



**Mutua & another (Suing as the Administrators to the Estate of the late Benard Mutua Mwanzia - Deceased) v Mwalimu (Civil Suit 9 of 2020) [2025] KEMC 20 (KLR) (19 February 2025) (Judgment)**

Neutral citation: [2025] KEMC 20 (KLR)

**REPUBLIC OF KENYA  
IN THE MUTOMO LAW COURTS  
CIVIL SUIT 9 OF 2020  
LK MWENDWA, PM  
FEBRUARY 19, 2025**

**BETWEEN**

**KAVUU MUTUA ..... 1<sup>ST</sup> PLAINTIFF**

**ISAAC MWANZIA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS TO THE ESTATE OF THE LATE BENARD  
MUTUA MWANZIA - DECEASED**

**AND**

**FELIX MUTUA MWALIMU ..... DEFENDANT**

**JUDGMENT**

1. The plaintiffs, the legal representatives of the estate of Benard Mutua Mwanzia (the deceased), claim against the Defendant, as comprised in the plaint dated 6/12/2019 and file on 3/3/2020, in for:-
  - a. General Damages
  - b. Special Damages
  - c. Costs of this suit
  - d. Interest from the date of filling this suit.
2. The cause of action is a Road Traffic Accident which is alleged to have occurred on 12/2/2019-involviung Motor vehicle No. KTCB 503U, at material time registered in the name of Defendant along Kibwezi – Ikutha road. It was further alleged that the deceased who was a pedestrian along the aforesaid road, was knocked down by the driver of the subject motor vehicle wherein he sustained fatal injuries. The plaintiffs allege that the said driver was negligent in the manner in which he drove, controlled and/or managed his motor vehicle. Particulars of negligence were set out in Paragraph (a) – (g) of the plaint.



3. The plaintiffs have sought damages under *Fatal Accidents Act* and *Law Reform Act*. As for the *Fatal Accidents Act*, the damages are sought for and on behalf of deceased's four(4) dependents as captured in Paragraph 7(a)-(e) of the Plaint. In addition, the plaintiffs seek special damages of Kshs 16,600/=, particularized as follows; -

Particulars of special Damages

- a. Motor vehicle search Kshs. 550/=
  - b. Letter of limited grant ad litem
    - a. Court Fees Kshs. 1,050/=
    - b. Advocate Fees Kshs. 15,000/=
- Total Kshs. 16,600/=
4. In the statement of Defence dated 14/7/2020 and filed on 15/7/2020, the Defendant denied the plaintiff's claim. In particular denied: Ownership of motor vehicle KCTB 503U; occurrence of the accident; particulars of negligence; claim for dependency, and particulars of special damages.
5. In the alternative, the Defendant pleaded contributory negligence of the part of the deceased. Particulars were set out at Paragraph 8(a) – (h) of the statement of Defence.
6. The matter proceeded ex parte on 4/12/2024. The Defendant failed to attend despite due notification of the aforesaid hearing date. The plaintiffs called two witnesses and thereafter filed submissions dated 8/1/2025.

### **Analysis and Determination**

7. I have considered the pleadings, the evidence and submissions herein. I will determine this claim under the following three (3) broad issues.
- a. Liability
  - b. Quantum
  - c. Costs

#### **(a) Liability**

8. The Plaintiffs called Dedan Mwanzia (PW 1) who adopted his witness statement dated 6/12/2019 as his evidence in chief. By his aforesaid witness statement, he alleged that he witnessed the accident herein. He stated that the deceased – his late brother was walking off Kibwezi – Ikutha road. He was from opposite direction and noticed a tractor No. KTCB 503 U being driven in a zigzag manner, which ended up knocking the deceased.
9. The plaintiffs submit, relying on the finding in *Linus Ng'ang'a Kiongo & 3 Others Vs. Town Council of Kikuyu* (2012) eKLR, that the Defendant having called no evidence, their evidence stands unchallenged. Further that the evidence of PW 1, establishes negligence on the part of the Defendant.
10. I have evaluated the evidence of PW 1 who eye witnessed how the accident occurred. The said evidence is unchallenged. I agree with the line of argument by the plaintiffs. I thus find and hold that the plaintiffs have established the particulars of negligence they pleaded against the Defendant. I hold and find the defendant 100% Liable.



