



**Kimani (Suing as the Administrators of the Estate of Peter Chege Mungai - Deceased) v Almasi Bottlers Limited & another (Civil Suit E1093 of 2021) [2025] KEMC 240 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEMC 240 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL SUIT E1093 OF 2021  
PA NDEGE, SPM  
SEPTEMBER 30, 2025**

**BETWEEN**

**DANSON MUNGAI KIMANI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF PETER CHEGE MUNGAI - DECEASED) ..... PLAINTIFF**

**AND**

**ALMASI BOTTLERS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SAMSON KIPTOO CHEMJOR ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Peter Chege Mungai, deceased at the age of 28 years<sup>1</sup>, was a student at Egerton University pursuing a degree in Bachelor of Science in Horticulture. On or about the 12<sup>th</sup> February 2021, he was lawfully passenger of motor vehicle registration number KCM 068S Toyota Matatu which was being driven at Soysambu area along Gilgil- Nakuru road when it was hit by motor vehicle registration number KCL 748E Prime Mover, whereof a serious accident occurred which occasioned fatal injuries on the deceased, and for which the Plaintiff holds the Defendants jointly and severally wholly liable, hence the instant suit.
2. By a Plaint dated the 8th of September, 2021, the plaintiff (suing as the legal representatives of the estate of the deceased) sued the defendants for negligence which resulted in the death of the deceased who was his son. He is seeking damages under the *Law Reform Act* and the *Fatal Accidents Act*, special damages of Kshs. 87, 850/-, costs of the suit, and interest at court rates.
3. The defendants entered appearance and filed their Statement of Defence on 06/12/2021, traversing each and every allegation of fact and/or law made in the plaint and invited the plaintiff to strict proof to the contrary while also blaming the deceased herein, and the driver of motor vehicle registration

<sup>1</sup> Per PEXH. Nos. 4, 5, and 13.



number KCM 068S for the accident. Upon close of pleadings and after the pretrial, the matter was thus set for the hearing on 12/09/2023.

4. Only the plaintiff tendered evidence in court through three witnesses, PW1, NO. 90678 PC Maina Ngugi, Pw2, Danson Mungai Kimani, And Pw3, Janet Bii. There was no eye witness account of the circumstances leading to occurrence of the accident. Based on records in Gilgil Police Station, mainly a police abstract, PEXH. NO.1, on the material date of the accident herein, at around 4.50am, the motor vehicle KCM 068S, matatu, took off from Molo while picking passengers heading towards Nairobi. That on reaching the location of the accident, and while with 14 passengers and a child on board, a motor vehicle KCL 748E overtook a lorry and in the process collided head on with the said matatu. That due to the impact, the 2 vehicles rested on the right side of the road while facing Nakuru directions and that several passengers died on the spot, while 2 others passed on while undergoing treatment in the hospital. That police officers from Gilgil police station visited the scene and drew sketch maps and plans. That one Samson Kiptoo Cheruiyot was charged at Naivasha Law Courts with 11 counts in relation to the accident herein. The police abstract was produced as PEXH. NO. 1. The witness further confirmed that the deceased herein passed on as a result of the accident.
5. In cross-examination, the witness confirmed that he is not the investigating officer and that he did not witness the accident nor visit the scene. That the traffic case against the driver of the prime mover lorry is still pending in court. He therefore did not investigate the accident but only exhibited the police abstract report of the accident issued by the station.
6. PW2, Danson Mungai Kimani, the plaintiff herein produced the documents filed by the plaintiff herein as PEXH. Nos 2 – 13; while PW3, Janet Bii, a legal officer at Egerton University, confirmed that the deceased was a student at the institution, studying a degree of Bachelors of Science in Horticulture. She produced the admission letter and a message of condolence upon his death as PEXH. Nos 10A and 10B, respectively.
7. The Respondent did not offer evidence. Learned Counsel for the parties were invited to put in Written Submissions after the close of hearing. On liability, the plaintiff thinks that the defendants are liable having failed to tender evidence, while the defendant raised no serious argument as regards liability.
8. The doctrine of *res ipsa loquitur* was explained as follows in the case of *Embu Publis Road Services Vrs Riimi (1968) EA22: -*

