



**Monda v Suji & another (Suing as the Legal Representatives of
the Estate of Mathew Okello Ombonya Deceased) (Civil Appeal
E032 of 2022) [2023] KEHC 2778 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E032 OF 2022
RE ABURILI, J
MARCH 22, 2023**

BETWEEN

HARON KAMAU MONDA APPELLANT

AND

**GEORGE OUMA SUJI & PERES OMOLE SUJE (SUING AS THE LEGAL
REPRESENTATIVES OF THE ESTATE OF MATHEW OKELLO OMBONYA
DECEASED) RESPONDENT**

*(An appeal arising out of the judgement and decree of the Honourable Margaret Wambani in the
Chief Magistrate's Court at Siaya delivered on the 7th July 2022 in Siaya CMCC No. 85 of 2018)*

JUDGMENT

Introduction

1. This appeal arises from the Judgment and decree of Hon Margaret Wambani, Chief Magistrate in Siaya CMCC No 85 of 2022 delivered on the July 7, 2022 in Siaya CMCC No 85 of 2018. A brief background of the case is that the respondents sued the appellant for general damages under the [Law Reform Act](#) and the [Fatal Accidents Act](#), special damages, costs of the suit and interest at court rates following a fatal road accident involving the deceased Mathew Okello Ombonya on the 26/9/2017 when the deceased who was riding his motorcycle was knocked down by a vehicle belonging to the appellant that was allegedly driven negligently, carelessly and recklessly.
2. In his defence, the appellant herein who was the defendant in the lower court denied the occurrence of the accident and put the plaintiffs/ respondents to strict proof claiming that the accident was due to the negligence of the deceased.



3. The trial magistrate after hearing the case, found that the respondents had proved their case against the appellant herein and entered judgment on liability against him at 100% and assessed damages payable by the appellant in favour of the respondents.
4. Aaggrieved by the decision of the Trial Court, the appellant filed this appeal vide the Memorandum of Appeal dated July 29, 2022, which raising the following grounds of appeal:
 - i. The learned trial magistrate erred in fact and in law by apportioning 100% liability to the appellant (defendant) despite the respondent (deceased) being entirely to blame for the accident.
 - ii. That the learned trial magistrate erred in fact and in law by apportioning 100% liability to the appellant (defendant) by disregarding the evidence of the defence witness, the driver who entirely blamed the respondent (deceased) for the accident.
 - iii. That the learned trial magistrate erred in law and in fact in finding favour of the respondent (deceased) against the appellant (defendant) when there was totally no credible evidence of proof of negligence on the part of the appellant (defendant).
 - iv. That the learned trial magistrate erred in law and in fact by adopting a multiplicand of 22 years which was excessive and without taking into consideration vicissitudes and vagaries of life.
 - v. That the learned trial magistrate erred in law and in fact in awarding pain and suffering of Kshs 30,000 despite the deceased having died instantly after the accident, an award which was excessive.
 - vi. That the learned trial magistrate's exercise of discretion in assessment of quantum was injudicious.
 - vii. That the learned trial magistrate erred in fact and in law in failing to consider the appellant's submissions on both liability and quantum by completely disregarding the submissions and authorities of the appellant and as a result arrived in unjustified decision on quantum.
5. The appeal herein was canvassed by way of written submissions.

The Appellant's Submissions

6. On behalf of the appellant, it was submitted that the accident did not occur as narrated by the respondents but rather as testified by the appellant's driver DW1, and that it was the deceased who veered his motorcycle onto the lane of the appellant's driver. It was further submitted that furthermore, the investigating officer was not called to testify on the circumstances of the accident as they would have been able to shed more light on the accident.
7. It was also submitted that the riding license of the deceased was not produced as evidence and thus the deceased's competence was questionable.
8. The appellant's counsel submitted that the respondents failed to discharge the burden of proof and further that the respondents failed to call an investigating officer to corroborate allegations of negligence on the appellant's part.



