

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT VOI**

**CIVIL APPEAL NO. E006 OF 2025**

**SANITA INVESTMENTS LIMITED.....**

**APPELLANT**

**=VERSUS=**

**MIRIAM RUTH KYABAKI.....1<sup>ST</sup>**

**RESPONDENT**

**THANDE MBUGUA NJAU.....2<sup>ND</sup>**

**RESPONDENT**

**(Being an appeal from the Judgment of Hon. C. K. Kithinji (PM)  
in Voi CMCC No. E059 of 2024 delivered on 11<sup>th</sup> December  
2024)**

**JUDGMENT**

1. **Sanita Investments Limited** the Appellant in this case was sued by Miriam **Ruth Kyabaki** and **Thande Mbugua Njau** the Respondents in this appeal, on behalf of the Estate of **NICHOLAS NJAU MBUGUA (Deceased)** seeking damages under the Law Reform Act and the Fatal Accidents Act.

2. The cause of action arose out of a road traffic accident that occurred on 21<sup>st</sup> January 2024 while the deceased was driving motor vehicle registration No. KBV 868T along Mombasa Road.
3. When the deceased reached White House Academy area along Mombasa Road, motor vehicle KCC 991G/ZE 8887 which was being driven by **FREDRICK KASAJU** veered off its side of the road and it went on the extreme left and collided with motor vehicle registration No. KBV 868T.
4. The deceased sustained fatal injuries. The driver of motor vehicle registration No. KCC 991G /ZE 8887 was charged in traffic case No. 041 of 2024.
5. The Appellant did not adduce any evidence. In their defence dated 3<sup>rd</sup> May 2024 they denied the Respondent's claim.
6. The trial court found the Appellant 100% liable in negligence and assessed damages as follows:-

**(i) General damages for pain and suffering                      Kshs.**

**200,000/=**

**(ii) Loss of expectation of life    Kshs.    100,000/=**

**(iii) Loss of Dependency    Kshs. 3,343,007/=**

**(iv) Loss of consortium    Kshs.    150,000/=**

**(v) Special damages**

**Kshs. 240,000/=**

**Total**

**Kshs. 4,033,007/=**

7. The Appellant has appealed against the said Judgment on the following grounds:-

**(i) That the Honourable Learned Magistrate erred in law and in fact by not stating any legal backing to her judgment.**

**(ii) That the quantum of damages is excessive and an erroneous estimate of the damages that may be awarded to the Respondent due regard had to the circumstances of the case before the subordinate court and the weight of precedents in similar circumstances.**

**(iii) That the Honourable Learned Magistrate erred in law and in facts in relying on extraneous evidence not before the court in arriving at the decision on the general damages.**

**(iv) That the Honourable Learned Magistrate erred in law and in fact by awarding the Respondent an excessive and exorbitant amount of Kshs. 200,000/= as general damages for pain and suffering in total disregard of the submissions by parties herein.**

**(v) That the Honourable Learned Magistrate erred in law and in fact by awarding the Respondent an excessive and exorbitant amount of Kshs. 3,343,007/= as general damages for loss of dependency in total disregard of the submissions by parties herein.**

**(vi) That the Honourable Learned Magistrate erred in law and in fact by awarding the Respondent an amount of Kshs. 150,000/= as general damages for loss of consortium in total disregard of the provisions of the Fatal Accidents Act.**

**(vii) That the Honourable Learned Magistrate erred in law and facts in relying on extraneous evidence not before the court in arriving at the decision on the special damages.**

8. The parties filed written submissions as follows;

9. That the Appellant, Sanita Investments Limited, appeals the judgment from the Voi CMCC NO. E059 of 2024 on several grounds, arguing that the trial magistrate's decision was flawed.

10. The Appellant contends that the magistrate failed to provide a legal basis for the judgment and awarded excessive damages without proper justification.

11. Specifically, the award of Kshs. 200,000 for pain and suffering is challenged as being far above the conventional range

of Kshs. 10,000 to Kshs. 100,000 for a deceased who died on the same day as the accident, a point supported by the death certificate and police abstract.

12. The Appellant also disputes the award of Kshs. 3,343,007 for loss of dependency and Kshs. 150,000 for loss of consortium, the latter claimed to lack legal backing under the Fatal Accidents Act.

13. Further, the magistrate is accused of relying on extraneous evidence not presented in court when determining both general and special damages.

14. The Appellant seeks to have the appeal allowed, the damages significantly reduced, the award for loss of consortium set aside, and costs awarded in their favor.

15. The Respondents argued that the Appellant's appeal against the trial court's judgement should be dismissed in its entirety. The Respondents contend that the appeal is limited to challenging the quantum of damages awarded and does not contest the finding of 100% liability against the Appellant, which should therefore be affirmed.

16. The Respondents assert that an appellate court should not interfere with a trial court's assessment of damages unless it is demonstrated that the trial court applied wrong principles, considered irrelevant factors, ignored relevant evidence, or

arrived at a figure so inordinately high or low as to be an entirely erroneous estimate.

