



**Flamingo Horticulture Kenya Ltd & another v Chepkwony & another (Suing as the Personal Representatives of the Estate of Kipkurui Vincent Bett - Deceased) (Civil Appeal E065 of 2023) [2025] KEHC 9769 (KLR) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9769 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E065 OF 2023  
JK NG'ARNG'AR, J  
JULY 7, 2025**

**BETWEEN**

**FLAMINGO HORTICULTURE KENYA LTD ..... 1<sup>ST</sup> APPELLANT**

**CHERUIYOT KIBET ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BEATRICE CHEPNGENO CHEPKWONY & DANCAN KIPTOO (SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF KIPKURUI VINCENT BETT - DECEASED) ..... RESPONDENT**

*(Being an Appeal from the Judgment of Senior Principal Magistrate, Kimtai B.M. at the Senior Principal Magistrate's Court at Sotik, Civil Suit Number E036 of 2023)*

**JUDGMENT**

1. The Respondents (then Plaintiffs) as the Personal Representatives of the deceased Kipkurui Vincent Bett, sued the Appellants (then Defendants) for general and special damages that arose when the deceased was fatally knocked head on by motor vehicle registration number KCC 719C on 1<sup>st</sup> October 2022 along Litein-Kapkatet Road.
2. The trial court conducted a hearing where the Respondents called one witness and close their case while the Appellants closed their case without calling any witnesses.
3. In its Judgement delivered on 5<sup>th</sup> December 2023, the trial court awarded the Respondents Kshs 50,000/= for pain and suffering, Kshs 100,000/= for loss of expectation of life, Kshs 1,536,000/= for loss of dependency and Kshs 85,230/= for special damages.



4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 15<sup>th</sup> December 2023 appealing against the award on damages specifically the trial court's award on loss of dependency and the award on pain and suffering.
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'/Respondents' case.**

7. Through their Complaint dated 19<sup>th</sup> April 2023, the Respondents stated that the deceased Kipkurui Vincent Bett was involved in a road traffic accident on 1<sup>st</sup> October 2022. That he was hit head on by motor vehicle registration number KCC 719C while he was riding motorcycle registration number KMFL 349X along Litein-Kapkatet Road. It was their case that the 1<sup>st</sup> Appellant was the registered owner of the said motor vehicle and the 2<sup>nd</sup> Appellant was its beneficial owner.
8. It was the Respondents' case that the 2<sup>nd</sup> Appellant was negligent in causing the accident. The particulars of the negligence were stated in paragraph 7 of the Complaint. That as a result of the accident, Kipkurui Vincent Bett suffered fatal injuries.
9. The Respondents prayed for special and general Damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.
10. At the time of writing this Judgment, the Respondents had not filed their written submissions despite this court directing on 31<sup>st</sup> October 2024, that the Appeal be canvassed through written submissions.

**The Appellants'/Defendants case.**

11. Through their statement of defence dated 26<sup>th</sup> May 2023, the Appellants denied the occurrence of the accident on 1<sup>st</sup> October 2022 and further denied being the registered and beneficial owners of motor vehicle registration number KCC 719C.
12. It was the Appellants' 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 7 of the Defence.
13. Through their written submissions dated 28<sup>th</sup> January 2025, the Appellants submitted that the trial court erred in awarding the Respondents Kshs 1,536,000/= as loss of dependency yet the deceased had no dependants as listed under section 4 of the *Fatal Accidents Act*. That the evidence on record indicated that the deceased was single at the time of his death. The Appellants further submitted that the deceased was survived by his siblings and this was contrary to the provisions of section 4 of the Fatal Accidents which provided provision for the deceased's spouse, parents and children. They relied on *John Mungai Kariuki & another v Kaibei Kangai Ndethiu & 2 others* [2020] KEHC 5379 (KLR) et.al.
14. On the issue of pain and suffering, the Appellants submitted that the award of Kshs 50,000/= by the trial court was excessive. That the deceased died on the same date and hour that the accident occurred. They proposed an award of Kshs 10,000/= to Kshs 20,000/= under this head and relied on *Simon Bogonko v Alfred Mongare Mecha & another* (Suing as the Legal Representatives of the Estate of Akama Mong'are (Deceased)) [2019] KEHC 10414 (KLR).



