



REPUBLIC OF KENYA



KENYA LAW
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**Mwende & 2 others v Elmi & 3 others (Civil Case 156, 155 & 154 of 2014
(Consolidated)) [2025] KEHC 9950 (KLR) (Civ) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9950 (KLR)

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

CIVIL

CIVIL CASE 156, 155 & 154 OF 2014 (CONSOLIDATED)

JN MULWA, J

JULY 10, 2025

BETWEEN

JANET MWENDE PLAINTIFF

AND

MOHAMMED ABDI ELM I 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 155 OF 2014

BETWEEN

**CATHERINE WANGARI MWANGI (SUING AS ADMINISTRATOR OF THE
ESTATE OF THE LATE GEOFFREY MWANGI WAMWEA) PLAINTIFF**

AND

MOHAMMED ABDI ELM I 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 154 OF 2014

BETWEEN



CATHERINE WANGARI MWANGI (SUING AS ADMINISTRATOR OF THE ESTATE OF THE LATE PAUL KINYILI) PLAINTIFF

AND

MOHAMMED ABDI ELMI 1ST DEFENDANT

MEGA WHOLESALERS LTD 2ND DEFENDANT

MEGA TRANSPORTERS CO LTD 3RD DEFENDANT

JUDGMENT

Liability

1. Janet Mwendé, the Plaintiff in Nairobi Milimani HCCC. No. 156 of 2014, and Catherine Wangari Mwangi (suing as an administrator of the estates of the late) Geoffrey Mwangi Wamwea and Paul Kinyili, the Plaintiffs in Nairobi Milimani HCCC. No. 155 & 154 of 2014, respectively, vide their corresponding complaints dated 28/05/2014 and amended on 26/10/2018 sued Mohamed Abdi Elmi, Mega Wholesalers Ltd and Mega Transporters Co. Ltd (hereafter the 1st, 2nd & 3rd Defendant/Defendants) seeking to recover damages and costs following a road accident that occurred on 21/04/2011 along Nairobi-Mombasa Highway at Ndii. The aforesaid suits also consolidated alongside Nairobi Milimani HCCC. No. 38, 39, 40, 41, 42 and 43 of 2013, with the latter being selected as the lead file. Nairobi Milimani HCCC. No. 43 of 2013 was heard and determined, to wit, the question of liability was settled wherein judgment on liability was entered wholly at 100% as against the Defendants for causing the accident in question.
2. This decision on liability holding the Defendants wholly liable for the accident shall apply to these three suits and others in the series.

Assessment on Quantum of Damages

3. On 25/02/2025, parties took directions in respect of Nairobi Milimani HCCC. No. 156, 155 & 154 of 2014, to dispose of the question of quantum by way of documents filed in evidence and written submissions. As at writing of this judgment only the Plaintiffs in the respective suits complied with directions on filing of written submissions, of which this Court has duly considered.
4. With the above in reserve, regarding this Court's role in assessing Quantum of damages, it is useful at the outset to restate the applicable principles on assessment of damages. The exhortation by the English court in *Lim Poh Choo v Health Authority* (1978) 1 ALL ER 332 as echoed by Potter, J.A in *Tayab v Kinany* (1983) KLR14, Quoting dicta by Lord Morris Borth-y-Gest in *West (H) v Shepherd* (1964) AC 326, at page 345 stated as follows-;

“But money cannot renew a physical frame that has been battered and shattered. All the courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process, there must be the endeavor to secure some uniformity in the method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said and done, it still must



be that amounts which are awarded are to a reasonable extent conventional.” (Emphasis added).

See also *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd.* [2013] eKLR.

5. More recently, the Court of Appeal in *SJ v Francesco D. Nello & Another* [2015] eKLR observed that -;

“The guiding principle in the assessment of damages has been the subject of numerous authorities. For the purposes of this case, we refer to the *ossuman Mohammed & Another vs. Saluro Bundi Mohamud*, [CA 30/1997](#) (unreported) wherein the following passage, in the case of *Kigaragari vs. Aya* (1982 – 1988), KAR 768 is employed;

“Damages must be within limits set out by decided cases and also within limits the Kenyan economy can afford. Large awards are inevitably passed on the members of the public, the vast majority of whom cannot afford the burden in the form of increased costs of insurance or increased fees. over time, courts have held that damages should not be so inordinately low or so inordinately high as to be a wholly erroneous estimate of damage.”(emphasis added).

