



Abonyo (Suing as the Administratrix of the Estate of Lorna Chepkemoi Laboso (Deceased)) v Kenya Civil Aviation Authority (Civil Case 306 of 2009) [2024] KEHC 2122 (KLR) (Civ) (1 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2122 (KLR)

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

CIVIL

CIVIL CASE 306 OF 2009

AN ONGERI, J

MARCH 1, 2024

BETWEEN

EDWIN JACOB ABONYO PLAINTIFF

**SUING AS THE ADMINISTRATRIX OF THE ESTATE OF LORNA
CHEPKEMOI LABOSO (DECEASED)**

AND

KENYA CIVIL AVIATION AUTHORITY DEFENDANT

JUDGMENT

1. The plaintiff herein substituted Rebecca Chebet Laboso (deceased) and Joyce Cheron Laboso (deceased) as the administrator of the estate of Lorna Chepkemoi Laboso (deceased) who died on 10/6/2008 when aircraft 5Y BVE crashed at Kojonga area in Narok District.
2. The plaintiff sued the Kenya Aviation Authority (KCAA) being a statutory body established in accordance with the [Civil Aviation Act](#) as the sole statutory regulatory body charged with the responsibility of controlling flights, aircraft worthiness, pilot and operator licencing and the control of the aviation industry in general alleging negligence in the carrying out of its duties.
3. The plaintiff is seeking general damages under the [Fatal Accidents Act](#) and the [Law Reform Act](#) together with special damages of Kshs 785,000 and also costs of the suit and interest on behalf of the Estate of Lorna Laboso(deceased).
4. The initial defendants were Sky Traders Limited and The Kenya Civil Aviation Authority (KCAA).
5. The KCAA filed a defence on 14/7/2009 denying the plaintiffs claim.



6. On 19/11/2015, the name of the Sky traders Limited was struck off and the evidence of Joyce Laboso (now deceased) was taken as the sole witness for the plaintiff.
7. On 10/3/2020, the plaintiff herein substituted Joyce Cherono Laboso (Deceased).
8. The plaintiff's evidence as adduced by PW1 Joyce Cherono Laboso was that the deceased was aboard the aircraft registration No 5Y-BVE on 10/6/2008 when it crashed at Kojonga area in Narok district due to the negligence of the defendant.
9. The defendant called four witnesses as follows;
 - Peninna Njeri Nginyo (DW1)
 - Denis Kangethe Kimani (DW2)
 - Richard Chesire (DW3) and
 - John Kiragu Mwangi (DW4)
10. DW1 Peninna Njeri Nginyo a senior Airworthiness Inspector with KCAA adopted her written witness statement dated 10/11/2021 in which she stated that following the import of the aircraft registered as No 5Y-BVE it went through preliminary inspection in order to meet the requirements of airworthiness in accordance with the provisions of KCAA and Civil Aviation Regulations.
11. As regards to the accident which occurred, she confirmed that all the relevant documents and procedures as pertains the issue/renewal of the certificate of Airworthiness had been adhered satisfactorily in respect of the aircraft registration No 5Y-BVE. She indicated that it was her professional opinion that KCAA did not contribute in any way to causation of the accident and ought not to be blamed for the accident.
12. In cross examination, DW1 said she did not examine the aircraft 5Y-BVE. She said that she went through the records maintained at KCAA.
13. DW1 said the pilot Christopher Maria Schnerr was also the operator of the aircraft.
14. The operator was indicated as Sky Trades Limited in the records.
15. DW1 said when there is a serious incident, it was beyond KCAA to investigate.
16. She said she was aware there was a report of the accident but the findings were not made public.
17. DW2 Denis Kangethe Kimani also adopted his witness statement dated 28/5/2021 as his evidence in chief. In it he stated that following the importation of the aircraft by the operator Mr. Christoph Maria Schnerr, it had to go through preliminary formalities in order to meet the applicable requirements to legally operate as an aircraft in Kenya.
18. With regard to the accident that occurred on 10/6/2008 in Narok, he confirmed that all the relevant documents and procedures as pertains issuance/renewal of the certificate of airworthiness had been adhered to satisfactorily.
19. DW2 was the chief legal officer at KCAA at the time of the incident. He said according to records held at KCAA, all relevant requirements and procedures as pertains the issuance or renewal of the certificate of Airworthiness had been adhered to satisfactorily pursuant to the provisions of the airworthiness and equipment of aircraft regulations in respect of aircraft 5Y-BVE.