17. They argue that the Appellant has failed to meet this threshold.
18. Specifically, the Respondents defend the trial court's award for loss of dependency, arguing that the magistrate correctly calculated the multiplicand using the deceased's net income (gross salary less statutory tax deductions), a principle supported by Court of Appeal precedents.
19. Regarding general damages for pain and suffering, the Respondents justify the award by citing evidence that the deceased survived for three hours after the accident, and they reference a comparable case to show the award is reasonable and accounts for inflation.
20. Concerning special damages for funeral expenses, the Respondents maintain that such awards can be made even without documentary evidence, as established by higher courts, and that the amount awarded is consistent with contemporary social and economic realities.
21. Finally, on the issue of loss of consortium, the Respondents argue that the award is justified by uncontroverted evidence of the deceased's loving relationship with his family and is

supported by Court of Appeal authority, which holds that such damages are recoverable in fatal accident claims.

22. In conclusion, the Respondents submit that the Appellant has not shown any error in the trial court's judgement and pray for the appeal to be dismissed with costs.

23. From the grounds of appeal and the rival submissions, the following are the issues falling for this court's determination;

**(i) Whether the learned trial magistrate failed to provide a legal basis for the judgment.**

**(ii) Whether the award of Kshs. 200,000 for pain and suffering was inordinately high and unsupported by the evidence.**

**(iii) Whether the award of Kshs. 3,343,007 for loss of dependency was based on a wrong principle or was an erroneous estimate.**

**(iv) Whether the award of Kshs. 150,000 for loss of consortium is legally permissible under the Fatal Accidents Act.**

**(v) Whether the award of Kshs. 240,000 as special damages was based on extraneous evidence.**

24. Having carefully considered the record of appeal, the grounds advanced, and the submissions by both parties, this court proceeds to determine the matter as follows.

25. On the first issue, the Appellant contends that the trial magistrate failed to state the legal backing for the judgment. While the impugned judgment is succinct, a perusal of it shows that the magistrate identified the relevant statutes, being the Law Reform Act and the Fatal Accidents Act, under which the claim was brought.
26. The court further considered the evidence on record, including the police abstract and testimony, to establish liability. Although the judgment could have been more elaborate in its reasoning, the mere fact that it is brief does not automatically render it defective in law.
27. A court is presumed to have considered the evidence and the law, unless the contrary is shown. The Appellant has not demonstrated what specific legal principle was ignored. This ground therefore fails.
28. The second issue concerns the award of Kshs. 200,000 as general damages for pain and suffering. The Appellant argues that since the deceased died on the same day, a conventional award of between Kshs. 10,000 and Kshs. 100,000 should have been applied.
29. The Respondents, however, pointed to evidence that the deceased survived for three hours after the accident. The principle governing such awards is that the court must make an

assessment of the conscious pain and suffering endured by the deceased between the time of injury and death.

30. While the conventional awards for instant death are indeed lower, the trial court, having the advantage of assessing the evidence, was entitled to find that the three-hour period of survival involved conscious pain.

31. The award of Kshs. 200,000, while on the higher end for such a duration, cannot be said to be so inordinately high as to represent a wholly erroneous estimate, especially when considering the effects of inflation.

32. This court finds no sufficient reason to interfere with this award.

33. The third and most substantial issue is the award for loss of dependency amounting to Kshs. 3,343,007. The Appellant's challenge appears to be on the quantum, implying it is excessive.

34. The role of an appellate court in interfering with an award of damages is settled, an appellate court will not disturb an award of damages unless the trial judge acted on a wrong principle, or the award is so inordinately high or low that it is a completely erroneous estimate of the damage.

35. The trial court adopted a multiplier of 13 years, which was not contested. The dispute, as gleaned from the submissions, revolves around the multiplicand.

36. The Respondents submitted that the court correctly used the net salary after tax. The Appellant did not provide a counter-calculation.
37. The starting point for calculating loss of dependency is the net income of the deceased, after accounting for tax.
38. The trial magistrate, therefore, applied the correct principle. In the absence of a demonstration that the multiplicand was incorrectly derived from the pay slips presented in evidence, this court finds that the Appellant has not discharged the heavy burden of showing that the final figure was a wholly erroneous estimate. This ground also fails.
39. On the fourth issue, the award of Kshs. 150,000 for loss of consortium, the Appellant argues that it lacks legal backing under the Fatal Accidents Act.
40. This argument is misconceived and is not supported by the current state of Kenyan law. While the Fatal Accidents Act does not explicitly mention "loss of consortium", the same includes the companionship, comfort, affection and solace that the spouse has lost.
41. The award to the deceased's widow was therefore legally sound and this court finds no reason to set it aside.
42. Finally, regarding the award of Kshs. 240,000 as special damages for funeral expenses, the Appellant alleges it was based on

extraneous evidence. The law is that special damages must not only be pleaded but also strictly proved.

43. However, an award for funeral expenses can be made even in the absence of receipts, as it is an expense that is inherently incurred upon death.

44. The court can make an estimation based on common sense and the circumstances of the case.

45. The trial magistrate was entitled to accept the evidence of the Respondents on this point, and the amount awarded is not so unreasonable as to warrant appellate intervention.

46. In the final analysis, this appeal is devoid of merit. The Appellant has failed to demonstrate that the learned trial magistrate applied wrong principles of law or arrived at figures that were so inordinately high as to constitute an entirely erroneous estimate of the damages payable.

47. Consequently, the appeal is hereby dismissed in its entirety with costs to the Respondents.

**Dated, signed and delivered this 15<sup>th</sup> day of October 2025 in open court at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

**Court Assistant: Millicent/Mabishi**

.....**for the Appellant**

.....**for the Respondents**

ORIGINAL