



**High Plateau Limited v Namalwa & 2 others (Suing as the Administrators of the Estate of Alex Mafura (Deceased)) (Civil Appeal E146 of 2023) [2025] KEHC 10311 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10311 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E146 OF 2023  
REA OUGO, J  
JULY 18, 2025**

**BETWEEN**

**HIGH PLATEAU LIMITED ..... APPELLANT**

**AND**

**CHRISTABEL NAMALWA ..... 1<sup>ST</sup> RESPONDENT**

**ANTHONY MASIKA WAMBWA ..... 2<sup>ND</sup> RESPONDENT**

**ANTHONY WAFULA LUKENDO ..... 3<sup>RD</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF ALEX MAFURA  
(DECEASED)**

*(Being an Appeal from the Judgment and Decree in Bungoma CMCC No. 112 of 2019 delivered by Hon. T.M. Olando, Principal Magistrate on 18th October 2023)*

**JUDGMENT**

1. The Respondents, who were the plaintiffs in the trial court, sued the Appellant via Plaint dated 26th March 2019, seeking compensation under the *Fatal Accidents Act* and the *Law Reform Act*, along with special damages, costs, and interest on the suit.
2. The Respondents' case was that on 11th June 2018, the deceased Alex Mafura was a lawful passenger aboard a motor vehicle registration No. KBH 454W along Bungoma-Malaba Road, particularly at Zero-Zero Junction, when the Appellant's motor vehicle registration No. KBW 534U was negligently and recklessly driven, causing it to knock the said motor vehicle and resulting in the deceased sustaining fatal injuries.
3. The Appellant filed its statement of defence dated 28th August 2019, in which they denied all the contents of the plaint and put the plaintiffs to strict proof thereof. The Appellant alleged that if



negligence was involved, it was entirely attributable to or contributed to by the deceased and the driver of the motor vehicle KBH 454W in which he was travelling.

4. At the conclusion of the trial, the trial court entered judgment against the Appellant as follows: -

Liability at 100% in favour of the Plaintiff

Pain and Suffering – Kshs. 20,000/=

Loss of Expectation of Life – Kshs. 200,000/=

Loss of Dependency – Kshs. 1,200,000/=

Special Damages – Kshs. 93,550/=

Total – Kshs. 1,513,550/=

Costs and interest of the suit at court rates.

### **The Appeal**

5. Aggrieved by the said decision, the Appellant filed the present Appeal vide Memorandum of Appeal dated 3<sup>rd</sup> November 2023 seeking the following orders: -

- a. That the Appeal be allowed
- b. That the subordinate court's judgment on liability and quantum be set aside and substituted with an order dismissing the Respondent's case.
- c. That the damages awarded for pain and suffering be re-assessed downwards.
- d. That the damages awarded for loss of expectation of life be re-assessed downwards to Kshs. 100,000/=.
- e. That the dependency ration of 1/3 be adopted.
- f. The costs of the Appeal be awarded to the Appellant.

6. The Appeal is premised on nine (9) grounds as follows: -

1. That the Learned Trial Magistrate erred in law and fact in finding and/or holding the Appellant 100% liable in view of the evidence on record.
2. That the Learned Trial Magistrate erred in law and fact in failing to make a determination with respect to the third party.
3. That the Learned Trial Magistrate erred in law and fact in failing to dime (sic) the suit against the Appellant.
4. That the Learned Trial Magistrate erred in law and in fact in failing to analyse the facts and make a finding on the facts in making a determination on the issue of liability thereby arriving at an erroneous decision.
5. That the Learned Trial Magistrate erred in law and fact by failing to consider the Appellant's submissions on both liability and quantum thereby arriving at an erroneous decision.
6. That the Learned Trial Magistrate erred in law and fact in adopting the wrong principles in assessment of damages payable to the Respondent both under the *Fatal Accidents Act* and *Law Reform Act*.



7. That the Learned Trial Magistrate erred in law and fact in awarding excessive damages for pain and suffering in view of the evidence on record.
  8. That the Learned Trial Magistrate erred in law and fact in awarding excessive damages for loss of expectation of life in view of the evidence on record.
  9. That the Learned Trial Magistrate erred in law and fact by adopting a dependency ratio of 2/3 despite the fact that dependency was not proved at all.
7. The Appeal was admitted for hearing and parties took directions to canvass it by way of written submissions.