20. In cross examination, DW2 said at the time of the incident he was still at KCAA. He said he was aware a team was appointed to do the investigations but he was not aware of the findings of investigations.
21. DW2 further said in cross examination that for any aircraft to be issued with registration, inspection has to be done to show that it was airworthy.
22. DW2 said the aircraft did not have a certificate of airworthiness.
23. He was not aware whether the pilot had Commercial Pilot Licence (CPL).
24. DW3 Richard Chesire Cherop adopted his statement dated 10/11/2021 in which he stated that he holds the position of Chief Air Traffic Management and Search and rescue Inspector at KCAA. He indicated that he read the records maintained by KCAA and confirmed that the aforementioned aircraft accident was caused by Controlled Flight Into Terrain which is usually a major cause of many aviation accident generally and accounts for a high percentage fatality rate.
25. He explained that CFIT is normally associated with lack of situational awareness brought about by misinterpretation of the available cues or loss of some cues necessary for reacting correctly to flight circumstances.
26. He stated that the said investigations also revealed that the pilot who was strictly on visual flight rules and despite the deteriorating weather conditions continued to fly over the mau escarpment which had poor visibility. In this case the aircraft collided with a hill about 8,500 feet above sea level in a foggy area which the pilot could have avoided had he followed the visual flight rules.
27. DW3 said in cross examination that the purpose of the investigation done after the accident was not to blame anyone but for mitigation so as to avoid future similar accidents. He said the report was confidential.
28. DW3 said the pilot was qualified to undertake the flight and he had a valid CPL.
29. DW3 said the aircraft had an insurance which expired one month after the accident. However, the aircraft did not have a 3rd party cover.
30. DW4 John Kiragu Mwangi adopted his statement dated 28/5/2021 in which he stated he is the Chief Personnel Licensing Officer of the defendant. He indicated that the pilot Mr. Christoph Maria Schnerr who was involved in a fatal aircraft accident was a duly qualified Pilot who had met all the requirements for licencing for the USA Federal Aviation Authority (FAA) and had thus been issued with a Commercial Pilot Licence (CPL) by the said authority as far back as 5/12/2005, on the strength of which KCAA had processed his conversion documentation after he met all the applicable requirements and thus granted him a Kenyan CPL License in the year 2007.
31. DW4 said the pilot Christoph Maria Schnerr who was involved in the accident on 10/6/2008 had established from the record that he met all the requirements for licensing for the USA Federal Aviation Authority (FAA) and KCAA issued him with a Kenyan CPL in the year 2007 which was not an instrument rating which meant that he could only undertake visual flights.
32. In cross-examination, DW4 said the pilot was converting a licence issued in the USA dated 5/12/2005 in his application dated 10/5/2007.
33. DW4 was not aware whether the licence was renewed in USA before the pilot applied for a Kenyan licence. He said he had a valid licence when the accident occurred.