The doctrine of *res ipsa loquitur* is one which a plaintiff, by proving that an accident occurred in circumstances in which an accident should not have occurred thereby discharges, in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident. The Plaintiff in those circumstances, does not have to show any specific negligence, he merely shows that an accident of that nature should not have occurred in the circumstances, which leads to the inference, the only reasonable inference, that the only reason for the accident must therefore be negligence of the defendant....
9. In the instant case the Plaintiff pleaded that the defendants' vehicle collided with the matatu in which the deceased was a passenger, while overtaking another vehicle, and thus, the driver or the defendants herein failed to give due regard to other lawful road users and especially motor vehicle registration number KCM 068S in which the deceased was travelling. The defendants did not tender evidence to explain the circumstances in which their vehicle collided with the matatu in which the deceased was travelling.



10. The Plaintiff had no capacity to tell how the vehicle in which the deceased was travelling was hit. These were matters within the knowledge of the vehicle owner and/or driver of the motor vehicles. Owing to the operation of the doctrine of *res ipsa loquitur*, the burden shifted to the defendants who have been sued herein to explain occurrence of the accident but they chose not to offer evidence. In the circumstances of the case, therefore, the Plaintiff proved the Defendants' liability on a balance of probability. In the circumstances I do find that the plaintiff has been able to establish the defendants' liability at 100%.
11. On quantum, the plaintiff submitted that they be awarded general damages amounting to Kshs. 120,000 for pain and suffering; Kshs 200,000 for loss of expectation of life, Kshs 4,200,000 for loss of dependency and Kshs. 87, 850/- for special damages. He relied on numerous authorities to back his proposals.
12. Learned counsel for the defendant similarly relied on numerous authorities and proposed awards of Kshs. 10,000/- for pain and suffering, a multiplier of 28 years, a multiplicand of Kshs. 12,000/- and a dependency ratio of 1/3 as part of loss of dependency, or a global sum of Kshs. 12,000/- for lost years.
13. The plaintiffs sought Kshs 87,850 as special damages. It is trite law that special damages must be specifically pleaded and proved. I find that the plaintiff has been able to prove that they spent Kshs. 10000/- for Post Mortem vide PEXH No. 9C, Kshs. 33,500/- for the hearse vide PEXH. No. 9A, and Kshs. 13,500/- as mortuary expenses vide PEXH. Nos 9B and 9C. I further find that the plaintiff has been able to prove that they incurred expenses of Kshs. 30,000/- for legal costs for obtaining the grant ad-litem, vide a receipt from Wachira Waiganjo & Co. Advocates dated 24/02/2021. There is also an invoice from the NTSA to prove that she incurred Kshs. 550.00 for motor vehicle search certificate. I do therefore find that he is entitled to Kshs. 87,550/- as special damages herein. I thus do hereby award the same.
14. On general damages, in *H West And Son Ltd Vrs Shepherd (1964) AC 326* the House of Lords in England stated that: -

... but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional ...
15. In regard to the issue of damages awarded under the *Law Reform Act*, the High Court at Kakamega in *West Kenya Sugar Co. Limited Vrs Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR* observed that-

The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.



16. As pointed out, money cannot renew the life of the deceased. However, the damages ought to be reasonable in the circumstances. Having found so, I will now address the extent of damages to award under the following heads.

### **General Damages**

#### **Pain and suffering**

17. The uncontroverted evidence herein, mainly the post mortem report, PEXH. NO. 5, indicates that the deceased died on the spot. Learned counsel for the plaintiff has proposed a sum of Kshs. 120,000 while the counsel for the defendant proposed Kshs. 10,000.
18. In the case of Sukari Industries Limited Vrs Clyde Machimbo Juma [2016] eKLR the deceased had died immediately after the accident and the trial court had awarded Kshs 50,000/= for pain and suffering in the year 2016. Majanja J held on appeal that:
- (5) On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable.
19. Upon considering the fact that the deceased herein passed on instantly, and factoring inflation and the rise in the cost of living, I will go with the learned counsel for the plaintiff's proposal and award the sum of Kshs 120,000/-.

#### **Loss of expectation of life**

20. In Mercy Muriuki & Another Vrs Samuel Mwangi Nduati & Another (Suing as the legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR the court observed that: -

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.

