



**Kiptanui & another v Maina (Suing as a personal representative of the Estate of Sarah Wangui (Deceased) (Civil Appeal E030 of 2021) [2024] KEHC 765 (KLR) (1 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 765 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E030 OF 2021  
JR KARANJA, J  
FEBRUARY 1, 2024**

**BETWEEN**

**JULIUS KIPTANUI ..... 1<sup>ST</sup> APPELLANT**

**MOMBASA MAIZE MILLERS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**RACHEAL NYAWIRA MAINA (SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF SARAH WANGUI (DECEASED)) ..... RESPONDENT**

**JUDGMENT**

1. The appeal arises from the decision of the Chief Magistrate at Kericho in CMCC No.178 of 2020, in which the appellants Julius Kiptanui and Mombasa Maize Millers Ltd were sued by the respondent, Rachel Nyawira Maina, as the legal representative of the estate of Sarah Wangui Maina (deceased) for damages arising from a road traffic accident which occurred on the 22<sup>nd</sup> June 2019 along the Muhoroni – Londiani Road at Kikap area involving the appellants/defendants motor vehicle registration No. KCS 452/2G – 0230 M/Benz Actross and a motor vehicle Reg No. KCK 338D Mazda Demio in which the deceased was a passenger.
2. It was pleaded that on the material date the first defendant being the driver of the defendant’s motor vehicle drove the same so negligently or carelessly such that it collided head on with the other vehicle thereby causing fatal injuries to the deceased.  
  
The plaintiff therefore prayed for General damages against the defendants under the Law Reform and *Fatal Accidents Act* as well as special damages together with costs and interest.
3. The defendants denied the claim on the basis of the averments contained in their statement of defence in which they contend that if the said accident occurred, then it was due to the sole and/or contributory negligence of the plaintiff and/or the driver of the motor vehicle Registration No. KCG 338D. The defendants therefore prayed for the dismissal of the plaintiffs claim with costs.



4. After the trial, Judgment was entered in favour of the plaintiff against the defendants for the total sum of Kshs.8,241,594/= made up as follows:-

Pain & Suffering – Kshs.50,000/=

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

Loss of dependency – Ksh.7,961,000/=

Special damages – Kshs.129,750/=

Total Kshs.8,241,594/=

5. Being aggrieved, with the trial court's decision, the defendants/appellants preferred this appeal on the basis of the grounds set out in the Memorandum of Appeal dated 20<sup>th</sup> September 2021. The appeal was canvassed by way of written submissions which were filed on behalf of the appellants by L. G. Menezes & Co. Advocates and CR Sagwa & Co. Advocates on behalf of the respondent.

This court after considering the appeal on the basis of the supporting grounds and the rival submissions was obliged to re-consider the evidence availed at the trial and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (see *Selle v Associated Motor Boat Co. & Others* [1968] E. A 123).

6. In that regard, the evidence adduced by the plaintiff Rachel Nyawira Maina (PW 1), and her two witnesses (PW2 & 3) was given due consideration against the evidence adduced by the first defendant Julius Kiptanui Chepkwony (PW 1). Basically, the occurrence of the accident was a factor which was not substantially disputed. There was sufficient evidence from the traffic police officer, P.C Michael Maloba (PW 2) and a pillion passenger on a motorcycle taxi (boda-boda, Thomas Okuku Owino (PW 3) to show that the accident occurred as alleged on the material date and time. The first defendant (DW 1) also confirmed the occurrence of the accident.

7. What emerged as the main issue for determination was whether the defendants/appellants were by their negligent or reckless act responsible for the accident and if so, would the plaintiff/respondent be entitled to damages and to what extent.

Police investigations on the causation of the accident as revealed by P.C Maloba (PW 2) concluded that the defendants through the first defendant were responsible for the accident in the manner that the first defendant drove into the path of the other vehicle resulting in a collision of the two vehicles and to the deceased who was in the other vehicle sustaining fatal injuries.

8. The pillion passenger (PW 3) indicated that the motorcycle he was riding on was behind the defendant's motor vehicle which he noted was being driven carelessly and at a high speed.

Although the first defendant (DW 1) indicated in re-examination that the other vehicle came into his path or lane, he implied on cross-examination that the other vehicle was not being driven at a high speed nor in a zig zag manner. He therefore portrayed himself as a person who was economical with the truth and most likely than not he was the person responsible for the accident rather than the driver of the other vehicle.

9. This court would therefore agree with the finding of the trial court on liability to the extent that the first defendant and by extension the second defendant was fully or 100% liable for the accident. Both must be held responsible for the consequences of their negligent act which led to the demise of the deceased. In the premise, the respondent was entitled to damages from the defendants jointly and severally.



10. As for damages under the Law Report Act, it was established that the deceased died on the same day of the accident. The trial court awarded a sum of Kshs.50,000/= for pain and suffering. This was neither unreasonable nor excessive in the circumstance and so was the award of Kshs.100,000/= for loss of life expectation. Both awards are hereby affirmed.

As for loss of dependency under the Fatal Accident Act, it was established through the evidence of the respondent (PW 1) that the deceased died at a young age of twenty seven (27) years while an employee with a local airline company known as 540 where she was a flight attendant earning a monthly net salary of Kshs.60,317/=. She was unmarried but her mother (PW1) depended on her.

11. The trial court basing its finding on evidential material placed before it awarded the plaintiff a sum of Kshs.7,961,844/= arising from a multiplicand of Kshs.60,317, a multiplier of thirty-three (33) years and a dependency ratio of 1/3<sup>rd</sup> given that her mother and siblings depended on her.

This court does not see any substantial reason to interfere with that award in as much as it was based on sound principles of law.

As for special damages, the plaintiff indicated that she incurred damages in the sum of Kshs.129,750/= . This amount was duly proved by the documentary evidence availed by the plaintiff in the form of receipts (P. Ex 10) and was rightly awarded by the trial court.

12. All in all, this appeal is devoid of merit and is hereby dismissed with costs to the respondent.

Ordered accordingly.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF FEBRUARY, 2024.**

**J. R KARANJAH**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