34. The parties filed written submissions as follows; the plaintiff submitted that the defendant being an authority established under the laws of Kenya had a duty for the management of aviation safety that could have prevented the occurrence of the aircraft accident that occurred on 10/6/2009 leading to the death of Lorna Chepkemai Laboso.
35. The plaintiff submitted that the pilot was not qualified to fly the aircraft bearing in mind that the Pilot's license was just converted from USA FAA CPL to Kenyan YK-5519-CL on 10th May 2007 and was never renewed as testified by DW4 in cross examination on 30th May, 2023 by Mr. Athuok.
36. Upon re-examination, DW4 testified that the pilot did not have an instrument rating at conversion and this affirms that the pilot had an invalid Commercial Pilot's License.
37. Further, that the defendant and/or its officers acted negligently by failing to properly license and monitor the subject crew, the pilot and aircraft. The Defendant allowed the operation of the Aircraft which had no insurance policy in respect of third party risks contrary to its mandate to ensure safety of the public contrary to the law.
38. It was therefore the submission of the plaintiff that the Defendants acted outside the law, secondly that they were negligent and reckless in the manner they acted and it's their acts and/ or omission that led to the occurrence of an aircraft accident Cessna 210E on 10/6/2008 that led to the loss of life of Hon. Lorna Laboso.
39. On damages the plaintiff submitted that were it not for the defendants negligent actions/or omission the accident would not have occurred leading to the loss of the plaintiff's sister-in-law, Hon Lorna Laboso. The plaintiff indicated that this action was brought on behalf of the dependants of the deceased. The deceased being unmarried, the dependants aforementioned fully depended on the deceased income and the untimely unexpected loss of life in the aircraft accident led to the suffering of the dependants.
40. Further, that her death has occasioned to loss of motherly love, support and care of Marco Kiprono and daughters support and care of Rebecca Chebet Laboso which translate into special and general damages. The fatal accident deprived the deceased of a substantial portion of her life-lease, occasioning loss and damage to her estate; and that her death was a sacrifice of professional capacity to earn for her family the means of support and livelihood on which account a prayer is made for general damages.
41. The plaintiff proposed that the defendant being liable of the aircraft accident should pay for the damages claimed by the Plaintiff as set out at page 5 of the Plaint. The Plaintiff claims a total sum of Kshs 785,000.00. The breakdown of this claim and the justification is as follows:-

Actual Loss

- a. Funeral Expenses -Kshs 750,000.00
 - b. Obtaining Letters of administration -Kshs 15,000.00
 - c. Post mortem charges -Kshs 20,000.00
- Total -Kshs 785,000.00

42. Further the plaintiff provided payment receipts of the hospital, school fees and school stationery he had supported Marco Kiprono Laboso the deceased's son during his school life which totaled to Kshs 889,365.20.



43. On loss of income and future salary loss the plaintiff submitted that the deceased earned Kshs 592,666.65 per month and a claim for travel and subsistence allowance for march 2008 in the sum of Kshs 71,538.00. The loss is the projected Gross Income salary that the deceased would have earned to save the Plaintiff's financial burden. The 5 years' term of the late Hon. Lorna Laboso projection as a Member of Parliament would have elapsed in March 2013 when the general elections were held summing up to 59 months from the time of the accident leading to Gross Income loss in the sum of Kshs 34,967,332.35 and loss of the Travel and Subsistence Allowance in the sum of Kshs 4,220,742.00.
44. The Plaintiff humbly claims and submits that the deceased being loved by the constituents would have served another 2 terms as a member of Parliament and/ or in the alternative, a possible governor of Bomet County leading to salary loss of another 120 months totaling to salary loss in the sum of Kshs 71,119,998.00 and loss for Travel and Subsistence Allowance in the sum of Kshs 8,584,560.00.
45. The defendants alternatively submitted that the plaintiff did not prove or establish through evidence any of the allegations made against it in the plaint dated 2/6/2009. The defendant contended that the said accident was occasioned by what is termed as: "Controlled Flight Into Terrain (CIFT)" due to the Pilot's lack of vertical situational awareness. It was further pleaded by KCAA that this was brought about by poor visibility coupled with unfavorable weather conditions which prevailed in the Kojonga Area of Narok District at the material time of the aircraft accident in question.
46. I have carefully considered the evidence adduced in this case together with the rival submissions.
47. I find that it is not in dispute that the accident involving aircraft No 5Y-BVE occurred on 10/6/2008 at Kojonga area in Narok in which the deceased herein perished together with all other occupants in the aircraft including the pilot who was also the operator of the aircraft.
48. The plaintiff substituted the original plaintiffs who died during the pendency of this suit.
49. It is the duty of the plaintiff to prove his case to the required standard in civil suits which is on a balance of probabilities.
50. The issues for determination in this case are as follows;
 - i. Whether the plaintiff has proved his case to the required standard.
 - ii. Whether the plaintiff is entitled to the remedies he is seeking against the defendant.
51. On the issue as to whether the plaintiff proved his case to the required standard, I find that there is no dispute that the accident in which the deceased perished occurred on 10/6/2008 when aircraft 5Y BVE crashed at Kojonga area in Narok District..
52. The plaintiff sued the Kenya Aviation Authority (KCAA) being a statutory body established in accordance with the *Civil Aviation Act* as the sole statutory regulatory body charged with the responsibility of controlling flights, aircraft worthiness, pilot and operator licencing and the control of the aviation industry in general alleging negligence in the carrying out of its duties.
53. The initial defendants were Sky Traders Limited and The Kenya Civil Aviation Authority (KCAA).
54. The KCAA filed a defence on 14/7/2009 denying the plaintiffs claim.
55. On 19/11/2015, the name of the Sky traders Limited was struck off and the evidence of Joyce Laboso (now deceased) was taken as the sole witness for the plaintiff.
56. The plaintiff herein substituted the first two plaintiffs who died during the pendency of this suit as administrators of the deceased.