### **The Appellant's Submissions**

8. Counsel for the Appellant raised four issues: whether the honourable magistrate erred in law and fact by holding the Appellant 100% liable; whether the learned magistrate erred in law and fact by awarding excessive damages for pain and suffering; whether the learned magistrate erred in law and fact by awarding excessive damages for loss of expectation of life; and whether the learned magistrate erred in law and fact by adopting a dependency ratio of 2/3 when the same was not proven.
9. On the first issue, it was submitted that the trial court erred in finding the Appellant 100% liable for the accident when the evidence on record never indicated the blameworthiness of the Appellant's driver and that PW1, the police officer, neither testified to the circumstances of the case nor mentioned whether anyone was charged with a traffic offence. Counsel submitted that the trial court was faced with two conflicting accounts of how the accident occurred but still chose the evidence of the eye witness. Furthermore, the testimony of the eye witness was not credible since he was never listed as a witness in the police abstract and therefore could not be confirmed to have truly witnessed the accident. Counsel argued that after the Appellant had joined the owner of the motor vehicle registration No. KBH 454W as a third party to the suit, and they failed to enter appearance, the trial court ought to have mentioned them in its judgment and determined liability among the Respondent, the Appellant, and the third party simultaneously. Instead, the court failed to do so, and therefore, it should hold the third party vicariously liable under the circumstances.
10. Regarding the second issue, it was submitted that the trial court adopted the wrong principles when assessing damages for pain and suffering by failing to consider the evidence on record, which showed that the deceased died instantly; therefore, nominal damages should have been awarded under this head. Counsel suggested that the award of Kshs. 20,000/= be reduced to Kshs. 10,000/= and cited the case of Hyder Nthenya Musili & Another vs. China Wu Yi Limited & Another (2017) eKLR in this regard.
11. On the third issue, Counsel submitted that the trial court made an excessive award for loss of expectation of life, whereas courts have adopted a standard sum of Kshs. 100,000, as held in the case of West Sugar and Co. Ltd vs. Philip Sumba Julaya (Suing as the Administrator and Personal Representative of the Estate of James Julaya Sumba (2019) eKLR. Counsel further submitted that the Court should reassess the award to Kshs. 100,000.
12. On the final issue, it was submitted that, although it was alleged that the deceased was survived by his wife, his four children, and his father, no documentary evidence such as birth certificates or a marriage certificate was presented in support. Additionally, there was no evidence showing that the children and the wife depended on the deceased for their maintenance. Conversely, it was the deceased's brother-in-law, the 3rd Respondent, who testified that the deceased sold his land and that he was now the one taking care of the deceased's school-going children, while his wife remained at home. Counsel argued



that, therefore, the deceased and his family relied on the 3rd Respondent for their support, and the issue of dependency was not proved. The case of *Chania Shuttle vs. Mary Mumbi* (Suing on behalf of the Estate of Francis Mungai Karanja [Deceased]) [2017] eKLR was cited, where the court held that the issue of dependency was a factual matter that had to be established. Counsel urged the Court to find that dependency was not proved, and if it was found to be proved, then the ratio of 2/3 was unjustified and should be replaced with a dependency ratio of 1/3.

### **The Respondents' Submissions**

13. Counsel for the Respondents argued two main points: whether the learned trial magistrate correctly determined liability and whether the magistrate properly awarded damages under quantum. On the first issue, Counsel contended that the trial court rightly concluded that the Appellant's own witness contradicted himself regarding the point of impact, stating in cross-examination that it was on the right side, and later during re-examination that it was in the middle of the road. Consequently, the court found the Appellant's driver 100% liable for the accident.
14. On the issue of quantum, Counsel urged the Court to uphold the award of Kshs. 20,000/= for pain and suffering and relied on the case of *Samwel Ondiek Athiany vs. Daniel Odero Dianga & Another*, High Court at Kisii Civil Case No. 142 of 2011, where the deceased died shortly after the accident and a similar award was made. On loss of expectation of life, it was submitted that the assessment of damages is a matter of the court's discretion and since the deceased was 26 years old with a young family, his estate suffered a significant blow upon his death, and hence the court was justified in awarding Kshs. 200,000/=. Counsel relied on the case of *Daniel Kuria vs. Nairobi City Council* (2013) eKLR, where this Court sitting at Nairobi awarded Kshs. 300,000/= under this head.
15. On the issue of dependency, Counsel argued that since the deceased was only 26 years old and a driver at the time of his death, considering the retirement age of 60, he would have continued working for a further 34 years. Therefore, the Court should increase the multiplier from 20 to 34 years, as 20 years was too low. Regarding the multiplicand, Counsel pointed out that the trial court correctly used Kshs. 7,500/= from the basic pay, as per the Minimum Wages [Legal Notice No. 2 of 2018](#). On the dependency ratio, Counsel submitted that Chief's Letter (P.Exh6) showed the deceased was survived by his wife and four children, so the dependency ratio of 2/3 should be upheld. Counsel urged the Court to dismiss the Appeal with costs for lack of merit and asked that interest be calculated at 14% from 18th October 2023, the date of the judgment in the trial court, with effect from 2nd April 2019, the date the suit was filed.