9. On the award for pain and suffering, it was submitted that the same was excessive as the deceased died immediately on the same day and did not undergo much pain prior to succumbing. Further, that an award of Kshs 10,000 would be adequate compensations as was held in the case of *Julius Ngobito Muriungi v John Gichunuku Mairoki* [2021] eKLR where the deceased died immediately after the accident and was awarded Kshs 10,000.
10. On loss of expectation of life, the appellant's counsel submitted that the deceased died aged 38 years old and that there was no evidence to show that he was in perfect health at the time of the accident. They submitted that an award of Kshs 50,000 would be sufficient under this head and relied on the case of *Midland Media Limited & another v Pauline Naukot Aule (Suing as the Legal Representative of the Estate of the Late Esinyon Esokon Ekai)* [2020] eKLR.
11. On the claim for loss of dependency, the appellant's counsel submitted that no documentation was filed by the respondents to prove that indeed the deceased earned Kshs 1000 per day out of his riding or that he had any other source of income or that he even had a riding license.
12. It was further submitted that there was no proof of dependants to the deceased's estate or that the aforementioned dependants were entitled to $\frac{1}{4}$ of the amount due. It was submitted that the deceased was an unskilled worker and that according to Legal Notice No 196 on *Regulation of Wages (General) (Amendment) Legal Amendment Order 2015*, the basic minimum consolidated wage for unskilled employee was Kshs 5436.90 per month. The appellant's counsel proposed an award of Kshs 114,174.90 for loss of dependency calculated as $5,436.90 \times 12 \times 7 \times \frac{1}{4} = 114,174.90$
13. The appellant's counsel submitted that the general damages awarded under the *Law Reform Act* ought to be deducted from the total award in order to avoid duplication as the deceased's beneficiaries under the *Law Reform Act* and Fatal Accident's Act were the same hence the proposal that the respondent be awarded a net award of Kshs 114,174.90.

The Respondents' Submissions

14. On liability, it was submitted counsel for the respondents submitted that the testimony of DW1 ought to be treated as that of one who is shifting blame as it was impossible for DW1 and the deceased to collide on the left side if they were moving in opposite directions as it was their right sides that were next to each other and the fact that the deceased was knocked by DW1's left side indicates that it was DW1 who veered off from his side of the road.
15. The respondents' counsel submitted that they had discharged their burden of proof to the required standard and therefore trial court was right in holding the appellant 100% liable.
16. On the multiplier adopted by the trial court, the respondents' counsel submitted that the deceased having been engaged in employment that had no fixed retirement age, the trial court was right in adopting a multiplier of 22 years having taken into account the vagaries of life.
17. Regarding the award of Kshs 30,000 for pain and suffering, it was submitted that the court ought not to interfere with a trial court's discretion in awarding damages merely because it would award a different figure as was held in the case of *Butt v Khan* 1981 KLR.
18. The respondents' counsel submitted that the deceased must have endured a lot of pain prior to his death as was evident from the PEx 5 that provided that the deceased's cause of death was severe brain injury/severe head injury due to road traffic accident. Reliance was placed on the cases of *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR where the court awarded Kshs 50,000 for pain and suffering where the deceased died on the spot and the case of *West Kenya Sugar Co. Limited v*



Philip Sumba Jalaya (Suing as the administrator and personal representative of the estate of James Jalaya Sumba [2019] eKLR where an award of Kshs 30,000 was deemed not excessive for a deceased who died on the spot.

19. It was submitted that the deceased's health condition was never challenged during the trial and that his cause of death was found to be road traffic accident. The respondents submitted that an award of Kshs 100,000 by the trial court for loss of expectation of life was correct as was held in the case of *Hyder Nthenya Musili & Another v China Wu Yi Limited & another* [2017] eKLR.
20. The respondents submitted that they adduced evidence that the deceased was married specifically a chief's letter produced by PW1 as PEx 4 and further that given the nature of the deceased's business, as a bodaboda rider, it was not expected that the deceased had records of his daily or even monthly earnings. It was therefore submitted that an award under this head ought to be calculated as follows:

$$5,844.20 \times 12 \times 22 \times 2/3 = \text{Kshs } 1,028,579.20$$

21. Regarding the issue of double compensation, the respondents relied on the case of *Kemfro Africa Ltd t/a Meru Express Services 1976 & another v Lubia & another* where it was held inter alia that there is no requirement in law or otherwise for a court to engage in a mathematical deduction where it is shown that the trial judge bore in mind or considered what he had awarded under the *Law Reform Act* for the non-pecuniary loss.
22. The respondents submitted that the trial court considered each party's submissions and further made reference to the circumstances of the case as well as being guided by the authorities from the superior courts that were binding on her and could therefore not have been faulted for disregarding a party's submissions or authorities.