57. This suit is filed on behalf of the son of the deceased who is the sole beneficiary of the estate of the deceased.
58. On 10/3/2020, the plaintiff herein substituted Joyce Cherono Laboso (Deceased).
59. The plaintiff's evidence as adduced by PW1 Joyce Cherono Laboso was that the deceased was aboard the aircraft registration No 5Y-BVE on 10/6/2008 when it crashed at Kojonga area in Narok district due to the negligence of the defendant.
60. The plaintiff's evidence was adduced by PW1 who was the 2nd plaintiff before she died during the pendency of this suit.
61. PW1 said the deceased was a passenger in aircraft 5Y-BE when it crashed at Kojonga area in Narok. She said the defendant was to blame for the accident.
62. The Accident Investigation Report was not produced in this case on the ground that Regulation 20(8) of the Aviation (Aircraft Accident and Incident Investigation Regulation, 2008 restricts the admission of such Reports in Court.
63. I find that it is not in dispute that the said accident was occasioned by what is termed as: "Controlled Flight Into Terrain (CIFT)" due to the Pilot's lack of vertical situational awareness. It was further pleaded by KCAA that this was brought about by poor visibility coupled with unfavorable weather conditions which prevailed in the Kojonga Area of Narok District at the material time of the aircraft accident in question.
64. It was the duty of the Defendant to ensure that the Aircraft was airworthy and the pilot was competent to fly it.
65. The defendant is a statutory body established under the *Civil Aviation Act* whose duties are stipulated under Section 7(1) of the Act as follows;

Functions of the Authority

1. The Authority shall be responsible for—
 - a. the licensing of air services;
 - b. the provision of air navigation services;
 - c. the establishment and maintenance of a system for the registration and the marking of civil aircraft;
 - d. securing sound development of the civil aviation industry in Kenya;
 - e. advising the Government on matters concerning civil aviation;
 - f. the co-ordination and direction of search and rescue services;
 - g. the facilitation and provision of all the necessary support for the aircraft accident and incident investigations conducted by the chief investigator;
 - h. carrying out investigations on incidents that are not classified as accidents and serious incidents;



