



Gatembe Prime Distributors Ltd v Baliach & another (Suing as the Legal Representatives and Administrators of the Estate of Maritim Koech - Deceased) (Civil Appeal 56 of 2023) [2025] KEHC 13956 (KLR) (7 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL 56 OF 2023
JK NG'ARNG'AR, J
OCTOBER 7, 2025**

BETWEEN

GATEMBE PRIME DISTRIBUTORS LTD APPELLANT

AND

RUTH CHEBII BALIACH 1ST RESPONDENT

SAMWEL KIPLANGAT BALIACH 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF MARITIM KOECH - DECEASED**

*(Being an Appeal from the Judgment of Chief Magistrate, Boke E. at
the Chief Magistrate's Court at Bomet, Civil Suit Number 119 of 2021)*

JUDGMENT

1. The Respondents [then Plaintiffs] as the Legal Representatives and Administrators of the deceased Maritim Koech, sued the Appellant [then Defendant] for general and special damages that arose from a road traffic accident on 20th December 2020 along Bomet-Narok Road.
2. The trial court conducted a hearing where one Respondent testified and closed their case. The parties then entered into a consent for liability in the ratio of 80:20 in favour of the Respondents. The Appellant closed its case without calling any witness.
3. In its Judgement delivered on 12th September 2023, the trial court awarded the Respondents Kshs 100,000/= for pain and suffering, Kshs 200,000/= for loss of expectation of life, Kshs 3,257,280/= for loss of dependency, Kshs 150,000/= and Kshs 15,550/= as special damages.



4. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 7th October 2023 appealing against quantum which it stated was excessive.
5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Respondents' case.

7. Through their Amended Plaintiff dated 9th February 2023, the Respondents stated that the deceased Maritim Koech was involved in a road traffic accident on 20th December 2020. That he was hit by motor vehicle registration number KCL 928S while riding motorcycle registration number KMET 774V along Bomet-Narok road.
8. It was the Respondents' case that the Appellant was negligent in causing the accident. The particulars of the negligence were stated in paragraph 6 of the Plaintiff. That as a result of the accident, Maritim Koech suffered fatal injuries.
9. The Respondents prayed for special and general damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.
10. Through their written submissions dated 23rd July 2025, the Respondents submitted that they pleaded Kshs 370,300/= as special damages and prayed that this court awards them the amount as prayed. They relied on section 6 of the *Fatal Accidents Act* and Jacob Ayiga Marija & another v Simeon Obayo [2005] eKLR.
11. The Respondents submitted that the trial court did not err when it used Kshs 13,572/= as the multiplicand, 30 years as the multiplier and 2/3 as the dependency ratio. They further submitted that the award of Kshs 100,000/= for pain and suffering and Kshs 200,000/= for loss of expectation of life was reasonable and fair.
12. It was the Respondents' submission that the Appeal had no merit and ought to be dismissed.

The Appellant's/Defendant's case.

13. Through its statement of defence dated 8th May 2023, the Appellant denied the occurrence of the accident and further denied being the registered owner of motor vehicle registration number KCL 928S
14. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the deceased.
15. Through its written submission dated 30th June 2025, the Appellant submitted that the award of Kshs 100,000/= for pain and suffering was excessive. They submitted that the deceased died on the spot and proposed an award of Kshs 20,000/= under this head. They relied on Harjeet Singh Pandal v Hellen Aketch Okudho [2018] eKLR and Techard Steam and Power Limited v Mutio Muli Mutua Ngao [2019] eKLR.
16. It was the Appellant's submission that the award of Kshs 200,000/= for loss of expectation of life was excessive. They proposed an award of Kshs 100,000/= and relied on Endege & Another [suing as the



legal representatives in the estate of John Madede Endege [Deceased] v Benard & another [Civil appeal 4 of 2021] [2024] KEHC 709 [KLR] et.al.

