



**Friends Lugulu Hospital & another v SNW & another (Suing as
Legal Representatives in the Estate of MM – Deceased) (Civil Appeal
73 of 2023) [2025] KEHC 13906 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 73 OF 2023
REA OUGO, J
SEPTEMBER 30, 2025**

BETWEEN

FRIENDS LUGULU HOSPITAL 1ST APPELLANT

ALEX JUMA WANYAMA 2ND APPELLANT

AND

SNW 1ST RESPONDENT

RW 2ND RESPONDENT

SUING AS LEGAL REPRESENTATIVES IN THE ESTATE OF MM – DECEASED

*(Being an appeal from the judgment of Hon. Cosmas Maundu (CM)
delivered on the 6th June 2023 in Bungoma CMCC No 345 of 2021)*

JUDGMENT

1. The deceased died in a road traffic accident, and at the trial court, liability was settled against the respondents in the ratio of 80:20 by mutual consent. The deceased was 12 years old at the time of death, attended {Particulars Withheld} Primary School, and was in good health. The respondent before the lower court sought general damages, special damages, costs, and interest of the suit.
2. At the end of the trial, the trial magistrate entered judgment for the respondent against the appellants on quantum as follows:
 - i. Pain and suffering Kshs 50,000/-
 - ii. Loss of Expectation of life Kshs 100,000/-
 - iii. Lost years Kshs 1,200,000/-



- iv. Special damages Kshs 92,250/-
Total Kshs 1,442,250/-
Less 20% contribution Kshs 288,450/-
Net Total Kshs 1,153,800/-
- 3. The appellants are dissatisfied with the trial court's award and have lodged their appeal challenging the damages awarded by the trial magistrate on the following grounds:
 - 1. The quantum of general damages in respect of lost dependency is inordinately high, erroneous, oppressive and punitive and amounts to a miscarriage of justice.
 - 2. The learned trial magistrate ignored and/or paid lip service to the appellant's submissions and especially the precedents cited therein, which he did not analyse or consider at all.
 - 3. The learned trial magistrate erred in law in finding to realise that comparable awards ought to be made in comparable cases, and thus reached an erroneous decision.
 - 4. The learned trial magistrate failed to take into account all relevant considerations and principles in assessing the quantum of damages.
 - 5. Other grounds may be argued with the leave of the court.
- 4. The appellants, in their submissions in support of the appeal, argue that the trial court did not carefully examine the facts, as there is no status of the deceased except that she was 12 years old. The trial magistrate relied on the case of *Daniel Mwangi Kimani & 2 others v J.G.M and Another* (2016) eKLR, where the court expressed that the deceased therein was a bright student. However, in this case, there was no evidence that the deceased was excelling in her studies. The trial court further failed to consider the appellant's submissions and only mentioned those of the appellant. It is submitted that had the trial court considered its submissions, it would have made an award of Kshs 700,000/- under the head of lost years.
- 5. The appeal is opposed by the respondent, who argues that the judgment was proper and reasonable. The trial court was guided by the case of *Daniel Mwangi Kimani & 2 others v J.G.M and Another* (2016) eKLR, where an award of Kshs 1,000,000/- was made for loss of expectation of life. The amount awarded by the trial court was not inordinately high nor excessive to warrant this court's interference.

Analysis And Determination

- 6. The only issue in the appeal is whether the trial court considered the submissions before it and awarded the correct damages. The assessment of damages is at the trial court's discretion, and this Court will only interfere where that discretion was exercised on wrong principles or where the award is so excessive or inadequate as to constitute an erroneous estimate.(see [*Kemfro Africa Ltd v Gathogo Kanini v A.M.M Lubia & Another*](#)).
- 7. The trial magistrate in his judgment considered the decision in *Daniel Mwangi Kimani & 2 others*, where a global sum was awarded to the plaintiffs therein, where the minor was 12 years. However, there was no indication in the judgment that he had considered the authorities cited by the appellant. In [*Diana Moraa & James Onsando Mose \(suing as the legal representatives of the estate of Jaquine Osoro – Deceased\) v Sotik Tea Company*](#) (2019) eKLR where the deceased was 11 years old and an award of Kshs 600,000 was made for loss of dependency. In [*Ambrose Kiptanui & another v Timona Wekesa \(suing as the administrator of the estate of Faith Nafula Wekesa \(deceased\)\)*](#) [2020] eKLR, the deceased died at



the age of 11 and the High Court awarded Kshs 500,000/-. In *Charles Maosa v AAA (suing as legal representative of the estate of GOO – Deceased)* [2021] eKLR, the deceased was 15 years old and the court awarded Kshs 500,000/-. In *Vertical Construction Limited v Otiemo* (Civil Appeal E095 of 2021) [2023] KEHC 335 (KLR) (24 January 2023) (Judgment), the deceased was a pupil aged 11 years, and the High Court made a global award of Kshs 800,000/-.

8. The decisions of the parties cited before the trial court ranged from Kshs 500,000 to Kshs 1,000,000/-. The authorities cited by the appellant revealed the recent trends of the awards made by the courts. Interestingly, the trial magistrate awarded Kshs 1,200,000/-, which in my view was excessive. I therefore set aside the award of Kshs 1,200,000/- and substitute it with an award of Kshs 800,000/-. The appellant shall have the costs of the appeal.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER, 2025.

R.E. OUGO

JUDGE

In the presence of:

Miss Barasa - For the Appellant

Miss Masakhalia h/b Mr. Mukisu - For the Respondent

Wilkister -C/A