- i. the safety, security, economic and technical regulation of civil aviation;
- j. dealing with incidents of unlawful interference with aviation security;
- k. deleted by Act No 42 of 2016, s. 5.;
- l. the certification of aircraft operators;
- m. enforcement of approved technical standards of aircraft;
- n. the licensing and monitoring of aeronautical personnel;
- o. the provision of technical services for the design, installation, and modification of electronic, radio and other equipment used in the provision of air navigation services;
- p. ensuring the integrity of the systems, equipment and facilities of the Authority;
- q. the issuance and dissemination of the publications referred to in this Act;
- r. the production of accurate, timely comprehensive and relevant air transport information for planning and decision making purposes;
- s. the approval, certification and licensing of aircraft maintenance organisations and regulation of aviation training institutions in Kenya;
- t. the establishment, management and operation of training institutions for the purposes of the Authority;
- u. the registration of rights and interests in aircraft;
- v. the planning, development and formulation of the airspace master plan for the safe and efficient utilization of Kenyan airspace;
- w. the establishment, co-ordination and maintenance of state aviation safety and security programmes;
- x. licensing, certification, registration and surveillance of aerodromes;
- y. certification and surveillance of air navigation service providers;
- z. licensing and certification of regulated agents;
- aa. implementing and enforcing the provisions of this Act, regulations and directives issued hereunder and treaties to which Kenya is a party;
- ab. taking measures to minimize, to the extent possible, any disturbance to the public and any adverse effect on the



environment from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation;

- ac. performing economic oversight of air services, protecting consumer rights, environment and ensuring fair trading practices;
- ad. giving effect to the Chicago Convention and other international agreements relating to civil aviation to which Kenya is party to; and
- ae. the performance of such other functions as may, from time to time, be conferred on it by the Cabinet Secretary or by any other written law.

66. The plaintiff's advocate submitted that according to the evidence of the defendant's witnesses the pilot's licence was converted from USA FAA CPL issued on 5/12/2005 to a Kenyan licence YK-5519CL on 10/5/2007.
67. Further that DW4 confirmed that the pilot's licence did not have instrument rating.
68. The defendant's defence was that the accident was caused by controlled flight into terrain (CFIT) due to the pilot's lack of vertical situational awareness.
69. The defendant's witnesses said the defendant was not to blame for the accident since it had properly played its statutory role and did not contribute to the accident.
70. However, there is evidence that the deceased applied to DW4 for conversion of a USA CPL licence no 3124807 dated 5/12/2005 and he was issued with a Kenyan licence No YK-551-CL without any confirmation that the pilot was competent to fly the Aircraft.
71. I also find that that aircraft was insured but it did not have a 3rd party cover contrary to Section 40(1) of The *Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020*.
72. I find that the defendant was negligent in issuing a conversion to the pilot without taking him through tests to ensure he was competent to fly the aircraft.
73. I also find that the defendant was negligent in allowing the registration of the aircraft without being in force a policy of insurance in respect of 3rd party risks.
74. I hold the defendant 100% liable in negligence.
75. I find that the plaintiff has proved on a balance of probabilities that the defendant was entirely to blame for the accident.
76. On the issue as to whether the plaintiff is entitled to the remedies he is seeking, I find that the answer is in the affirmative.
77. The plaintiff substituted the first two plaintiffs who died during the pendency of this suit as administrators of the deceased.
78. This suit is filed on behalf of the son of the deceased who is the sole beneficiary of the estate of the deceased.



79. The said sole beneficiary should be substituted before the award is settled if he has now attained the age of majority.
80. There is evidence that the deceased was 46 years old and a Member of Parliament of Sotik Constituency earning Kshs 592,666 per month.
81. The plaintiff submitted that the deceased would have served as Member of Parliament for two terms or be elected Governor.
82. However, I find that there was no guarantee that the deceased would have been re-elected. I find that term was to end in March 2013.
83. The deceased would have served for 4 more years.
84. I award damages as follows;
- i. General damages for pain & suffering Kshs 50,000
 - ii. General damages for loss of expectation of life Kshs 100,000
 - iii. General damages for loss of dependency Kshs 9,482,656
 $592,666 \times 12 \times 4 \times 1/3$
 - iv. Special damages Kshs 889,365
- Total Kshs 10,522,021

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
1ST DAY OF MARCH, 2024.**

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

