



**Ng'ang'a (Suing as the administrators of the Estate of Peterson
Karanja Gathu - Deceased) v Nolan Ventures Limited (Civil Suit
E1095 of 2021) [2025] KEMC 219 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEMC 219 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E1095 OF 2021
PA NDEGE, SPM
SEPTEMBER 18, 2025**

BETWEEN

**CATHERINE NJERI NG'ANG'A (SUING AS THE ADMINISTRATORS OF THE
ESTATE OF PETERSON KARANJA GATHU - DECEASED) PLAINTIFF**

AND

NOLAN VENTURES LIMITED DEFENDANT

JUDGMENT

1. Peterson Karanja Gathu, deceased at the age of 40 years, was a cereals dealer in Nakuru County. On or about the 6th April 2021, he was lawfully riding a motor cycle registration number KMCQ 448R at Mweteta Kabatini along Kabatini forest road, when the Defendant's driver/ employee or agent so carelessly and/or negligently drove, managed and/or controlled motor vehicle registration number KDB 321P Faw Truck that he carelessly reversed the said motor vehicle causing it to hit the said motor cycle as a result of which the deceased suffered fatal injuries. As a result of the said accident and the resultant death, the plaintiffs now hold the Defendant liable, hence the instant suit.
2. By a Plaint dated the 7th of September, 2021, the plaintiff (suing as the legal representatives of the estate of the deceased) sued the defendant for negligence which resulted in the death of the deceased who was her husband and brother. She is seeking damages under the *Law Reform Act* and the *Fatal Accidents Act*, special damages of Kshs. 54,550/-, costs of the suit, and interest at court rates.
3. The defendant entered appearance and filed its Statement of Defence on 18/11/2021 and 26/11/2021, respectively, 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 for the accident. Upon close of pleadings and after the pretrial, the matter was thus set for the hearing on 22/08/2023.



4. When the matter came up before me for the hearing on 22/08/2023, the plaintiffs testified and called another witness. On 20/05/2025, this matter came up for defence hearing. On that day, the plaintiff was represented by Mr. Cheruiyot, while the Defence was represented by Ms. Chepngetich. On that day, the parties herein entered an oral consent that was adopted to apply in this matter. The consent closed the defence case without calling any witness. Liability was agreed at a ratio of 80:20 in favour of the Plaintiff. Parties thereafter closed the hearing and the submissions were confirmed filed and exchanged, and this judgment was fixed for the 18/09/2025. The issue remaining for determination is the quantum of damages awardable herein.

Plaintiffs' Submissions

5. 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, and Kshs 2,003,632 for loss of dependency. She relied on numerous authorities to back her proposals. She further submitted for special damages of Kshs 54,550.

Defendant's Submissions

6. Learned counsel for the defendant similarly relied on numerous authorities and proposed awards of Kshs. 10,000/- for pain and suffering, Kshs 100,000/- for loss of expectation of life, and Kshs 800,000 for loss of dependency.

Analysis and Determination

7. The plaintiffs sought Kshs 54,550 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. 12000/- as funeral expense vide official receipt from Sam Njoroge Workshop dated 14/04/2021, being the cost of coffin, transport and hearse. 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 28/04/2021. There is also an invoice from the NTSA to prove that she incurred Kshs. 550.00 for motor vehicle search certificate. There are further receipts to prove that she incurred Kshs. 11,700/- as the costs of treating the deceased prior to his death. She however only pleaded for Kshs. 700/- as medical expense and since parties are bound by their pleadings, the compensation for medical expenses shall be limited to the Kshs. 700/- pleaded. I do therefore find that she is entitled to Kshs. 43,250/- as special damages herein. I thus do hereby award the same subject to the plaintiff's 20% contribution as consented to herein.
8. On general damages, in *H West and Son Ltd v 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 ...



9. In regard to the issue of damages awarded under the *Law Reform Act*, the High Court at Kakamega in *West Kenya Sugar Co. Limited v 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.

10. 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.

a. General Damages Pain and suffering

11. The evidence herein, including the receipts from the Rift Valley PGH and the postmortem report indicate that the deceased did not die on the spot. He died while undergoing treatment at the hospital. Learned counsel for the plaintiff has proposed a sum of Kshs. 120,000 while the counsel for the defendant proposed Kshs. 10,000.
12. In the case of *Sukari Industries Limited v 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. 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.
13. Upon considering the fact that the deceased herein did not pass on instantly and he must have therefore undergone much pain and suffering for a moment before he passed on, 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

14. In *Mercy Muriuki & Another v 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.



15. In the case of *Moses Akumba & Another v 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.

16. In the case of Patrick Kariuki Muiruri & 3 others v Attorney General [2018] eKLR Serگون 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) v Mogogosiek Tea Factory Co Ltd & another* [2018] eKLR an award of Kshs 200,000/= was made.
17. 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

18. The deceased was 40 years old at the time of his untimely death and was supporting his family, being a spouse and children. The plaintiffs proposed a multiplier of 20, while assuming that the deceased would have worked as a businessman 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 as a businessperson. Learned counsel for the plaintiff also proposed and a dependency ratio of 2/3.
19. Learned counsel for the defendant, on the other hand, urged the court to use the global sum award and award Kshs. 800,000/-. In proposing the global sum award, learned counsel argued that there is no evidence of the monthly income of the deceased and as such relying on the multiplier method would be an error in principle.
20. The Court of Appeal in *Hellen Waruguru (Suing as the Legal Representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stoors 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



expectation of life as these are only awarded under the *Law Reform Act*, 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.

21. In the case of *Moses Akumba & another v 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 principal 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: $20,000 \times 20 \times 12 \times 1/3 = 1,600,000$.

22. In the instant case the deceased had 3 dependents, including the plaintiff herein and 2 children. The widow, the plaintiff herein, is now a single parent to the minors. The minors are approximately aged 7 and 11 years respectively. Relying on the above decision by Justice Chitembwe, I do find that a multiplier of 17.5 will be sufficient in this case. This will adequately and reasonably cover for the dependency of the deceased’s children. They still had a long way to go for them to at least become self-dependant.
23. In regard to the wages of the deceased, the plaintiff urged the court to go by the minimum wages approach. I do therefore adopt the minimum wage of Kshs. 12,522.70 as the deceased’s wage and a



dependency ratio of 2/3. Considering the above findings, I therefore award for loss of dependency as follows:

$$12,522.70 \times 12 \times 17.5 \times 2/3 = 1,753,178$$

24. Accordingly, I hereby enter judgment in favour of the plaintiffs and against the defendant as follows:

- a. Special damages: Kshs 43,250/=
 - b. General damages
 - i. Pain and suffering: Kshs 120,000/=
 - ii. Loss of expectation of life: Kshs 200,000/=
 - iii. Loss of dependency: Kshs 1,753,178/=
- Gross Total Kshs 2,116,428/=
- Less 20% contribution Kshs 423,285/60
- Net Total Kshs 1,693,142/40

25. 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 18^T DAY OF SEPTEMBER. 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the Presence of:

Plaintiffs' Counsel: Cheruiyot

Defendant's Counsel: Mwangi h/b Chepngetich

Plaintiff: N/A

Mwangi: Seeking for 30 days stay of execution

Cheruiyot: No objection.

CT: 30 days stay of execution granted.

