



**Wang’onde (Suing as the administratrix of the Estate of John Charles Wang’onde (Deceased) v Amadi & another (Civil Case 580 of 2007) [2024] KEHC 2648 (KLR) (Civ) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2648 (KLR)

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

**CIVIL**

**CIVIL CASE 580 OF 2007**

**CW MEOLI, J**

**MARCH 8, 2024**

**BETWEEN**

**FELICINA MUTHONI WANG’ONDU (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF JOHN CHARLES WANG’ONDU (DECEASED) ..... PLAINTIFF**

**AND**

**MOSES AMADI ..... 1<sup>ST</sup> DEFENDANT**

**JOHN MASINDE MAKOMERE ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Felicina Muthoni Wang’onde (hereafter the Plaintiff) instituted this suit in her capacity as administratrix of the estate of John Charles Wang’onde (hereafter the deceased), via a plaint dated 8<sup>th</sup> August 2007. She named two defendants, namely, Moses Amadi and John Masinde Makomere (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Defendants) and sought general damages, special damages in the sum of Kshs. 83,300/- arising out of a road traffic accident which claimed the life of the deceased.
2. The 1<sup>st</sup> Defendant was sued in his capacity as the driver and/or beneficial owner of the motor vehicle registration number KAN 039L (the subject motor vehicle) at all material times, whereas the 2<sup>nd</sup> Defendant was said to be the registered owner thereof, at all material times. It was alleged that on or about the 5<sup>th</sup> day of January, 2007 the deceased was lawfully walking along Moi Drive, Umoja Estate in Nairobi when the Defendants, whether by themselves or through their driver/agent, so negligently and recklessly drove, managed and or controlled the subject motor vehicle that it veered off the road and knocked down the deceased, and fatally injuring him. As particularized, the negligent acts alleged against the Defendants included:

**PARTICULARS OF NEGLIGENCE**



- a. Driving at an excessive speed in the circumstance;
  - b. Failing to adhere to road traffic rules;
  - c. Failing to have any regard to the presence of other road users who were on the said road;
  - d. Failing to stop, swerve, slow down or in any other manner manage or control the said motor vehicle or to steer the same properly or at all to avoid hitting the deceased;
  - e. Failing to have any and/or proper control of his vehicle;
  - f. Failing to keep a proper lookout or to see the Deceased in time to avoid the accident;
  - g. Driving without due care and attention.
  - h. Driving recklessly, carelessly, and dangerously. (sic)
3. It was further pleaded that at the time of his death, the deceased who was aged 53 years was in good health and worked as a businessman earning a monthly income of Kshs. 75,000/- , 2/3 of which was applied to family and related expenses. That the deceased has left behind the following dependants:
- a. Felicina Muthoni Wang'onde Wife
  - b. Joe Muchiri Wang'onde Son (aged 23 years)
  - c. Hilda Wangari Wang'onde Daughter (aged 18 years)
4. The 2<sup>nd</sup> Defendant in his defence statement denied the key averments in the plaint, liability as well as ownership of the subject motor vehicle. He averred that the 1<sup>st</sup> Defendant was not his driver and/or agent at any material time or at all, as alleged. He further averred in the alternative, that at the time of the accident, the ownership of the subject motor vehicle had changed, and it did not therefore belong to him in the material period.
5. The record shows that initially, the Plaintiff sought and was granted interlocutory judgment against the 1<sup>st</sup> Defendant on 23<sup>rd</sup> January 2008, in default of appearance defence. The suit thereafter proceeded against the 2<sup>nd</sup> Defendant, who testified in his defence following the Plaintiff's case. Aburili J, by her judgment delivered on 14<sup>th</sup> April 2016 found that no evidence had been tendered to support the Plaintiff's claim against the 2<sup>nd</sup> Defendant. Consequently, the learned Judge dismissed the suit against the aforesaid Defendant but entered a finding of liability against the 1<sup>st</sup> Defendant.
6. Subsequently, however, the 1<sup>st</sup> Defendant successfully applied to set aside the final judgment and was therefore granted leave to defend the suit. In his statement of defence, the 1<sup>st</sup> Defendant denied the key averments in the plaint and liability. In the alternative and without prejudice to the foregoing denials, he pleaded that if an accident did occur as alleged, then it was solely caused and/or substantially contributed to by negligence on the part of the deceased, as follows:
- a. Crossing the road at a place where it was not designated for pedestrians.
  - b. Walking in the middle of the road without any due regard to other road users and especially motor vehicle registration number KAN 039L.
  - c. Causing the accident.
  - d. Walking in the lane of motor vehicle registration number KAN 039L.
  - e. Failing to see motor vehicle registration number KAN 039L so as to avoid the accident.



