that area. He observed the speed of the trailer to have been between 50-60kph. He could not remember whether there are bumps.
43. DW1 was Dickson Wambua Kavoi, a truck driver and a resident of Mombasa. He adopted his statement filed on 14/12/2021 in which he stated that he obtained his driving license in 1997 and was authorized to drive vehicles in classes B, C, E and ART M/v. On 03/12/2019, he was driving motor vehicle KCM 305X truck from Nairobi to Mombasa within Sultan Hamud Trading centre. He was alone while driving from Tororo-Uganda where he had delivered a clinker. The vehicle was hauling trailer registration number ZF 7957. The weather was dry and visibility was clear.
44. The motor traffic flow was heavy and he was driving at a speed of about 20kph keeping to the left lane of the two-traffic road. On reaching the junction of the minor road to the interior of the trading centre at about 6.30am, he flashed the oncoming vehicle from the opposite direction to give him way as he wanted to park on the right side of the road to have tea. As he was almost getting off the road, he heard the driver who had given him way hooting. He stopped immediately and on alighting, he noticed a body lying on the main road on the left side of the vehicle with the head crashed and a bicycle besides him which was not crashed.
45. He drove the vehicle to Sultan Hamud for his security, reported the incident and the police took up the matter. He had not seen the victim prior to the accident and the head was crashed with no blood shed. He suspected that the deceased banged on the vehicle and was crashed by the rear tyres.
46. On cross-examination, he said that the accident occurred at 6.30am. He was on the left heading to Mombasa and the body was on the left side of the road. He stopped after the accident, looked at the body and drove to the police. He alighted from the vehicle to look at the body. He said that he was driving at 20kph and that 20kph speed can kill someone depending on the circumstances. He did not see the deceased Infront at any time and saw him for the first time lying on the road.

Analysis

47. It is not in dispute that the deceased was crashed to death on the material day by motor vehicle KCM 305X/ZF 7957 (trailer). According to the eye witness, the deceased was riding his motor cycle beside the trailer and both of them were heading towards the Mombasa direction. They were therefore on the



left lane. The deceased was crashed when the trailer started to cross over to the right lane as if to park and the trailer's driver (DW1) confirmed that indeed he was going to park to the right side in order to take tea.

48. The evidence shows that the Mombasa -Nairobi highway comprised of two lanes at the accident scene hence the vehicles were supposed to be moving on two lanes i.e., the ones headed to Mombasa and the ones headed to Nairobi. The deceased was on the proper lane, but it appears he was cycling beside the trailer. When the trailer driver was requesting to be given way by oncoming motorists in order to cross over to the other side, it appears that the deceased did not move away and in the motion of crossing over to the other lane the deceased was crashed. It is evident that the driver of the truck was not aware that he had crashed someone until he alighted from the trailer.

49. Be that as it may, DW1 was expected to keep a proper look out for other road users and to anticipate all manner of situations on the road. DW1 testified that visibility was clear and it should therefore have been possible for him to see the deceased using the left side mirror. In *t Masembe -vs- Sugar Corporation and Another* [2002] 2 EA 434, the Supreme Court of Uganda held that;

“Whereas a driver is not to foresee every extremity of folly which occurs on the road, equally he is not certainly entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, that is to say anything which the experience of the road users teaches them that people do albeit negligently.”

50. Additionally, there is *Zarina Akbarali Shariff and Another -vs- Noshir Piroshesha Sethna and Others* [1963] EA 239 where the East African Court of Appeal opined that:

“It is not correct that drivers are entitled to drive on the assumption that other road users whether drivers or pedestrians, would behave with reasonable care. It is common experience that many do not. A driver is not, of course, bound to anticipate folly in all forms, but he is not entitled to put out of consideration the teachings of experience as to the form those follies commonly take... it is his duty to keep a proper look-out of all the vehicles or pedestrians who are using or may come upon the road from any direction and if he fails to do so and as a result an accident happens, then he is negligent even though there has been greater negligence on the other party.”

51. Similarly, the deceased was also expected to keep a proper look-out for other road users and to understand that it was unsafe for him to cycle beside a trailer. The facts point that the trial court erred by finding the Appellant wholly liable for the accident. Considering that DW1 was the one in possession of a lethal machine, a higher duty of care was expected from him.

52. I would set aside the 100% liability finding upon the appellant and substitute it at 90:10 in favour of the respondent.

Whether the quantum of damages should be disturbed.

53. The Appellant's ground of appeal is that the award of kshs 2,182,020/= is manifestly excessive in the circumstances.



54. Awarding damages is largely an exercise of judicial discretion and the instances that would make an appellate Court interfere with that discretion are well established. In *Butt –vs Khan (1977)1KAR* it was held that;

“An appellate Court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.

Award under Law Reform Act

55. The trial court made a global award of kshs 2,000,000/= as the plaintiff did not produce proof of earnings. The approach used by the trial magistrate was well within his discretion as it has been repeatedly approved in cases where the deceased’s earnings are unknown. In persuasive authorities such as; *Moses Mairua Muchiri –vs- Cyrus Maina Macharia (Suing as the Personal representative of the estate of Mercy Nzula Maina (Deceased) [2016] eKLR* and *Eston Mwirigi Ndege –vs- Patrick Gitonga [2018] eKLR* the common thread was that where the earnings of a deceased person were unknown, a global award/sum ought to be adopted.

56. I have carefully considered the submissions by both sides and the authorities cited.

57. The appellant distinguished the authority relied on by the trial court.

58. In this case the deceased had only his mother as the depnedant. Taking int consideration all the circumstances I would allow a sum of Ksh 100000. The award of Ksh 2000000 is set aside and substituted with ksh 1 Million. The rest of the awards remain the same.

59. The special damages of kshs 32,020/= were pleaded and proved.

60. The total award is therefore;

Loss of expectation of life.....Kshs 100,000/=

Loss of dependency.....kshs 1, 000,000/=

Pain & suffering..... Kshs 50,000/=

Special damages..... Kshs 32,020/=

Total..... kshs 1,482,020/=

Less 10%.....Kshs 148,202/=

Net Award..... Kshs 1,333,818/=

61. The award of the subordinate court is set aside and substituted as above and at the sum of Ksh 1,333,818. The appellant will have 10% of the costs of the appeal. The Respondent will have interest on the from the date of the award by the subordinate court at court rates.

62. Orders accordingly

DATED, SIGNED AND DELIVERED VIA CTS THIS 11TH JULY 2025(CTS DOWN)

MUMBUA T MATHEKA

JUDGE

Appellants’ Advocates



Ombati Ong'au & Co. Advocates

Respondent's Advocates

Gesare Oginda & Co Advocates