6. Therefore, applying myself to the above wisdom, the Court proposes to independently address the respective claims.

a. HCCC No. 156 of 2014 - Janet Mwendu

7. As at taking of directions on 25/02/2025 towards disposal of the question of awardable damages, the parties hereto agreed to adduce the medical report in respect of Janet Mwendu dated 10/10/2016 by consent. That said, by her amended plaint, she particularized her injuries as being -;

soft tissue injury, head injury, multiple lacerations over the face and neck region and multiple lacerations in the left forearm. The medical report by Dr. Ndeti dated 10/10/2016 that was adduced into evidence equally confirmed the injuries sustained by the Plaintiff to ideally constitute soft tissue injuries with no major attendant consequences. In urging the Court to award damages to the tune of Kshs. 400,000/-, the Plaintiff relied on the decision in *Adembesa & another v Gweno* [2024] KEHC 5379 (KLR) wherein on appeal a claimant who had sustained a head injury, chest injury, neck injury, bruises on the shoulders, bruises on both knees and legs was awarded Kshs. 200,000/- as general damages. The Plaintiff relied on *Savanna International Ltd v Muka* [2022] KEHC 675 (KLR) wherein similarly on appeal, the claimant who had sustained a fracture of the medial malleolus of the left ankle joint and severe soft tissue injuries of the left ankle joint was awarded general damages of Kshs. 400,000/- in 2022.

8. As earlier stated and at the risk of repetition, the Defendants failed and/or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
9. That said, though the Court is alive to the fact that the decisions relied on by Plaintiff were not on all fours similar to her injuries, it is difficult to find a decision with exact parallels whereas all this Court can do is award damages based on decisions of comparable injuries. Though the Plaintiff must have endured much pain in the period of morbidity after the accident, by Dr. Ndeti’s report she appears to have sufficiently recovered from her injuries.



10. Comparing her injuries with those in the decisions relied on and noting that the claimant in Savanna International Ltd (supra) sustained slightly severe injuries to the Plaintiff herein, further adjusting for inflationary trends, this Court reasonably believes an award in the sum of Kshs. 200,000/- in general damages for pain and suffering would be sufficient in the circumstance.
11. On special damages, the Plaintiff pleaded the sum of Kshs. 2,500/- be the amount spent towards preparation of the medical report however went on to submit that the sum of Kshs. 3,000/- was expended towards the said endeavor. It is trite that parties are bound by their pleadings whereas this Court can only proceed to pronounce itself on issues running through the respective parties' pleadings therefore it was not open for the Plaintiff to surreptitiously urge the Court through her submissions to award Kshs. 3,000/-. And in any event, the law on special damage within our jurisdiction is now fairly settled. Chesoni, J (as he then was) in the case of Ouma v Nairobi City Council (1976) KLR 304 held that -:

“Thus, for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence. As to the particularity necessary for pleading and the evidence in proof of special damage the court's view is as laid down in the English leading case on pleading and proof of damages, Ratcliffe v Evans (1892) 2 QB 524 where Bowen L J said at pages 532, 533:-

The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

See also;- David Bagine vs. Martin Bundi [1997] eKLR and Hahn -v- Singh [1985] KLR 716.

12. On taking directions on 25/02/2025, no consent was recorded on the documents relating to proof of special damages; however attached to the medical report adduced by consent was a receipt for Kshs. 3,000/- . To the foretated end, this Court is bound by the parties' pleadings. Accordingly, the Court is only inclined to allow the claim for special damages to the tune of Kshs. 2,500/- as pleaded in the amended plaint.
13. In the end, Janet Mwendu's claim succeeds in the following terms-;
 - a. Liability 100% as against the Defendants.
 - b. General damages – Kshs. 200,000/-
 - c. Special damages – Kshs. 2,500/-
 - d. The award on general damages to accrue interest at Court rates from date of judgment until payment in full.
 - e. The Plaintiff is also awarded costs of the suit, which will equally accrue interest at Court rates.



b. HCCC No. 155 of 2014 - Catherine Wangari Mwangi – (Geoffrey Mwangi Wamea, Deceased)

