



REPUBLIC OF KENYA



**Njuguna v Oseko & another (Civil Appeal E010 of 2022)  
[2024] KEHC 5656 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL E010 OF 2022**

**F GIKONYO, J  
MAY 21, 2024**

**BETWEEN**

**PETER MUCHAI NJUGUNA ..... APPELLANT**

**AND**

**EZEKUEK OSEKO ..... 1<sup>ST</sup> RESPONDENT**

**LABAN NYANGARORA OBACHI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Appeal on quantum**

1. The appellant claims that general damages awarded for pain and suffering, and loss of dependency, were insufficient in the circumstances of the case, and that, the trial court erred in failing to award special damages as prayed for, yet, the suit was unopposed, and therefore, the special damages were uncontroverted. He cited the case of Francis Odhiambo Nyunja & 2 others vs. Josephine Malala to the effect that, families of the bereaved are not expected to be concerned with issues of record-keeping when their primary concern is to bury their kin.
2. The appellant's argument seems to suggest that, the trial court, was under a peremptory command to award the claim for special damages as prayed for because the suit was not defended making the claim for special damages uncontroverted.
3. This argument raises important issue on proof of special damages, and the essence of formal proof.
4. Whilst, special damages must not only be specifically pleaded but also strictly proved, what amounts to strict proof depends on the circumstances of the case, that is to say, the character of the acts producing damage, and the circumstances under which those acts were done. See Nizar Virani T/A Kisumu Beach Resort vs. Phoenix of East Africa Assurance Company Limited Civil Appeal No. 88 of 2002 [2004] 2 KLR 269, Gulhamid Mohamedali Jivanji vs. Sanyo Electrical Company Limited Civil Appeal No.



225 of 2001 [2003] KLR 425; [2003] 1 EA 98, *Coast Bus Service Ltd vs. Sisco E. Murunga Ndanyi & 2 Others* Civil Appeal No. 192 of 1992.

5. See also the Court of Appeal in *Jackson K Kiptoo vs. The Hon Attorney General* [2009] KLR 657 that:

“The court is conscious that the degree of certainty and particularity of proof required depends on the circumstances and the nature of acts complained of.”

6. More indents. In *Hahn vs. Singh*, Civil Appeal No. 42 of 1983 [185] KLR 716, the Court of Appeal held that of strict proof of special damages;

“...The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

7. Judicial authorities are agreed that, the degree of certainty and particularity of proof required in strict proof for special damages, depends on the circumstances and nature of the acts themselves.

8. This is the rationale and basis for assessment of burial expenses as special damages. See *Francis Odhiambo Nyunja & 2 others vs. Josephine Malala* (supra).

9. But, the determination of the degree of certainty and particularity of proof required is not by arbitrary judicial discretion or judicial fiat as to allow astronomical special award.

10. The court makes a conscientious decision guided by best judgment values drawing upon the circumstances of the case and the nature of acts complained of.

11. Applying the test, in claims for damages for personal injuries, the claimant must, prove of special damages within these precincts of the law, whether the suit is defended or not defended. This is the essence of formal proof procedure.

12. Burial expenses were stated in the plaint to be at Kshs. 120,000. The trial court, relying on various authorities on the subject, considered Kshs. 80,000 to be reasonable for, and awarded it as funeral expenses.

13. The trial court was not under a peremptory command to award the claim for special damages as prayed for because the suit was not defended. The trial court was guided by best judgment values and the circumstances of the case, in awarding burial expenses. There was therefore, no error in principle committed by the trial court in the assessment of burial expenses. The ground fails.

14. On pain and suffering, the appellant claims that a sum of Kshs. 20,000 was inordinately low as the deceased died several hours after the accident. His argument is pegged on the date of post-mortem as evidence that the deceased died several hours after the accident.

15. There is no proof of the claims by the appellant or that the award is unreasonable. There is therefore, no reason to interfere with the discretion by the trial court. The ground is unsuccessful.

16. Of loss of dependency; the appellant claims an award of Kshs. 1,213,600 based on the age of the deceased.

17. Multiplier method of calculating loss of dependency is not to be applied in all cases and circumstances.

18. Ringera J (as he then was) in the case of *Kwanzia Vs Ngalali Mutua & another* stated that:

“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 facts do not facilitate its application. It



is plain that it is a useful and practical method where factors such as 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.’

19. Dependency is, therefore, a matter of factual proof through evidence.
20. Nothing in this case compels application of the multiplier method in the assessment of loss of dependency. There is also no error in principle committed by the trial court in awarding a global sum in loss of dependency.
21. Thus, the ground fails.
22. The appellant is satisfied with the award on loss of expectation of life.
23. In sum, therefore, the appeal is unsuccessful, and is dismissed with no order as to costs on the appeal.
24. Orders accordingly.

**DATED AND SIGNED AT NAROK THROUGH TEAMS’ ONLINE APPLICATION THIS 21<sup>ST</sup> DAY OF MAY, 2024.**

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**F. GIKONYO M.**

**JUDGE**

In the presence of : -

Moragia for appellant

N/A for respondent

Otolo C/A