### **ANalysis and Determination**

16. The duty of an appellate court is to reconsider the evidence, evaluate it independently, and draw its own conclusions, although it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. (See *Gitobu Imanyara & 2 others V Attorney General* (2016) eKLR).
17. Having considered the grounds of appeal and the rival submissions, the only issues for my determination are liability and quantum.

### **Liability**

18. The question of liability in this case centred on the fact that the trial court received two different accounts of how the accident occurred and that the trial court failed to address liability concerning the third party who was enjoined to this suit. On one hand, PW3, the eyewitness whose statement dated 12th December 2022 was adopted as his evidence-in-chief, stated that the appellant's driver turned to



go into a petrol station on his right side and collided with the vehicle in which the deceased was aboard, heading in the opposite direction. On the other hand, the appellant's driver stated that he saw a vehicle joining the highway from the opposite direction without confirming whether the road was clear, and despite his attempts to swerve, they collided because the driver of the other vehicle continued to drive.

19. In the analysis of the evidence, the trial court found that the evidence from the Appellant's driver that the driver of the vehicle in which the deceased was travelling suddenly turned was untrue, as the vehicle was struck on its right side. The court also noted that the defence witness contradicted himself by stating during cross-examination that the point of impact was on the right side, and later, during re-examination, claimed that the impact occurred in the middle of the road.
20. I have considered the evidence before the court and the trial court's analysis. It was unfortunate that the police officers investigating the accident did not provide their professional opinion on how it occurred. Nonetheless, this Court holds that every road user has a standard of care to maintain in order to prevent accidents. In this case, it is clear that the accident happened because the Appellant's driver was either turning to go to the petrol station, as the Respondent's eyewitness alleged or that the driver of motor vehicle No. KBH 454W, in which the deceased was aboard, turned abruptly to join the highway before it was safe to do so. I believe that each driver owed a duty of care to other road users, which, if properly exercised, would have prevented the accident altogether. I find that if the Appellant's driver had slowed down upon noticing the alleged reckless turn by the driver of motor vehicle KBH 454W, he would not have collided with the vehicle in his lane. Conversely, if the driver of KBH 454W had exercised due caution and joined the highway when it was clear, as alleged, the accident could have been avoided.
21. In determining which of the two conflicting accounts is more probable in order to properly apportion liability, I am guided by the Court of Appeal's decision in *Hussein Omar Farah vs. Lento Agencies* [2006] eKLR, where it was stated thus: -

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame. In the case of *Barclay – Steward Limited & Another v Waiyaki* [1982-88] 1 KAR 1118, this Court said:-  
“The bare narrative of the accident gives rise to a number of possibilities. Either Waiyaki was driving on his correct side and the Datsun hit his vehicle on its correct side or Mr. Cottle was driving on his correct side where the Range Rover crushed it.”

The Court went on to state: -

“The trial court, as we have said, had two conflicting versions of how the accident occurred. Both parties insisted that the fault lay with the other side. As no side could establish the fault of the opposite party we would think that liability for the accident could be equally on both the drivers. We therefore hold each driver equally to blame.”

22. I find that the trial court erred in finding that the Appellant's driver was solely to blame for the accident. I find that both the Appellant's driver and the driver of the motor vehicle KBH 454W were to blame under the circumstances. In other words, the 3<sup>rd</sup> Party, the owner of the motor vehicle KBH 454W, was vicariously liable for the tortious actions of his driver. Accordingly, I hold him and the Appellant herein 50% liable for the accident.



## Quantum

23. The Court of Appeal outlined the principles for challenging the award of damages in *Kemfro Africa Ltd vs Meru Express Service*. A.M Lubia & Another 1957 KLR 27, as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.”