14. Here, as at when directions were taken on 25/05/2025, the parties hereto agreed by consent that the Plaintiff would rely on his list of documents dated 28/05/2024 and the supplementary list of documents dated 26/10/2018. By her pleadings – Catherine Wangari Mwangi, pleaded that the deceased – Geoffrey Mwangi Wamea, succumbed to his injuries as result of the accident. Through her submissions, under the Fatal Accident Act, counsel anchored arguments on the decision in *Crown Bus Services Ltd & 2 others v Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased) [2020] eKLR*, to assert the principles applicable in assessing damages under the Act. Thus, submitting on the head of loss of dependency, it was posited that the deceased was 62 years old at the time of his untimely demise and at the time was married to one Ruth Wanjiru Mwangi. Therefore, it is in the interest of justice a multiplier of nine (9) years be applied. It was further submitted the deceased had since retired as at when the accident occurred however was a farmer, earning living through rental income totaling Kshs. 50,000/- per month and the sole bread winner thus a dependency ratio of two-thirds (2/3) ought to be applied. In summation, the Plaintiff while calling to aid the decision in *John Wamae & 2 others v Jane Kituku Nziva & another [2017] eKLR* urged the Court to assess damages as follows;- Kshs. 50,000/- x 9 x 12 x 2/3 = Kshs. 3,600,000/-.
15. On the award under the *Law Reform Act*, counsel summarily argued that an award of Kshs. 100,000/- for pain and suffering, given that the deceased died on the spot and a similar amount of Kshs. 100,000/- for loss of expectation of life would be sufficient. The decision in *John Muchiri Njoroge & another v Monicah Asami [2021] eKLR* was cited in the above regard. Finally, on the award of special damages counsel urged the Court to award Kshs. 100,000/- for funeral expenses, Kshs. 1,500/- for the death certificate and Kshs. 1,000/- utilized to procure the police abstract.
16. Likewise, the Defendants herein failed and or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
17. Ordinarily within our jurisdiction damages awarded in a fatal accident claim arising out of a road accident would entail an award under the *Law Reform Act*, Fatal Accident Act and special damages (if any). And as earlier observed, in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings. See:- *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91*. In *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others [2014] eKLR*.
18. The above position was fortified by the Court of Appeal where after discussing relevant precedent, reiterated this position by stating that -;

“It was held in the case of *Galaxy Paints Co. Limited v Falcon Guards Limited [2000] 2 EA 385* that the issues for determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for determination....”
19. In a judgment delivered recently by this Court on 14th February, 2014 in *Romanus Joseph Ongombe & others v Cardinal Raphael Ochieng Otieno & others (Kisumu) Civil Appeal No. 20 of 2011 (ur)* it was held that a judgment whose basis was on issues not founded on the pleadings was a nullity.
20. The position flowing from the previous judgements we have considered herein is that a judgement must be based on issues arising from the pleadings and the trial judge is not at liberty, as the trial judge



in the case leading to this appeal did, to depart from the pleadings or the case before the court to write and deliver a judgment on issues that are not before the court.