Analysis and Determination

23. I have considered the pleadings before the trial court, the evidence adduced and the submissions as well as the judgment of the trial court, grounds of appeal herein as well as the parties' written submissions. The issue for determination in this appeal is whether the respondents proved their case against the appellant in the lower court on liability and whether the quantum of damages as assessed was inordinately high in the circumstances of the case.
24. This being the first appeal, it is this court's duty under Section 78 of the *Civil Procedure Act* to re-evaluate the evidence tendered before the trial court and arrive at its own independent conclusion taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123 cited by the appellants where Sir Clement De Lestang (V.P) stated that:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”



25. Revisiting the evidence adduced before the lower court, PW1 testified that he was the deceased's father. He adopted his witness statement dated 17/9/2019 in which he had stated that on the 26/9/2017, he received a phone call that his son had been involved in a Road Traffic Accident and had died on the same day. He testified that prior to his death, the deceased was a bodaboda operator earning an average of Kshs 1,000 per day enjoying good health. In cross-examination, PW1 stated that he did not have any document showing how much the deceased earned. He further stated that the deceased's wife ran away before he died.
26. PW2 Rose Awino Akuku also adopted her witness statement dated 17/9/2018 in which she stated that she witnessed the accident. She testified that she used to reside at Yala Centre so she could walk to and from work daily. It was her testimony that on the 26/9/2017 at about 8.30pm, she was walking from a teacher's house near Nyamnina Secondary School to Yala Centre towards Kisumu direction when a motor vehicle registration number KBP 780V christened Transline passed her being driven from Busia towards Kisumu.
27. She testified that at Mukhokho area, the aforesaid motor vehicle tried to overtake a vehicle ahead of it when it swerved off its correct lane and collided with an on-coming motor cycle registration number KMDY 985P and the rider fell on the left side of the road. PW2 testified that she knew the deceased who used to carry her to and from work at times. In cross-examination, PW2 stated that the bus did not hoot. She further stated that she was not on the list of witnesses in the police abstract.
28. DW1, the appellant's driver adopted his witness statement dated November 22, 2018 in which he stated that the accident occurred because the deceased came onto his lawful left side of the road and hit him on the frontal left side. It was his testimony that he was not charged with a traffic offence and that he had been driving for 20 years.
29. In cross-examination, DW1 stated that the deceased was riding at a very high speed and that he veered onto his lane and hit DW1's left side bumper and windscreen. He denied causing the deceased's death.
30. From the evidence adduced, there is no doubt that an accident occurred involving the deceased and the appellant's motor vehicle at the place and along the road as pleaded. The police abstract report produced by the respondents in support of their case indicated that the accident was pending under investigations. The two parties involved in the accident blame each other for causing the said accident. In her judgement, the trial magistrate found that the respondents had proved on a balance of probabilities that the appellant was wholly to blame for the accident.
31. The Court of Appeal in *Micheal Hubert Kloss & Another v David Seroney & 5 others* [2009] eKLR:

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley v Gypsum Mines Ltd* (2) (1953) A.C. 663 at p. 681 as follows:

‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper



to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...”

32. In this case, PW2’s uncontroverted testimony was that she saw the accident first hand as she was facing the accident scene ahead of her and that the appellant’s driver was overtaking another motor vehicle ahead of him when he knocked the deceased who was riding a motorcycle on his-the deceased’s side of the road as per the rule of the road of keeping left unless overtaking. In his testimony, DW1 testified that the deceased veered onto the lane of DW1 and hit the motor vehicle on the left side.

33. PW2’s testimony remained uncontroverted. In my view DW1’s testimony is not consistent at all. This is so because if at all the deceased was the one who hit him, then the first point of contact would have been the motor vehicle’s right side as this was the side that was closer to impact on the deceased and not the left side that he testified was the point of impact especially considering that DW1 and the deceased were going the opposite directions.

34. In *Masembe v Sugar Corporation and another* [2002] 2 EA 434, it was held that:

“When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his car at any time to avoid anything he sees after he has seen it... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object.”

35. Further, in the case of *Mary Njeri Murigi v Peter Macharia & another* [2016] eKLR, this court expressed itself thus;

“A person who is driving a vehicle is under a duty of care to other road users. The vehicle is a lethal weapon and due care is expected of the driver who is in control thereof.”