## **(b) Quantum**

11. This being a fatal claim, I will handle the issue of quantum under the following sub headings:-

- (i) Pain and Suffering
- (ii) Loss of Dependency
- (iii) Special Damages

### **i. Pain and Suffering**

12. This award is to compensate the deceased for the pain he endures prior to meeting his death. The evidence of PW 1 and PW 2 is that the deceased died on the spot.
13. The plaintiffs have proposed a sum of Kshs. 400,000/=. They have relied on the award of Kshs. 200,000/= in *Beatrice Mukulu Kang'ata & Another Vs. Silverstone Limited & Another* (2016) eKLR.
14. In *Francis Wainaina Kirugu (Suing as the personal representative of the estate of John Karanja Wainaina) Deceased Vs. Elijah Okethc Adella*(2015) eKLR, a sum of Kshs. 50,000/= was awarded to deceased who died shortly after the accident. Similarly, in *Ngania & 2 Others Vs. Adulu* (Suing as the Legal Representative of the Estate of Clinton Morgan Kiprotich (2024) KEHC 4005 (KLR), a sum of Kshs. 50,000/= was awarded for pain and suffering where the deceased passed on after four (4) hours.
15. Having taken into account the awards in the above authorities, I find and hold that a sum of Kshs. 50,000/= will be commensurate for pain and suffering herein. It is hereby awarded.

### **(ii) Loss of Expectation of Life**

16. Guided by *Ngania* case(Supra) and taking into account that the deceased passed on at age of 35 years, I find and hold that a sum of Kshs. 100,000/= will be commensurate under this heading. It is hereby awarded.

### **(iii) Loss of Dependency**

17. Pursuant to Section 4(1) of the *Fatal Accidents Act*, damages under this head are meant for the benefit of husband, parent and/or children of the deceased. PW 2-Kavuu Mutua –evidence is that she was wife to the deceased and which was not rebutted. I thus find and hold that she is a dependant within the meaning of aforesaid Section 4 of the *Fatal Accidents Act*.
18. The plaintiffs have proposed a Multiplier –Multiplicand approach herein. They urge the court to adopt an income of Kshs. 30,000/= per month and a Multiplier of 25 years since the deceased was aged 35 years and would have worked up to 60 years. As ratio applicable, 2/3 was proposed. The Plaintiffs take the view that despite failure to prove income at the trial, the court should take notice that is not in all instances that one's income can only be proved by production of documents. The court was referred to the finding in *Jacob Ayiga Maruja & another Vs Simeon Obayo* (2005) eKLR.
19. I have considered the evidence of PW 2 and the submissions herein as pertains the income of the deceased. I take the view that Multiplier –Multiplicand approach is not appropriate herein since income of the deceased was not proved. I will adopt the global/lump sum approach. This is on guidance by the finding in *Jacob Ayiba* (Supra) where it was held:-

“On the loss of dependency, it is generally settled in law that a global/lump sum damages are awarded in instances where the court is left with no choice since there is absolutely no proof



of deceased's monthly earnings, and the Regulation of Wages (general) Amendment) orders are not applicable and that the use of Multiplier approach would be tantamount to court engaging in speculation”

20. In arriving at an appropriate global sum herein, I have considered:
- (a) The award of Kshs. 200,000/= in *Bunyala Vs Amarayi*(Suing as the Legal Representative of the estate of Shem Kokonya(Deceased) [2024] KEHC 618 (KLR)
  - (b) *Karuku Vs. Kariuki and Another* (Suing as the Personal Representatives of John Muriuki Muceke(Deceased)(2023)KEHC 24803 (KLR). In this matter a global sum of Kshs. 1,200,000/= was awarded.
21. Having considered the above case law as well as the age of the deceased herein, I find that a global sum of Kshs. 2,000,000/= is reasonable and appropriate herein. It is hereby awarded.
22. Special damages are awarded subject to specific pleading and subsequent proof. The plaintiffs herein claimed a sum of Kshs. 16,600/=. PW 2 produced a bundle of receipts for special damages as PEX 10. The bundle comprised a receipt for Kshs.550/= paid to NTSA, a receipt for Kshs. 15,000/= paid to Musili Mbiti Associates & Advocates and a receipt for Kshs. 1045/= paid Kitui Law Courts. They sum up to Kshs. 16,595/=. I thus award this amount under special damages.

#### **(c) Costs**

23. Pursuant to Section 27 of the *Civil Procedure Act*, costs follow the event unless for a good cause the court orders otherwise. The Plaintiffs have succeeded in prosecuting their claim against the defendant, as such, I award them the costs and interests of this suit.

#### **Disposition**

24. I hereby enter judgment for the plaintiffs against the defendant as follows:-
- (a) Liability 100%
  - (b) Pain and Suffering Kshs. 50,000/=
  - (c) Loss of Expectation of Life Kshs. 100,000/=
  - (d) Loss of Dependency Kshs. 2,000,000/=
  - (e) Special Damages Kshs. 16,595/=
  - TOTAL Kshs. 2,166,595/=
  - (f) Costs and Interests of suit to the Plaintiff.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HON. L. K. MWENDWA**

**PRINCIPAL MAGISTRATE**