21. Ex facie the Plaintiff by her pleadings, omitted to particularize her claim pursuant to the Fatal Accident Act, however based on her pleadings it is not in dispute that the deceased succumbed to injuries as a result of a fatal accident that was specifically pleaded by the Plaintiff. A review of the claim supporting documents as seen in her list of documents dated 28/05/2024 and the supplementary list of documents dated 26/10/2018, it can be gathered therefrom, by the death certificate and confirmation of grant, that the deceased died aged 62 and left beneficiaries to his estate. However, the said relationship of the said beneficiaries was not equally demonstrated either by way of a letter from the local chief or was there material illustrative of the deceased earnings.
22. While it is not in dispute that the deceased was retired, he must have sustained himself with some source of income. However, there was no tangible evidence of persons dependent on him at the time of his untimely demise. It is trite that in cases where a Court is faced with scarcity of evidence to support a claim under the Fatal Accident Act, the applicable modulus would be a global award as held in the Court of Appeal decision in *Roger Dainty vs. Mwinyi Omar Haji & Another* [2004] KECA 147 (KLR) and *Kenya Breweries Ltd vs. Saro* [1991] KECA 12 (KLR).
23. Recently, the Court of Appeal in *Cherangany Hills Ltd & another v Wanyama* (Suing as the Administrator to the Estate of Brian Khisa Wanyama) [2025] KECA 1030 (KLR) observed that -;
 - “ 27. As we search for an answer to the above question, it is important to mention that court decisions under the *Law Reform Act* and *Fatal Accidents Act* emphasize the need for courts to consider the "vagaries of life" when calculating damages, particularly in cases involving loss of dependency or earning capacity. This means accounting for unforeseen events, changes in circumstances, and the potential for the deceased's or plaintiff's circumstances to improve or worsen over time or even death. Therefore, whether a court uses a "multiplier" to estimate future earnings, or a global award, it must always bear in mind factors such as the deceased's age, skills, and potential for advancement, while also considering the possibility that these factors might change to the worse or even death.
 28. Predicting someone's future earnings with absolute certainty is impossible. There are various factors that can affect earning potential, including health, employment opportunities, and economic conditions. The "vagaries of life" concept recognizes these uncertainties. For example, a person might be promoted, lose their job, face an illness, or experience other life events that could alter their earnings. When calculating damages, courts must consider these potential changes and make reasonable assumptions about the future.....”
24. Therefore, applying my mind to facts of the case, taking due cognizance of the persuasive decision of this Court in *China Civil Engineering & another v Mwanyoha Kazungu Mweni & another* [2019] eKLR wherein this Court upheld the trial Court global award under the Fatal Accident Act to the tune of Kshs. 700,000/- for a 79-year-old man meanwhile factoring in inflationary trends and that loss of life cannot be monetarily quantified, this Court reasonably believes a sum of Kshs. 1,100,000/- would be a sufficient award under the Fatal Accident Act.



25. On the award under the Law Reform Act it is undisputed that the deceased died on the spot and despite his untimely demise was expected to live notwithstanding the vicissitudes of life. Consequently, this Court will proceed to award Kshs. 80,000/- for pain and suffering and Kshs. 100,000/- for loss of expectation of life.
26. On the award of special damages, this Court reiterates the dicta in *Ouma v Nairobi City Council* (supra). Palpably, from the Plaintiff's documents in support of claim no receipts were provided for the sums claimed in special damages. Therefore, the sums claimed for the police abstract and death certificate are accordingly declined. However, on funeral expenses despite the Plaintiff's failure to provide any receipts it is not contested that the estate of the deceased must have expended some funds towards his burial.
27. This Court in its earlier decision in *Muthike Muciimi Nyaga (Suing as Administrator of the Estate of James Githinji Muthike (Deceased)) v Dubai Superhardware [2021] KEHC 9017 (KLR)* judiciously observed that with hardships and difficulties faced by deceased's mourning families, it has now become necessary and trite to allow, without strict prove, reasonable funeral expenses. See also -; Court of Appeal decisions in *Jacob Ayiga Maruja & another -v- Simeon Obayo (2005) eKLR* and *Premier Dairy Limited -vs - Amrit Singh Sago & Another, C.A No. 312/2009*. Therefore, applying myself to the above decision and inflationary trends this Court deems an award of Kshs. 80,000/- for funeral expenses as reasonable in the circumstance.
28. Consequently, the plaintiffs claim succeeds in the following terms-;
 - a. Liability 100% as against the Defendants jointly and severally.
 - b. Damages under the Law Reform Act -;
Pain and Suffering – Kshs. 80,000/-
Loss of Expectation of Life – Kshs. 100,000/-
 - c. Damages Under the Fatal Accident Act – Kshs. 1,100,000/-
 - d. Special damages – 80,000/-, to accrue interest at court rates from date of filing the suit.
 - e. The award on general damages to accrue interest at Court rates from date of judgment until payment in full.
 - f. The Plaintiff is also awarded costs of the suit.

c. HCCC No. 154 of 2014 - Catherine Wangari Mwagi - (Paul Kinyili (deceased))