36. The evidence adduced before the trial court pointed to the appellant’s driver being the one who strayed from his lane and ended up colliding with the deceased when DW1 was overtaking another motor vehicle ahead of him. I find that evidence was not controverted even in cross examination. The driver was the instigator of the accident. Even if the deceased lacked all the safety gear (helmet) as claimed by the appellant before this court and not before the trial court, he would not collide with the motor vehicle had the appellant’s driver not overtaken without regard to the safety of other road users.

37. In *Khambi and another v Mahithi and another* [1968] EA 70, it was held that:

“It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.”

38. The above position was upheld in the case of *Rentco East Africa Limited v Dominic Mutua Ngonzi* [2021] eKLR where the court stated that apportionment of blame represents an exercise of a discretion with which the appellate court will interfere only when it is clearly wrong, or based on no evidence or on the application of a wrong principle.



39. The respondents' witness PW2 adduced uncontroverted evidence that she saw the accident take place and that the driver of the motor vehicle as overtaking another vehicle ahead of him when he knocked the deceased who was riding his motor cycle from the opposite direction. The evidence by the driver of the accident motor vehicle on behalf of the appellant was inconsistent as stated above. I find no evidence to show that the deceased ought to shoulder some blame for the accident. Additionally, this court has not been shown that the trial magistrate wrongly exercised her discretion when apportioning liability or based her finding on liability on no evidence or the wrong principle.
40. In the circumstances, I find that there was sufficient evidence that the appellant failed in his expectation as a reasonable driver and therefore he cannot be absolved from liability in the causation of the accident and fatal injury to the deceased. I thus decline to interfere with the trial court's decision regarding liability. I dismiss the appellant's grounds of appeal on liability and uphold the trial court's finding of liability against the appellant at 100%.
41. On quantum, an award on damages is a discretionary matter to be applied judiciously by a trial court. Being a discretionary matter, it is now well settled that an appellate court will not ordinarily interfere with the findings of a trial court on an award of damages unless it can be shown that the court proceeded on wrong principles, or misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low (see *Butt v Khan* [1981] KLR 349).
42. In the case of *Kemfro Africa Ltd T/A Meru Express Services & Gathogo Kanini v Aziri Kamau Musika Lubia & another* (Nbi C.A No 21 of 1984), the Court of Appeal laid out the following guiding principles:
- “The principles to be applied by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must have been a wholly erroneous estimate of the damages.”
43. The above decision was premised on the fact that damages must be commensurate with injuries and should not appear like it is greater or conferring a benefit to a party over the injuries suffered. Similarly, in *Amos Wenyere & another v Ashford Muriithi Muregi & 2 others* [2017] eKLR it was stated that:
- “It is now a settled position that an award of damages is a matter of discretion on the part of the court seized of the matter and as in all discretionary matters the same is exercised judiciously depending on circumstances of each case but the guiding factor in regard to quantum of damages is that it should not be either too low to amount to an injustice or too high to amount to unjust enrichment of the victim. Damages should as matter of law compensate the victim and restore him or her to as much as possible to the position he/she was prior to the accident”.
44. There is no dispute that the Deceased suffered fatal injuries and died on the spot. In the case of *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR where the deceased had died immediately after the accident and the trial court had awarded Kshs 50,000/= for pain and suffering, Majanja J. stated as follows;
- “(5) On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and



fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable."

45. In this case, the deceased died on the spot following the material accident and this is as per the postmortem report dated October 30, 2017. In view of the foregoing, albeit the deceased must have suffered pain before death, as the decisions give a range of awards between 10,000 to kshs 100,000, I find the award of kshs 20,000 to be sufficient in the circumstances, I set aside the award of kshs 30,000 and substitute it with an award of kshs 20,000.
46. On the claim for loss of expectation of life, the appellant submitted in support of the grounds of appeal that the sum of Kshs 100,000 awarded by the trial court was manifestly high. They proposed an amount of Kshs 50,000. In the case of *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another* (Suing as the legal Administrator of the Estate of the late Robert Mwangi) [2019]e KLR the Court observed that: -

"The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000/- while for pain and suffering the awards range from Kshs 10,000/= to Kshs 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death."

I find that the award of kshs 100,000 was not inordinately high since the same is within the range stipulated in many decisions.

