



Irungu v Gachanja & another (Suing as a legal representative of the Estate of George Ndung'u Wainaina - Deceased) (Civil Appeal E003 of 2024) [2025] KEHC 14671 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E003 OF 2024
TW OUYA, J
OCTOBER 16, 2025**

BETWEEN

NELSON KARIUKI IRUNGU APPELLANT

AND

**CHARLES WAINAINA GACHANJA & ELIZABETH WANJIKU
KARIUKI RESPONDENT**

**SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF GEORGE
NDUNG'U WAINAINA - DECEASED**

*(An appeal from the judgement and decree of learned magistrate Hon. D. Orago
Delivered at Ruiru on the 28th November, 2023 in Ruiru civil case No. E018 of 2023)*

JUDGMENT

1. This is an appeal against both liability and quantum following a fatal road traffic accident.
2. By a Plaint dated 18th January 2023, the Respondent lodged a claim for compensation for both general and special damages. Where it was alleged that on or about 6th October 2022, the deceased was lawfully a pedestrian along Thika superhighway near Kahawa Barracks when motor vehicle registration number KCF 065A was so negligently, recklessly and or carelessly driven at a high speed in the circumstances and or without regard or due care by the appellant that it lost control, veered off the road and fatally hit the deceased.
3. It was averred that the deceased was 31years old at the time of the accident and in good health. He was a mason with an income of Kshs.50,000 per month, 2/3 of which went to support his family with basic needs and other related expenses. He had abstained from both alcohol and tobacco. He was survived by his wife Elizabeth Wanjiku Kariuki, his daughter Beatrice Ngendo Ndung'u and his father Charles Wainaina Gachanja.



4. He also claimed special damages of Kshs.51,950.00 which covered the death certificate, letters of administration, police abstract and motor vehicle search and prayed for damages both under the *Fatal Accidents Act* and the *Law Reform Act*.
5. The Appellant denied the claim through his statement of defence dated 11th February 2023. Instead, he pleaded that the deceased had contributed to the accident by failing to move and avoid the accident, failing to walk with due care and attention and failure to keep the pedestrian walk.
6. During the hearing, PW1 No. 677T9 CPL Samuel Kirimi testified that he had a police abstract dated 25th October 2022 in respect of one George Ndungu (the deceased) who had been involved in a road traffic accident having been knocked down by motor vehicle registration number KCF 065A Isuzu Mini Bus belonging to Lopho Sacco. The said accident occurred on 6th October 2022 at around 07.30 am along Thika Superhighway along Kahawa Barracks. The subject vehicle was being driven by David Maina at the time of the accident. The deceased was knocked down while crossing the road and he died on the spot. The abstract was produced as Exhibit 5. PW1 could not tell the point of impact as he did not visit the scene. He testified on behalf of Corporal Njenga who was on transfer at the time of the hearing. Investigations into the accident had been completed and the file forwarded to the DPP for directions. Also, the abstract was silent on the person liable for the accident.
7. PW2, the father to the deceased testified that the deceased was 31 years at the time of the accident and had been survived by his daughter and wife. Prior to his death, the deceased was a mjengo person making about Kshs. 50,000.00 per month and the bread winner. He had no statement to support the assertion that the deceased used to make about Kshs. 50,000.00 per month.
8. PW3, David Wamae Gitition, testified that he visited his friend at Kahawa Wendani. Ahead of him were two people crossing the road. One was hit before finishing crossing the road, just near the foot bridge of Kahawa Wendani. PW3 was of the opinion that the driver of the bus was to blame for causing the accident. He confirmed that the deceased was hit at the side of the road.
9. At the end of the trial, judgement was entered in favour of the Respondent against the Appellant with liability assessed at 80:20. General damages for pain and suffering was assessed at Kshs. 30,000.00, Loss of expectation of life was assessed at 100,000.00, loss of dependency at Kshs. 2,000,000.00 and special damages assessed at Kshs. 100,000.00.
10. The court found that the Appellant did not tender any evidence to prove that the deceased was to blame for the accident. Nevertheless, the deceased was found liable at 20% for crossing the road at an undesignated crossing yet the pedestrian bridge was 10 metres away.
11. The post mortem revealed that the deceased died due to multiple injuries on the head, chest, abdominal and musculoskeletal injuries due to blunt force trauma consistent to a Road Traffic accident. The trial court awarded Kshs. 30,000.00 for pain and suffering while relying on Civil Appeal No. 42 of 2018 Joseph Kivati Wambua v SMM & Another (suing as the legal representative of the estate of EMM-deceased).
12. On loss of expectation of life, the court was guided by the decision in Lucy Wambui Kahoro v Elizabeth Njeri Obuong (2015) eKLR and in Civil Appeal No. 113 of 2012 Makano Makonye Monyanche v Hellen Nyangena (2014) eKLR and awarded Kshs. 100,000.00.
13. On loss of dependency, the court observed that no evidence had been tendered to support the assertion that the deceased earned Kshs. 50,000.00 per month. Therefore, the court used the global award principle while guided by the case of Moses Mairua Muchiri v Cyrus Maina Muchiri (Suing as the personal Representative of the estate of Mercy Nzula Maina- deceased (2016) e KLR. Accordingly, the