24. Damages under the *Law Reform Act* are for pain and suffering and loss of expectation of life. For pain and suffering, the generally accepted principle is that the court must consider the circumstances of the death of the deceased and will grant nominal awards where death is instantaneous. If a person undergoes prolonged suffering before death, the awards will be higher. For the awards under loss of expectation of life, the conventional figure is Kshs. 100,000/=. In *Mercy Muriuki & Another vs. 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.”

25. In this case, the deceased died on the spot as evidenced by his Post-Mortem Report. I find the award of Kshs 20,000/- adequate. I, however, reduce the award on loss of expectation of life from Kshs. 200,000/= to the conventional sum of Kshs. 100,000/=.
26. Turning to the award under the *Fatal Accidents Act* for loss of dependency, I note that the Respondents' case was that the deceased died at age 26, as evidenced by his Death Certificate, and left behind six dependants: his wife, four children, and his father. The Appellant argued that, due to the lack of evidence such as birth certificates or a marriage certificate, the relationship between the deceased and his alleged dependants could not be confirmed. However, I hold a different view, stating that it is not always the case that a married couple will have a marriage certificate, nor that all children will possess a birth certificate. This fact alone is insufficient to dismiss the Respondents' claim that the deceased left a young family. There is also the Chief's letter, which details the deceased's surviving dependants, and I find that this was sufficient proof on the balance of probabilities that the deceased left behind a family.
27. I have also considered the argument by Counsel for the Appellant that there was no proof of dependence. It is my view that even if the deceased lived in his brother-in-law's house as alleged by Counsel, that fact alone cannot be construed to mean that he did not provide for his family. I therefore dismiss this argument and proceed to consider whether the multiplier approach or the global sum approach was suitable for the assessment of damages under this head.



28. In *Albert Odawa vs. Gichimu Gichenji* NKU HCCA No. 15 of 2003[2007] eKLR Justice Ringera gave the following guidance when determining which approach a court should undertake in assessing damages for loss of dependency. He held thus: -

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

29. In this case, the Plaintiffs/Respondents neither provided evidence to prove that the deceased was a driver nor demonstrated proof of income. In my view, when the facts of a case do not support the use of the multiplier method, the court should consider a global sum approach, which I hereby do.

30. Noting that the deceased died at 26 years of age and left behind a young family, I have considered similar cases with almost similar circumstances as follows: -

- a. In *Achenda & another (Suing as the legal representatives/ administrators of the Estate of the Late Jophan Achenda) vs. West Kenya Sugar Company Ltd* (Civil Appeal E004 of 2022) [2023] KEHC 18044 (KLR) (26 May 2023) (Judgment) Wananda J. set aside the award of Kshs. 1,506,117.60/= for loss of dependency and awarded a global sum of Kshs. 2,000,000/= for a deceased who was 29 years old.
- b. In *Nancy Gesare Motari & Samwel Motari Motende (Suing as the Legal Representatives of the Estate of Motari Omanwa Dominic –Deceased) vs. Osano Simpson Nyambane*, Civil Appeal No. E029 of 2024, Okwany J. set aside the award of Kshs. 1,800,000/= based on the multiplier approach and substituted it with a global sum of Kshs. 2,000,000/= for loss of dependency where the deceased died at 24 years of age and left behind a wife and two young children below 5 years old.
- c. In *Stanwel Holdings Limited & another vs. Racheal Haluku Emanuel & another* [2020] eKLR the court reduced an award of Kshs. 2,000,000.00/= for Loss of Dependency (a global sum) to Kshs 1,000,000/= for the Estate of a 23-year-old deceased.

31. Taking into account the age of the deceased, and the fact that he left behind four children and a wife, it is the view of this Court that a global sum of Kshs. 2,000,000/= would be sufficient under this head. Accordingly, I set aside the award of 1,200,000/= and increase it to 2,000,000/=. Since there was no contest on the award under Special Damages, I shall not interfere with the same.

32. In the final analysis, the Appeal is merited and is hereby allowed. I set aside the judgment of the trial court and enter judgment as follows:

Liability at 50:50% between the Appellant and the 3<sup>rd</sup> Part, Owner of Motor Vehicle KBH 454W in favour of the Respondents

Pain and Suffering – Kshs. 20,000/=

Loss of Expectation of Life – Kshs. 100,000/=

Loss of Dependency – Kshs. 2,000,000/=

Special Damages – Kshs. 93,550/=



Total Kshs. 2,333,550/=

The appellant is awarded half the costs of the appeal.

**DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Miss Abubakar For the Appellant

Respondent

Wilkister C/A