29. Similarly, in this suit, the Plaintiff would relied on her list of documents dated 28/05/2024 towards disposal of the issue on quantum. By her plaint – Catherine Wangari Mwagi, pleaded that the deceased – Paul Kinyili, succumbed to his injuries as result of the accident. Through her submissions, while addressing the Court on the award under the Fatal Accident Act, counsel anchored his submissions on the decision in *Mwangangi & Another v FKM (Suing as Legal Representative of the Estate of the Late AMK [2021] KEHC 291 (KLR))* to posit that where a multiplier approach is not applicable such as in the instant suit, the Court ought to adopt a global sum. Summarily, counsel urged the Court to award Kshs. 1,500,000/- under the said head as damages in favour of the Plaintiff.
30. On the award under the Law Reform Act, it was equally submitted herein an award of Kshs. 100,000/- for pain and suffering was sufficient given that the deceased died instantaneously after the accident and a similar amount of Kshs. 100,000/- was urged for loss of expectation of life. The decision in *John*



Muchiri Njoroge (supra) was similarly called to aid. On the award of special damages, counsel asserted the Court ought to award Kshs. 100,000/- for funeral expenses, Kshs. 1,500/- for the death certificate and Kshs. 1,000/- utilized to procure the police abstract.

31. Here too, the Defendants failed and or opted not to file submissions on the question of quantum despite being accorded ample opportunity to do so.
32. As earlier observed by this Court, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings. See-: Wareham t/ a A.F. Wareham (supra), North Kisii Central Farmers Limited (supra). Similarly, in the instant suit, the Plaintiff failed to particularize her claim pursuant to the Fatal Accident Act however on the premise of her pleadings it is not in dispute that the deceased succumbed to injuries as a result of a fatal accident.
33. A review of the claim-supporting document as can be evidenced in her list of documents dated 28/05/2024, it can be noted therein upon perusal of the death certificate that the deceased died aged 3 months. Evidently, the deceased was a minor of tender years. As earlier stated, where a Court is faced with scarcity of evidence to support a claim under the Fatal Accident Act, the applicable modulus would be a global award approach. See Court of Appeal decision in Roger Dainty (supra), Kenya Breweries Ltd (supra) and Cherangany Hills Ltd (supra).
34. Thus, applying my mind to facts of the case, taking due cognizance of the binding decision in Mauti & another v Momanyi & another [2025] KECA 996 (KLR) wherein on a second appeal the Court of Appeal set aside the High Court award under the Fatal Accident Act and proceeded to award Kshs. 800,000/- in respect of a child who was a one and half years old. Given the recent nature of the latter decision this Court reasonably believes an award to the tune Kshs. 800,000/- would be sufficient under this head. On the award under the *Law Reform Act* it is undisputed that the deceased died on the spot due to the accident and despite his untimely demise was expected to live notwithstanding the vicissitudes of life. Consequently, this Court will proceed to award Kshs. 80,000/- for pain and suffering and Kshs. 100,000/- for loss of expectation of life.
35. On the award of special damages, this Court reiterates the dicta in Ouma v Nairobi City Council (supra). Palpably, from the Plaintiff's documents in support of claim no receipts were evinced for the sums claimed in special damages. Therefore, the sums claimed for the police abstract and death certificate are accordingly declined. However, on funeral expenses despite the Plaintiff failure to evince any receipts it is not contested that the family of the minor must have expended some funds towards his burial.
36. This Court in its earlier decision in Muthike Muciimi Nyaga (supra) judiciously observed that with hardships and difficulties faced by deceased's mourning families, it has now become necessary and trite to allow, without strict proof, reasonable funeral expenses. See also -; Court of Appeal decisions in Jacob Ayiga Maruja (supra) and Premier Dairy Limited (supra). Thus, applying my mind to the above decisions and inflationary trends this Court deems an award of Kshs. 60,000/- as funeral expenses as reasonable in the circumstance.
37. Consequently, the Plaintiff's claims succeeds in the following terms-;
 - a. Liability 100% as against the Defendants jointly and severally.
 - b. Damages under the *Law Reform Act* -;
 - Pain and Suffering – Kshs. 80,000/-
 - Loss of Expectation of Life – Kshs. 100,000/-



- c. Damages Under the Fatal Accident Act – Kshs. 800,000/-
- d. Special damages – 50,000/-, to accrue interest at court rates from date of filing the suit.
- e. The award on general damages to accrue interest at Court rates from date of judgment until payment in full.
- f. The Plaintiff is also awarded costs of the suit.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY, 2025.

.....
JANET MULWA.
JUDGE