- f. Failing to heed the hooting of motor vehicle registration number KAN 039L.
- g. Failing to obey the highway code. (sic)
7. That being the position, the suit proceeded between the Plaintiff and the 1<sup>st</sup> Defendant. The hearing of the suit commenced on 21<sup>st</sup> March 2022. The Plaintiff testifying as PW1 stated that she was the widow of the deceased. She adopted her witness statement dated 26<sup>th</sup> May, 2013 as her evidence-in-chief and her bundle of documents dated 8<sup>th</sup> January, 2008 which she produced as P. Exhibits 1-20.
8. During cross-examination, PW1 testified that the accident occurred at about 8.30pm and that she later visited the scene located on a road within Umoja estate. She confirmed the absence of a pedestrian crossing at the scene. It was her testimony that at the time of his death, the deceased was aged 53 years and in good health. That he worked as a merchant businessman and that the two (2) children left behind had become adults but were still living at their parent's home at the time of the accident. That the income earned by the deceased though regular varied from month to month and had continued to his death. It was also her testimony that she incurred various expenses towards the funeral of the deceased, for which she sought compensation.
9. In re-examination, the Plaintiff stated that part of the income earned by the deceased went towards household and family-related utilities.
10. Abraham Kamau ( PW2) similarly adopted his signed witness statement dated 26<sup>th</sup> May, 2013 as part of his evidence-in-chief. He then proceeded to testify that he was present at the scene of the accident on the material date and therefore witnessed the events that took place. It was his testimony that the subject motor vehicle knocked down the deceased while he was walking along the pavement, causing him serious injuries. The witness testified that the driver and conductor of the subject motor vehicle thereafter placed the deceased in the said vehicle under the claim that they were taking him to the hospital, but that when the witness later made a follow-up, he could not trace the deceased's whereabouts in any of the nearby hospitals. That prompted him to lodge a report with the local chief and thereafter, the local police station.
11. In cross-examination, the witness stated that he witnessed the accident from his grocery kiosk situated beside the road; that the deceased was on the side of the road; that the subject motor vehicle approached from a junction at a high speed; and that the vehicle proceeded to knock down the deceased who was standing on the pavement. That on the following day, some people, whom he later learned were the family members of the deceased, approached him inquiring about the accident.
12. During re-examination, PW2 restated his earlier evidence that the subject motor vehicle was moving at a high speed when it emerged from the junction, causing the accident involving the deceased. This marked the close of the Plaintiff's case.
13. The 1<sup>st</sup> Defendant testified as DW1. Adopting his signed witness statement dated 16<sup>th</sup> March, 2022 as his evidence -in-chief, he produced his bundle of documents of like date, as D. Exhibit 1&2.
14. In cross-examination, he stated that he was the owner of the subject motor vehicle as of the date of the accident and that he learned of the said accident from a traffic police officer. Admitting that he was not present at the scene of the accident he said he could not tell who was to blame for the accident. This marked the end of the hearing.
15. Parties subsequently filed submissions. The Plaintiff's counsel submitted liability and quantum of damages. On liability, he asserted that the evidence tendered at the trial supported the averment that the subject motor vehicle belonged to the 1<sup>st</sup> Defendant at all material times and hence he ought to



be found liable for the accident. On damages for lost dependency, counsel, reiterating the Plaintiff's evidence on the age and income of the deceased urged the court ought to apply a multiplier approach by tabulating the deceased's monthly income of Kshs. 75,000/- and a multiplier of 12 years and a dependency ratio of 2/3, as follows:

$$\text{Kshs. } 75,000 \times 12 \times 12 \times 2/3 = \text{Kshs. } 7,200,000/-$$