17. The Appellant submitted that the Respondents were not entitled to compensation under the *Fatal Accidents Act*. That the Respondents did not prove dependency which was a question of fact. Reliance was placed on Abdalla Rubeya Hemed v Kayuma Mvurya & another [2017] eKLR, section 4[1] of the *Fatal Accidents Act*, and sections 109 and 112 of the *Evidence Act*. The Appellant further submitted that the Respondents failed to demonstrate the extent to which the deceased supported them and further that PW1's testimony was hearsay evidence which was not corroborated. They relied on Moses Maina Waweru v Esther Wanjiru Githae [suing as the personal representatives of the estate of the late David Githae Kiririo Taiti] [2022] eKLR.
18. In the alternative, the Appellant proposed the use of Kshs 7,240.95/= as the multiplicand, a multiplier of 20 years and a dependency ratio of 1/3 which would total to Kshs 579,276/= as loss of dependency.
19. It was the Appellant's submission that the trial court erred in awarding Kshs 150,000/= as funeral expenses. That it was not supported by any evidence. The Appellant submitted that the award of Kshs 15,550/= as special damages was proper.
20. I have gone through and carefully considered the Record of Appeal dated 25th March 2025, the Supplementary Record of Appeal, the Appellant's written submissions dated 30th June 2025 and the Respondents' written submissions dated 23rd July 2025. The only issue that I have sieved for my determination was whether the award on quantum was excessive.
21. In regard to the pain and suffering and loss of expectation of life, the court in Mercy Muriuki & another v Samuel Mwangi Nduati & Anor [Suing as the Legal Administrators of the Estate of the late Robert Mwangi] [2019] KEHC 9014 [KLR], stated: -

“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”.
22. The Appellant submitted that the deceased died on the spot and that the award of Kshs 100,000/= as pain and suffering was excessive. On the other hand, the Respondents submitted that the award was just and fair. Samwel Kiplangat Baliach [PW1] testified that the deceased died on 20th December 2020. When he was cross examined, he testified that the deceased was knocked down on 19th December 2020 at around 9 pm and died at around 1 am on 20th December 2020. I have looked at the Post Mortem Report and Death Certificate produced as P. Exh 3 and P. Exh 4 respectively. Both stated that the deceased died on 19th December 2020. It is my finding that the deceased died on the same day and suffered little pain. In the auspices, I find the award of Kshs 100,000/= for pain and suffering as excessive and I substitute it with an award of Kshs 50,000/=.
23. On the award of Kshs 200,000/= as loss of expectation of life, it is my finding that the trial court did not err when awarding the said amount. In my view, after taking into account the rate of inflation, I find the award to be reasonable and fair.
24. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

“Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall , subject to



the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct."

25. The trial court awarded the Respondents Kshs 3,257,280/= by using a monthly wage of Kshs 13,572/=, a multiplier of 30 years and a ratio of 2/3.
26. The Amended Plaintiff stated that the deceased was a motorcycle rider. I have gone through the record and I have note that there was no proof of income from the testimony and exhibits that the Respondents produced in court. With respect to the trial court, I find that the safest way to make an award under this head where there is no ascertainable proof of income would be to go the global sum way.
27. The Appellant proposed an award of Kshs 579,276/= under this head while the Respondents submitted that the trial court did not fall into error when it awarded Kshs 3,257,280/= as loss of dependency.
28. In determining the award under this head, I have considered the parties' proposals under this head, the fact that the deceased died aged 26 years old and the fact that the deceased was survived by his parents and a son. Having considered the above, it is my finding that the award of Kshs 3, 257,280/= was excessive. I will therefore be guided by the global award approach and make an award of Kshs 1,500,000/=.
29. With regard to special damages, the trial court awarded Kshs 15,550/=. This award was not challenged by either party. I therefore uphold the award on special damages.
30. On funeral expenses, Section 6 of the *Fatal Accidents Act* makes provision for funeral expenses as follows: -

In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection [1] of section 4, damages in respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought.
31. The Court of Appeal, in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* [2016] KECA 56 [KLR] stated that: -

"We do not discern from our reading of this decision a departure from the time-tested principle that special damages should not only be specifically pleaded but must also be strictly proved ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc...."
32. Guided by the above authority, it is my finding that the trial court's award of Kshs 150,000/= for funeral expenses as reasonable and I uphold the same.
33. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court's award on general damages. This then translated the final award as: -



Pain and suffering Kshs 50,000/=

Loss of expectation of life Kshs 200,000/=

Loss of dependency Kshs 1,500,000/=

Funeral expenses Kshs 150,000/=

Add special damages Kshs 15,550/=

Kshs 1,915,500/=

Less 20% Contribution Kshs 383,100/=

Total Kshs 1,532,400/=

34. In the end, the Appeal dated 10th October 2021 is allowed. Each party shall bear their costs in the Appeal while the costs of the main suit shall remain as awarded by the trial court.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 7TH DAY OF OCTOBER, 2025.

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Hon. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan [Court Assistants].

Otieno for the Appellant

Langat holding brief for Kadet for the Respondents