15. I have gone through and carefully considered the Record of Appeal dated 20<sup>th</sup> March 2024 and the Appellant's written submissions dated 28<sup>th</sup> January 2025. The two issues that I have sieved for my determination are: -

- i. Whether the award on pain and suffering was excessive
- ii. Whether the trial court erred in making an award under loss of dependency

#### **Whether the award on pain and suffering was excessive**

16. Under this head, the trial court awarded the Respondents Kshs 50,000/=, an award which the Appellants opined was excessive in the circumstances. The Appellants stated that the deceased died on the same day and that he did not suffer any prolonged pain and it was their proposal that an award between Kshs 10,000/= to Kshs 20,000/= would suffice.

17. The oft-cited case of *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), 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. Beatrice Chepngeno (PW1) produced a Post Mortem Report and Death Certificate as P. Exh1 and P. Exh 4 respectively. Both exhibits showed that the deceased died on the material day (1<sup>st</sup> October 2022) but specifically the Post Mortem Report indicated that the deceased died on the material day at 3.30 p.m. According to the Plaintiff, the Respondents averred that the deceased was involved in a road traffic accident on 1<sup>st</sup> October 2022 at 3.30 p.m. This meant that the deceased died on the spot and did not suffer any prolonged pain. I am guided by *Rundii & another v Kendi* (Suing as Legal Representative and Administrator of the Estate of Peter Mugambi Ringera - Deceased) [2025] KEHC 7163 (KLR), where the court held: -

“Considering that the deceased died on the spot, it is prudent to keep the award of damages for pain and suffering to a minimum.....”

19. Flowing from the above, it is my finding that the award of Kshs 50,000/= was excessive considering the deceased died on the spot. I therefore vacate the trial court award of Kshs 50,000/= and substitute it with an award of Kshs 20,000/= under this head.

#### **Whether the trial court erred in making an award under loss of dependency**

20. 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. (Emphasis mine)

21. Majanja J. (as he then was) in *John Mungai Kariuki & another v Kaibei Kangai Ndethiu & 2 others* [2020] KEHC 5379 (KLR) held: -

“The brothers and sisters of the deceased are not dependants for purposes of the statute and language of the statute cannot be read, even by creative interpretation, to expand the list of dependants to include siblings of the deceased.....”

22. While discussing the provisions of section 4 of the *Fatal Accidents Act*, the court in *Mohamed Hirbo Shande & another v George Mwenda Mwit (Legal Representative of the Estate of Miriam Makena)* [2021] KEHC 7087 (KLR) held: -

“There is no mention of brothers and sisters of a Deceased, and the Court, therefore, finds that no damages were awardable for loss of dependency.....”

23. Similarly in *Easy Coach Limited v John Thomas Akalongo & another* [2014] KECA 177 (KLR), the court held: -

“..... As is clear from Section 4 of the *Fatal Accidents Act*, legal dependants of deceased persons are their spouses, children and parents. Deceased persons’ siblings are not their legal dependents.....”

24. From the Complaint dated 19<sup>th</sup> April 2023, the particulars of the deceased’s dependants were captured as Beatrice Chepngeno Chepkwony (sister), Dancan Kiptoo (brother) and Mercy Chepkemoi (sister). Beatrice Chepngeno Chepkwony (PW1) testified that the deceased was not married and he lived with his brother, Dancan and sister, Mercy. PW1’s evidence was not controverted upon cross examination.

25. From the above, it is evident that the deceased was not married and was survived by his siblings. The deceased’s siblings were not the deceased’s dependants as per the provisions of section 4 of the *Fatal Accidents Act*. It is my finding therefore that the trial court erred in awarding Kshs 1,536,000/= under this head. I hereby vacate the award under loss of dependency.

26. The Appellants did not challenge the award under loss of expectation of life and special damages and I therefore uphold the award of Kshs 100,000/= as loss of expectation of life and Kshs 85,200/= as special damages.

27. 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 translated the final award as: -

Pain and suffering Kshs 20,000/=

Loss of expectation of life Kshs 100,000/=

Kshs 120,000/=

Add special damages Kshs 85,230/=

Kshs 205,230/=

Less 20% contribution Kshs 41,046/=

Total Kshs 164,184/=



28. In the end, the Appeal dated 15<sup>th</sup> December 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.

29. 30 days stay is granted

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

.....

**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of M/s Langat for the Appellant No Appearance for the Respondent and Siele and Susan (Court Assistants)