47. On the issue of the multiplicand, the appellant's counsel submitted that there was no prove of the deceased's occupation. However, the use of documentary evidence is not the only way to prove the profession of a person. PW1 testified that the deceased was a motorcycle rider earning a salary of Kshs 1,000 per day whereas the appellant testified that the deceased was not in any gainful employment nor was he a skilled professional and that the same ought to be based on the minimum consolidated wage for unskilled employee of Kshs 5,436.90
48. The trial court recognized the fact that there was no documentary evidence to prove the actual earnings that the deceased was receiving and adopted the minimum monthly wage of a sum of Kshs 5,844.20 pursuant to legal notice No 117 of 2015.
49. This situation was similar to the decision of the Court of Appeal in *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR where the Court stated that:

"We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things. In this case, the evidence of the respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed."



50. The appellant also contended that the multiplier of 22 years as adopted by the trial court was excessive. In the *Board of Governors of Kangubiri Girls High School & another v Jane Wanjiku & another* NYR CA Civil Appeal No 35 of 2014 [2014] eKLR, the Court of Appeal adopted the findings by Nambuye, J.A in *Cornelia Eliane Wamba v Shreeji Enterprises Ltd. & others*- H.C.C.C No 754 of 2005 where it was stated that,

“The choice of a multiplier is a matter of the courts discretion which discretion has to be exercised judiciously with a reason.”

51. In this case, the trial court assumed that the deceased would have worked until 60 years which is the current retirement age in Kenya. Taking into consideration the nature of work that the deceased was engaged in and also considering the vagaries of life, I disagree with the trial court’s findings. This is because the trial court gave maximum of the remainder of the formal working life of the deceased who was engaged in very risky endeavours of being on the road daily and therefore the probability that he would work until 60 years without any harm cannot be 100%. She did not from the court record, take into account the vicissitudes of life. In my view, a multiplier of 14 years would be sufficient and reasonable in the circumstances. I set aside the multiplier of 22 years and substitute the same with 14 years. My finding is fortified by the decision in the case of *Nicholas Nyagwenchi Miyogo Joseph v James Nyakundi Nyamari & 2 others* [2019] eKLR, where Ougo J persuasively, upheld the multiplier of 30 years in the case where the deceased a motorcycle rider died aged 22 years, taking into account the vagaries and uncertainties of life. The learned Judge stated as follows and I agree:

“Regarding the multiplier, it was established that the deceased died aged 22 years. This fact was supported by the oral evidence of the deceased’s mother and backed by a copy of the certificate of death which was produced as evidence of the court. Taking the conventional retirement age of 60 years, the trial court adopted a multiplier of 30 years, which I cannot fault as this takes into account the vagaries and uncertainties of life.

52. On the multiplicand, I find that 2/3 of the dependency ratio was reasonable as there was evidence adduced of dependants of the deceased. Therefore, the total loss of dependency is kshs 5,436.90x 12x14x2/3=608,932.80.

53. The appellant also raised the issue of double compensation and called upon this court to deduct the award from the *law reform Act*. In disagreeing with the sentiments of the appellants I would rely on the court of appeal case of *Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited* [2015] eKLR where Waki, Nambuye & Kiage, JJA held that:

“This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; 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.”

54. In view of the above holding, I find that there is no legal requirement for the court to deduct the amount awarded under the *Law Reform Act* from the award made under the *Fatal Accidents Act*. The argument by the advocate for the appellant on the issue does not, therefore, hold. It is dismissed.



55. On special damages, the respondent pleaded for Kshs 33,130 but produced receipts for legal fees for filing of a limited grant in the sum of Kshs 25,000, another receipt from Yala Level 4 Hospital for kshs 1,000 and another receipt from the same hospital for kshs 6100. the total special damages proved is kshs 32,100. which is hereby awarded and the award of Kshs 33130 is therefore set aside.

56. For the above reasons this court finds that the appeal is successful only to the extent stated.

57. As the appeal is only partially successful, I order that each party bear their own costs of the appeal.

Final orders:

(a) Liability 100% against the appellant is upheld

(b) pain and suffering kshs 20,000

(c) Loss of expectation of life kshs 100, 000

(d) Loss of dependancy kshs 608,932.80

(e) Special damages kshs 32,100

Total damages kshs 761,032.80

58. The above damages shall earn interest as decreed in the lower court from date of filing suit in the case of special damages and from the date of judgment in the lower court in the case of general damages until payment in full.

59. I so order and this file is accordingly closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF MARCH, 2023

R.E. ABURILI

JUDGE