16. Concerning general damages for pain and suffering, and loss of expectation of life the sum of Kshs. 150,000/- was proposed under each head. Counsel citing the case of Stella Awinja and Another v Attorney General, HCCC 915 OF 1998 wherein the court awarded Kshs. 150,000/- for loss of expectation of life for a deceased aged 45 years. On specials, counsel submitted that the Plaintiff is entitled to the sum of Kshs. 83,300/- being pleaded and proved. Thus bringing the total award proposed to the sum of Kshs. 7,583,300/-.
17. The 1<sup>st</sup> Defendant's by submissions dated 30<sup>th</sup> November 2022 asserted that a finding of liability could only be entered against a defendant, where evidence was tendered to prove that the defendant was either the driver or owner of the accident motor vehicle. Citing the decisions in Evans Mogire Omwansa v Benard Otieno Omolo & another [2016] eKLR and Jane Wairumu Turanta v Githae John Vickery & 2 others [2013] eKLR in that regard. Asserting that the Plaintiff herein did not tender any credible evidence to prove that the 1<sup>st</sup> Defendant was at all material times in control of the subject motor vehicle, or to show that the subject motor vehicle was being driven by his agent at the material time, counsel contended that no finding of vicarious liability could be made against the 1<sup>st</sup> Defendant.
18. Regarding damages, it was counsel's argument that an award in the sum of Kshs. 20,000/- would suffice as damages for pain and suffering, relying on the decision in MMG (administrator of the estate of ZG-Deceased) v Muchemi Teresa [2015] eKLR. Regarding damages for loss of dependency, counsel urged the court to apply a global award rather than a multiplier approach, because the deceased's income was not proved decision. He relied on Albert Odawa v Gichimu Gichenji [2007] eKLR where a global award was made. He also contended that an award for lost dependency would amount to double compensation, citing the case of Hellen Waruguru Waweru v Kiarie Shoe Stores Limited [2014] eKLR. Concerning the prayer for special damages, counsel submitted that the Plaintiff is only entitled to the sum of Kshs. 36,000/- being the special damages both pleaded and proved. Overall, the court was consequently urged to dismiss the case against the 1<sup>st</sup> Defendant.
19. The court has considered the pleadings filed and the evidence tendered at the trial, as well as the rival submissions and authorities cited therein. The court proposes to deal with the issues liability and quantum sequentially.
20. On liability, Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
21. Moreover, as to the evidential burden of proof Sections 109 and 112 of the same Act stipulates that:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.



112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”

22. The abovementioned provisions were discussed in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, wherein the Court of Appeal held that:-

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

23. From the total evidence on record, an accident took place on the material date and at the place pleaded in the plaint, as a result of which the deceased lost his life. The Plaintiff tendered a copy of records in that respect, as P. Exhibit 18 (a) indicating that the 2<sup>nd</sup> Defendant was at all material times the registered owner of the subject motor vehicle. Nevertheless, the record shows that at the time of giving his evidence before Aburili J, the 2<sup>nd</sup> Defendant stated that the said motor vehicle did not belong to him at the time of the accident, as ownership had changed. In the end, the court absolved him of any liability in the suit.

24. The 1<sup>st</sup> Defendant, in his oral testimony admitted to being the owner of the subject motor vehicle at all material times. Moreover, the Plaintiff tendered the police abstract relating to the accident as P. Exhibit 1, listing the 1<sup>st</sup> defendant as the owner thereof. The Plaintiff similarly tendered as P. Exhibits 14 (a) and (b) being copies of the charge sheet and criminal proceedings in Makadara Traffic Case No. 2305 of 2007 to support the assertion that the 1<sup>st</sup> Defendant was indeed the owner of the subject motor vehicle as at the date of the accident in question. In the absence of any contrary evidence, and in light of the admissions by the 1<sup>st</sup> Defendant, the police abstract must be deemed to be conclusive proof of ownership.