- court awarded Kshs.2,000,000.00 rejecting the Respondents invitation to award Kshs.16,000,000.00 using a multiplier of 40 years.
14. For special damages, the court recognized that PW2 was 70 years at the time and unable to trace receipts to specifically prove special damages. Therefore, relying on the case of JNK (Suing as the legal representative of the estate of KMM (deceased) v Chairman Board of Governors [...] Boys High School (2018) eKLR, the court held that in as much as receipts were not available to the court, it cannot turn a blind eye to the fact that funeral costs were incurred as a result of the deceased's burial.
 15. The Respondent was also awarded costs of the suit on the basis that costs follow the event.
 16. Aggrieved and dissatisfied with the entire judgement of the trial court, the Appellant lodged the instant appeal via a memorandum of appeal dated 2nd January 2024 on grounds that:
 - a. The learned magistrate erred in fact and in law in finding that the plaintiff was entitled to general damages under the Law Reforms Act. 130,000.00 damages under *Fatal Accidents Act* of Kshs.2,000,000.00 special damages of KShs 100,000.00 costs and interest which was inordinately high in the circumstances was excessive in the circumstances hence occasioning miscarriage of justice;
 - b. The learned magistrate erred in law and in fact by finding that the liability was to be apportioned in the ratio of 80:20 in the favour of the respondent whereas it is apparent that the respondent is the one to blame wholly for the accident;
 - c. The learned magistrate erred in law and in fact by finding that the appellant would be apportioned 80% whereas the police officers actually told the trial court that the deceased was the one to blame for the accident;
 - d. The learned magistrate erred in law and in fact by failing to appreciate both the police officers (PW1) and the eye witness (PW3) did indicate to the court that at the time of the accident the deceased was crossing the road at an undesignated area as the foot bridge was only 100 metres away;
 - e. The learned magistrate erred in law and in fact and misdirect herself in awarding the respondent exorbitant amounts on under the head of *fatal accidents act* while there was no proof that the deceased would have survived such period of lifetime;
 - f. The learned trial magistrate grossly misdirected herself in treating the evidence and the submissions on quantum before her and consequently coming to a wrong conclusion on the same;
 - g. The learned trial magistrate grossly misdirected herself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented filed by the appellants;
 - h. The learned trial magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law;
 17. The Appellant therefore prayed that the appeal herein be allowed and the judgement and the decree of the magistrate court delivered on the 28th day of November, 2023 in Ruiru CMCCNO. E018 of 2023 be set aside and substituted with an order for judgement allowing the appellant's suit as prayed with costs.
 18. By order of the court the appeal was canvassed through written submissions.



19. The Appellant did not file submissions.
20. The Respondent submitted that it had proved on a balance of probability that the Appellant was liable for the accident in that he was driving at a high speed without due care and attention to other road users. Therefore, the motor vehicle lost control, veered off the road hitting the deceased who was standing on the pavement at the time of the accident.
21. On quantum, the Respondent submitted that the appellate court ought not disturb a finding on quantum unless it is shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect. Relying on *Mercy Muriuki & another v Samuel Mwangi Nduati & another* (Suing as the Legal Administrator of the estate of the late Robert Mwangi [2019] eKLR, the Respondent submitted that the award of Kshs. 30,000.00 for pain and suffering was reasonable.
22. The court was urged to uphold the award on loss of dependency as it was comparable to awards made in similar circumstances as seen in the case of *Moses Akumba & Another vs Hellen Karisa Thoya* (2017) eKLR
23. The Respondent proposed a multiplier approach on loss of dependency as the deceased was not in formal employment. The proposal of 40 years was thus a fair estimate using the minimum wage at Ksh. $16,417.91 * 40 * 12 = 5,253,731.2$
24. On special damages, the Respondent submitted that the failure to produce receipts does not negate the fact that a funeral was undertaken in respect of the deceased. Therefore, the award of Kshs. 100,000.00 for funeral expenses was reasonable. Reliance was placed on the case of *Alice O. Alukwe v Akamba Public Road Services Ltd and 3 others Nakuru HCCC No. 26 of 2005*.
25. Ultimately, the Respondent submitted that the award of Kshs. 1,784,000.00 was proper and in line with similar awards and as such does not warrant any interference from the court.
26. This is an appeal against both liability and quantum. On liability, I find it useful to cite Halsbury's Laws of England which states:

“The burden of proof in an action for damages for negligence rests primarily on the plaintiff, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the defendant to the plaintiff, some breach of that duty, and an injury to the plaintiff between which the breach of duty a causal connection must be established.”
27. The law demands that a person, who is capable of taking care of himself and appreciating his own interests and the dangers thereto, takes the same reasonable precautions for his own interests as well as others. Turning to the evidence on record, it is clear there is no contest that the accident occurred. There is no contest that the deceased sustained fatal injuries. What is contested is who was to blame for the accident.
28. The testimonies of PW1 and PW3 are instructive in determining liability for the accident. Crucially, PW3 states that the driver of motor vehicle registration KCF 065A was to blame for the accident. The appellant opted not to adduce evidence despite filing a defense denying liability. It is an established position that where a party fails to adduce evidence, his pleadings remain mere allegations which are not proved. The trial court rightly observed that the Appellant failed to prove that the deceased was wholly liable for the accident.



29. In the instant case, the testimony of PW3 was direct evidence, in that, he testified that he saw the subject vehicle hit the deceased while he had just crossed the road. PW3 further observed that there was a foot bridge around 100 m away from where the deceased had crossed the road. It is on this basis that the trial court found the deceased 20% liable for the accident; for failure to cross the road at the designated point.
30. Having evaluated the evidence on record, I find no reason to fault the learned magistrate’s finding on liability at 80:20 in favor of the respondent against the appellant.
31. I now turn to the question whether there are any grounds at all to interfere with the award on damages. The law on circumstances under which an appellate court would interfere with an award of damages is settled. An appellate court will not interfere with an award of general damages by a trial court unless the trial court acted under a mistake of law, or, where the trial court acted in disregard of principles, or, where the trial court took into account irrelevant matters or failed to take into account relevant matters, or, where the trial court acted under a misapprehension of facts, or, where injustice would result if the appellate court does not interfere; and, where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage.
32. The Court of Appeal in *Kivati v Coastal Bottlers Ltd* Civil Appeal No. 69 of 1984 in addressing this issue remarked thus:
- “The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate.”
33. Therefore, an award of damages is an exercise of discretion of the trial court but the same should be within limits set out in decided case law and must not be inordinately so low or so high as to reflect an erroneous figure. The award must also take into account the prevailing economic environment.
34. Concerning damages arising out of fatal claims under the *Law Reform Act* and the *Fatal Accidents Act*, it is settled that a Court can award damages to the deceased’s estate under the *Law Reform Act* on account of the pain and suffering before death as well as on the loss of expectation of life or otherwise referred to as “the lost years.” Likewise, a Court can award damages under the *Fatal Accidents Act* to the dependents for the loss of dependency. However, when dealing with a claim under both said Acts, a Court is to be carefully to discount the amount awarded on the loss of expectation of life/lost years from the final award. This was clearly laid down by the Court of Appeal in the case of *Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini =vs= A. M. Lubia & Olive Lubia (1982-88), KAR 727*.
35. *Mativo J in Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022)* remarked thus:
- “Any legal process should yield an appropriate compensation that is compensation, which is neither too much, nor too little. The compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable.”
36. Having accentuated the applicable principles in cases of this nature, I now turn to the awards made by the lower court. I find that the heads of damages as distilled by the learned Magistrate are correct. I have carefully considered the trial court’s reasoning and reasons for each award under each head. I have



also addressed my mind to the law and authorities. I am not persuaded that the awards are excessive or unreasonable. Special damages were proved as the law requires. I find nothing to suggest that the trial Magistrate improperly exercised his discretion or arrived at the wrong awards nor are the awards inordinately high or low.

37. The upshot is that this appeal fails. I dismiss this appeal with costs to the Respondent.

38. Thirty (30) days stay of execution orders to apply.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16TH DAY OF OCTOBER, 2025.

HON. T. W. OUYA

JUDGE