21. In the case of Moses Akumba & Another Vrs Hellen Karisa Thoya (2017) eKLR Chitembwe J rendered that an award of Kshs 200,000/= for loss of expectation of life for a deceased who was a fisherman was not inordinately high. He stated that:

My view on the issues of loss of expectation of life is that each life is important and equal. There should be no distinction between a poor man and a rich one, no distinction between one who is working and an unemployed person. The awarded damages are for loss of expectation of life. The deceased was aged 25 years and a healthy person. He was a fisherman as per his mother's evidence. The normal expectation is that he was going to live up to the age of 60 years. Whether he was going to get formal employment or not is not an issue. It is the aspect of that life having been cut short that is being considered. Due to the sudden death, the deceased's life was shortened. All his expectations in this world were eroded. Having



that in mind, we should then consider whether Kshs 70,000 is sufficient to compensate for that loss. We should not view the deceased as a simple fisherman whose expectation in life was limited to fishing. No one knows what tomorrow has for him. I do find that the award of Kshs 200,000 is fair and not inordinately high. The other dispute involves loss of dependency.

22. In the case of Patrick Kariuki Muiruri & 3 Others Vrs Attorney General [2018] eKLR Seron J made an award of Kshs 200,000/= under this heading. In Vincent Kipkorir Tanui (Suing as the Administrator and/or Personal Representative of the Estate of Samwel Kiprotich Tanui (Deceased) VRS Mogogosiek Tea Factory Co Ltd & Another [2018] eKLR an award of Kshs 200,000/= was made.
23. The plaintiffs have proposed an award of Kshs 200,000 as damages for loss of expectation of life while the defendant has proposed Kshs. 100,000. Upon consideration, I will award a sum of Kshs 200,000/- under this head as proposed by the learned counsel for the plaintiffs. I have again relied on the above decisions and those cited by the learned counsel for the plaintiff and factored in the rise in the cost of living.

### **Loss of dependency**

24. The deceased was 28 years old at the time of his untimely death and was a student pursuing a Bachelor of Science degree in Horticulture. He therefore clearly had a promising future and had prospects of providing support to his elderly parents. He was set to graduate had he not passed away, and then would have ventured into employment or practice by virtue of his profession. The plaintiff presented documents proving that the deceased undertook learning towards the study of Bachelor of Science in Horticulture.
25. As aptly submitted by the learned counsel for the plaintiff, the gross salary range for people working in Kenya in Agriculture and Food industry is typically from Kshs. 32,480/- (minimum salary) to Kshs. 88,684/- (highest average) according to salary survey obtained through <https://www.paylab.com/ke/salaryinfo/agriculture-food-industry?lang=en>. I do agree with the learned counsel on this. In the case of Rosemary Mwasya Vrs Steve Tito Mwasya & Anor. [2018] e KLR, the Court of Appeal upheld the monthly salary of Kshs. 118,546/- based on a salary survey extract where the deceased was a student studying accountancy. I shall thus go for the average salary of Kshs. 60,564/- as the gross pay. I will however have to factor in an income tax deduction of 30%, thereby leaving a net of Kshs.42,398.80, which I shall apply as the multiplicand herein.
26. The plaintiffs proposed a multiplier of 30, while assuming that the deceased would have worked until 60 years as there is no evidence brought by the Defendants of any vicissitude of life or other imponderables that would have shortened his working life. Learned counsel for the plaintiff also proposed a dependency ratio of 1/3.
27. Learned counsel for the defendant, on the other hand, urged the court to use the global sum award and award Kshs. 12000/-. Alternatively, counsel for the defendant proposed a multiplier of 28 years, and a dependency ratio of 1/3 as part of loss of dependency.
28. The Court of Appeal in Hellen Waruguru (Suing as the Legal Representative of Peter Waweru Mwenja (Deceased) VRS Kiarie Shoe Stoores Limited [2015] eKLR held as follows: -