25. The Court of Appeal in *Wellington Nganga Muthiora v Akamba Public Road Services Ltd & Another* (2010) eKLR (as cited in the case of *Lochab Transport (K) Limited & another v Daniel Kariuki Gichuki* [2016] eKLR) stated that:

“Where police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross-examination challenged it, the police abstract being a prima facie evidence not rebutted could be relied on as proof of ownership in the absence of anything else as proof in civil cases was within the standards of probability and not beyond reasonable doubt as is in criminal cases. However, where it was challenged by evidence or in cross-examination, the Plaintiff would need to produce certificate from the Registrar or any other proof such as an agreement for sale of the motor vehicle which would only be conclusive evidence in the absence of proof to the contrary”.



26. Moreover, the standard of proof in civil matters is a balance of probabilities, unlike the higher standard in criminal matters. The Court of Appeal discussed this principle in *Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another* [2015] eKLR:

“Denning J, in *Miller –vs- Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say;-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties... are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

27. The above settles the issue of ownership of the subject vehicle. Now to the issue of negligence. The Plaintiff's evidence was that the driver/agent of the 1<sup>st</sup> Defendant caused the material accident through his negligence, and that the 1<sup>st</sup> Defendant is therefore vicariously liable by virtue of his ownership of the subject motor vehicle. Her evidence was corroborated by that of PW2 who testified to have witnessed the occurrence of the accident. PW2's account of the accident was neither seriously challenged at the trial nor controverted by any evidence.

28. Where a defendant pleads contributory negligence on the part of a plaintiff or deceased person, he or she must adduce evidence to prove those specific acts of contributory negligence. Here no evidence was led to show that the deceased in any manner contributed to the accident. The Court of Appeal in *Embu Public Road Services Ltd v Riimi* [1968] EA 22 when it stated that:

“...where the circumstances of the accident give rise to the inference of negligence then the defendants, in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence or that the explanation for the accident was consistent only with an absence of negligence.”

29. In relation to the 1<sup>st</sup> Defendant's vicarious liability, the Plaintiff tendered the criminal trial proceedings (P. Exhibits 14 (a) and (b)) which confirmed that the 1<sup>st</sup> Defendant was charged in relation to the material accident with the offence of failing to keep a written record of drivers employed by him, contrary to Section 111 of the *Traffic Act*. The proceedings indicate that the 1<sup>st</sup> Defendant consequently pleaded guilty and was sentenced to a fine. The evidence of PW2 as to the occurrence of the accident was not controverted and it seemed that the 1<sup>st</sup> Defendant's position was that although he owned the subject vehicle, he had no connection with the driver.

30. The 1<sup>st</sup> Defendant's denials of knowledge of or connection to the driver of the subject motor vehicle on the material date, must be false in view of his plea of guilty in respect of the traffic charges preferred against him following the accident. The 1<sup>st</sup> Defendant was at all material times the owner of the subject motor vehicle and on the facts before the court, it is more plausible than not that the driver of the subject motor vehicle though unidentified was, if not the 1<sup>st</sup> Defendant himself, the 1<sup>st</sup> Defendant's employee, agent, or servant. Resultantly, the court is satisfied that negligence and vicarious liability have been proved against the 1<sup>st</sup> Defendant.



31. In *Tabitha Nduhi Kinyua v Francis Mutua Mbuvi & Another* [2014] eKLR the Court of Appeal observed that vicarious liability is not limited to employment relationships, citing *Messina Associated Carriers vs Kleinhaus* [2001] 3 ALL SA 285 (SCA), where it was stated:

“The law will permit the recovery of damages one person for delict committed by another where the relationship between them and the interest of the one in the conduct of the other is such as to render the situation analogous to that of an employee acting in the course and scope of his or her employment ... or where in the eye of the law the one was in the position of the owners servant.”
32. Consequently, the court finds the 1<sup>st</sup> Defendant wholly liable for the accident.
33. The court will now consider the matter of damages. Regarding general damages for pain and suffering, the evidence tendered demonstrates that while the accident occurred on or about the 5<sup>th</sup> of January 2007, the deceased died the following day as per the death certificate (P. Exhibit 11). The deceased must have experienced grave pain before his death. The respective sums of Kshs.150,000/ and Kshs. 20,000/- were suggested by the Plaintiff and the 1<sup>st</sup> Defendant respectively. The Defendant’s proposal of Kshs. 20,000/- is manifestly too low, while the Plaintiff’s proposal is on the higher side.
34. In the court’s view, considering the suffering of the deceased over two days since the accident, and upon factoring the rate of inflation, an award of Kshs.100,000/- appears reasonable as damages for pain and suffering. See *F M M & another v Joseph Njuguna Kuria & another* [2016] eKLR and the case of *Mosonik & another v Cheruiyot* (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) (Civil Appeal 113 of 2019) [2022] KEHC 11823 (KLR) (29 July 2022) .
35. Regarding general damages for loss of expectation of life, the evidence on record shows that the deceased died aged 53 years. There is nothing to indicate that he was in ill health. The courts have over time granted a conventional sum of Kshs.100,000/ under this head. Upon considering the cases of *Mumias Sugar Company Limited v Henry Olukokolo Ashuma* (suing as the legal representative in the estate of Patrick Kweyu Ashuma (Deceased) & another [2018] eKLR and *Caleb Juma Nyabuto v Evance Otieno Magaka & another* [2021] eKLR the court is convinced that a similar award of Kshs.100,000/ would constitute adequate damages for loss of expectation of life.
36. Concerning general damages for lost dependency, the death certificate (P. Exhibit 11) indicates that the deceased died at the age of 53 years. He left a widow, the Plaintiff, and two (2) children, the latter who were both young adults according to birth certificates (P. Exhibits 15 (a) and (b)). The Plaintiff further produced the Certificate of Registration issued on 27<sup>th</sup> July 1994 (P. Exhibit 16) in respect of the business name ‘Wamu Commercial Enterprises’ in support of testimony that the deceased operated a business prior to his death.
37. Be that as it may, the court, upon examining the statement of accounts pertaining to the business tendered as P. Exhibits 17, could not ascertain the monthly earnings of the deceased. Although the deceased may have earned some income from his business, the legal principle is that where earnings cannot be ascertained with accuracy, the court can apply the global approach in assessing damages under this head. The court has considered the case of *Nzioka* (Suing on her own behalf and as Administrator of the Estate of Gideon Mwanthi Nguyo - Deceased) v *Mwangangi & another* (Civil Appeal 283 of 2021) [2022] KEHC 15711 (KLR) (Civ) (28 November 2022) (Judgment) where the court upheld a global award made in the sum of Kshs. 1,500,000/- to the estate of a deceased person aged 53 years.