This court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate under the *Law Reform Act* and dependents under the *Fatal Accidents Act* are the same, and consequently the claim



for lost years and dependency will go to the same persons. It does not mean that a claimant under the *Fatal Accidents Act* should be denied damages for pain and suffering and loss of life, hence the issue of duplication does not arise. An award under the *Law Reform Act* is not one of the benefits excluded from being taken into account when assessing damages under the *Fatal Accidents Act*; it appears the legislation intended that it should be considered. The *Law Reform Act* (cap 26) section 2(5) provides that the rights conferred by or for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of the deceased persons by the *Fatal Accidents Act*. This therefore means that a party entitled to sue under the *Fatal Accidents Act* still has the right to sue under the *Law Reform Act* in respect of the same death. The words “to be taken into account” and “to be deducted” are two different things. The words in section 4(2) of the *Fatal Accidents Act* are “taken into account”. The section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the *Fatal Accidents Act*, the trial judge bore in mind or considered what he had awarded under the *Law Reform Act* for the non-pecuniary loss.

29. In the case of *Moses Akumba & Another Vrs Hellen Karisa Thoya* (2017) eKLR Chitembwe J rendered as follows:

The trial court invoked the provisions of section 4 (1) of the Fatal Accident Act and was well guided on the applicable legal principles. The trial court found that the deceased had only two dependents – the parents. A multiplier of 30 years was adopted in my view that multiplier is a bit high. The award is for the benefit of those two parents who were aged 52 and 53 years respectively. What this means is that the two parents would have lived up to the age of 80 years and beyond. The concern for the award is not how long the deceased would have lived but the extent and length of the dependency. I do find that a multiplier of 20 years would be sufficient. This would have extended the dependency to over 70 years. The trial court adopted a sum of Kshs 20,000 as the deceased’s salary each month. PW1 testified that the deceased was a fisherman earning between Kshs 1000 -1,500 daily. It is obvious that the allegation could not be backed by any record or documentation. The deceased was working informally. According to his mother, he had a fishing boat and the proceeds were from selling fish. Counsel for the appellant is of the view that the court should adopt the minimum wage of Kshs 4,577.220. It is clear to me that the deceased was active in life. There is no legal principle that any unemployed person should be considered to have been earning the minimum wage. Someone running a retail shop, kiosk or an eatery could be earning more than the minimum wage. The court simply has to consider whether a fisherman can earn Kshs 5,000 each week in his fishing business. This is a possibility as it translates to about Kshs 800 each day. I do find that the estimate of Kshs. 20,000 by the trial court is not exorbitant. The trial court adopted 1/3 dependency ration which I find to be just. This is what the appellant is proposing. On this head of award, workout is as follows:  $20,000 \times 20 \times 12 \times \frac{1}{3} = 1,600,000$ .

30. In the instant case the deceased had 2 dependents, including the plaintiff herein and his mother. The plaintiff is currently aged 64 years. This is going by the evidence in PEXH. NO.8. There is no proof of age of the other dependant. Relying on the above decision by Justice Chitembwe, I do find that a multiplier of 10 will be sufficient in this case. This will adequately and reasonably cover for the dependency of the deceased’s parents.
31. Considering the above findings, I therefore award for loss of dependency as follows:



$$42,394.8 \times 12 \times 10 \times 1/3 = 1,695,792$$

32. Accordingly, I hereby enter judgment in favour of the plaintiffs and against the defendant as follows:
- a. Special damages: Kshs 87,550/=
  - b. General damages
    - i. Pain and suffering: Kshs 120,000/=
    - ii. Loss of expectation of life: Kshs 200,000/=
    - iii. Loss of dependency: Kshs 1,695,792/=
- Total Kshs 2,103,342/=
33. Costs follow the event. The plaintiffs shall have costs of the suit and interest on special damages at court rates from the date of filing the suit and interest on general damages at court rates from the date of judgment until payment in full.

**DATED AND DELIVERED AT NAKURU THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In The Presence Of:

Plaintiffs' Counsel: Cheruiyot

Defendant's Counsel: Odhiambo

Plaintiff: n/a

2<sup>nd</sup> Defendant: n/a

Odhiambo: Praying for 30 days stay of execution

Cheruiyot: No objection.

Ct: 30 days stay granted.

Cheruiyot: Praying for a copy of the judgment.

CT: Certified copy of the judgment be supplied to the plaintiff's counsel upon payment of the requisite fee/s.