38. Here, it seems that the deceased operated a business and supported his family from the income generated therefrom. In the circumstances, an improved award of Kshs. 2,500,000/- under this head would be adequate as damages for lost dependency. The question of double compensation as raised by the 1<sup>st</sup> Defendant’s counsel in submission does not arise here. The whole counsel of the decision in *Hellen Waruguru Waweru v Kiarie Shoe Stores Limited* (2015) eKLR, as I understand it, was not that a beneficiary was not entitled to claim damages under both the [Law Reform Act](#) and the [Fatal Accidents Act](#), as represented by the 1<sup>st</sup> Defendant.
39. What the Court of Appeal stated is that:
- “Duplication occurs when the beneficiaries of the deceased’s estate under the [Law Reform Act](#) and dependants under the [Fatal Accidents Act](#) are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the [Fatal Accidents Act](#) should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the [Law Reform Act](#), hence the issue of duplication does not arise...”
40. Earlier, the Court of Appeal in *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another* (No 2) [1985] eKLR held that:
- “In my view what section 2(5) of the [Law Reform Act](#) means is that a party entitled to sue under the [Fatal Accidents Act](#) still has the right to sue under the [Law Reform Act](#) in respect of the same death. To be taken into account and to be deducted are two different things. The words used in s. 4(2) of the [Fatal Accidents Act](#) are “taken into account”. The section says what should not be taken into account and not necessarily deducted...There is no requirement in law or otherwise for him to engage in a mathematical deduction...”
41. Flowing from the foregoing, the 1<sup>st</sup> Respondent’s objection is without basis; the Plaintiff was lawfully entitled to seek general damages under both the [Law Reform Act](#) and the [Fatal Accidents Act](#), and there was no requirement for any deductions to be made from the total award.
42. Turning now to special damages, these must be specifically pleaded and strictly proved, as reaffirmed by the Court of Appeal in *David Bageine v Martin Bundi* [1997] eKLR:
- “It has been held time and again by this Court that special damages must be pleaded and strictly proved. We refer to the remarks by this Court in the case of *Mariam Maghema Ali v. Jackson M. Nyambu t/a Sisera store*, Civil Appeal No. 5 of 1990 (unreported) and *Idi Ayub Sahbani v. City Council of Nairobi* (1982-88) IKAR 681 at page 684:
- “... special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard C.J. in *Bonham Carter vs. Hyde Part Hotel Limited* [1948] 64 TLR 177 thus;
- “Plaintiff must understand that if they bring actions for damages, it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, ‘this is what I have lost, I ask you to give me these damages, ‘They have to prove it.’”
43. The special damages sought in this instance are primarily with respect to funeral and related expenses, allegedly incurred following the death of the deceased. The relevant receipts tendered are as follows:



| Plaintiff Exhibits | Receipt  | Amount in Kshs.                                     |
|--------------------|--|---|
| 2 (a); and 2 (b)   | Dated 17 <sup>th</sup> January, 2007 and 22 <sup>nd</sup> January, 2007 and issued in respect of the police abstract | 200/-<br>200/-                                      |
| 4 (b)              | Post-mortem receipt, dated 19 <sup>th</sup> January, 2007  | 2,500/-   |
| 5 (a), (b) and (c) | Media house receipts for funeral announcements   | 12,000/-<br>2,130/-<br>1,950/-                      |
| 6 (d)              | Dated 10 <sup>th</sup> January, 2007 for funeral expenses  | 500/-   |
| 7 (a) and (b)      | Dated 9 <sup>th</sup> January, 2007 and 10 <sup>th</sup> January, 2007, issued by Nairobi City Mortuary              | 3,000/-<br>1,400/-                                  |
| 8                  | Dated 12 <sup>th</sup> January, 2007, issued by Mastraw Funeral Services   | 8,500/-   |
| 9                  | 3 receipts, one dated 10 <sup>th</sup> January, 2007 and two dated 11 <sup>th</sup> January, 2007                    | 9,000/-<br>10,000/-<br>10,000/-                     |
| 13                 | Various receipts pertaining to legal fees, issued by Igeria & Ngugi Advocates  | 1,500/-<br>5,000/-<br>4,000/-<br>8,000/-<br>5,000/- |
| 18 (b)             | Dated 19 <sup>th</sup> January, 2007 for the copy of records   | 500/-   |
| Total              | 85,380/-   |   |

44. Although the sum proved was evidently slightly higher, the sum pleaded was Kshs. 83,300/- and is the sum awardable.

45. Consequently, judgment is hereby entered in favour of the Plaintiff and against the 1<sup>st</sup> Defendant as follows:

Liability 100%



- a. General damages
  - Pain and suffering Kshs.100,000/-
  - Loss of expectation of life Kshs.100,000/-
  - Loss of dependency Kshs. 2,500,000/-
- b. Special damages Kshs.83,300/-
  - Total - Kshs.2,783,300/- (Shillings Two Million Seven Hundred and Eighty-Three Thousand, Three Hundred).

46. The Plaintiff is also awarded the costs of the suit and interest.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF MARCH 2024.**

**C.MEOLI**

**JUDGE**

**In the presence of:**

For the Plaintiff: Ms. Wamuyu

For the Defendant: N/A

C/A: Carol

