



**Atieno & another (Suing as the Personal Representatives of the Estate of the Late Collins Omulo Okota - Deceased) v Owiti & another (Civil Suit E8658 of 2021) [2023] KEMC 126 (KLR) (3 April 2023) (Judgment)**

Neutral citation: [2023] KEMC 126 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

**CIVIL SUIT E8658 OF 2021**

**JP ADUKE, SRM**

**APRIL 3, 2023**

**BETWEEN**

**SALOME ATIENO & ANOTHER (SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE COLLINS OMULO OKOTA - DECEASED) ..... PLAINTIFF**

**AND**

**MIKE OKOTH OWITI & ANOTHER ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants as the Personal Representatives of the estate of the late Collins Omulo Okota (hereafter the deceased) after he sustained fatal injuries due to a road accident which occurred on the 01<sup>st</sup> October 2018. In the plaint on file, the plaintiff avers that the deceased was a passenger aboard motor cycle registration number KMEE 239D along Baba Dogo Lucky Summer Road in Nairobi when the defendants so negligently drove motor vehicle registration number KAV 669V causing the same to knock down the deceased to his demise.
2. The plaintiffs blame the defendants and their authorized agents for causing the accident. The plaintiffs further aver that the accident was caused solely by the negligence of the defendants.
3. The particulars of the alleged negligence are captured in paragraph 5 of the Plaint. The plaintiffs pray for general damages under the *Fatal Accidents Act* and the *Law Reform Act*, special damages, costs of the suit and interest.
4. Return of service on records shows that the defendants were served with the suit papers. The Defendants entered appearance and filed a defence. The suit is defended. The plaintiffs called two witnesses who testified on oath. The Defence closed its case without calling any witnesses. Parties filed and exchanged written submissions.



5. The issues for determination before this court are two:

1. Liability;
2. Quantum;

### Liability

6. From the documents available on record, I have seen a copy of the abstract from police records confirming the particulars of the road traffic accident. I have also noted that the same blames KAV 669V for causing the accident. From the documents available on record, I have seen a copy of the NTSA motor vehicle copy of records confirming that the 1<sup>st</sup> defendant was the registered owner of the motor vehicle in question as at 01<sup>st</sup> Sept 2020. I have seen a copy of the death certificate confirming the death of the deceased herein. I have also seen a copy of the Post mortem report creating nexus between the death of the deceased and the trauma from the alleged road traffic accident. This chronology of events in my view, settles the issue of liability. For the avoidance of doubt, I find that liability is apportioned at a ratio of 100:0 in favour of the Plaintiffs.

### Quantum

7. With respect to quantum, I will begin with special damages. The Plaintiffs claim Kshs 54,050/- as captured in para 7 of the Plaint on file. As at the date of writing this judgment, I have seen on record receipts attesting to this. It is settled principle in law that special damages must be proved and pleaded. I find that Kshs 54,050/- was pleaded and proved and I award this.

8. I have seen a copy of the Limited Grant of Letters of Administration ad litem on record confirming that the Plaintiffs in this suit have the authority to file this suit on behalf of the estate of the deceased. In view of this, I find that damages under the Law Reform Act are awardable. I award Kshs 100,000/- on account of this.

9. With respect to awards under section 4 of the Fatal Accidents Act, I find that the same are awardable. The deceased was 22 years old at the time of his death. He was not married, and had no known children. I have not seen any past payslips or proof of earnings from the documents available on file. In the absence of this information, I will proceed to use the gazetted minimum wage in force as at the date of death of the deceased being 2018. (Legal Notice Number 2 of 2018 The Regulation of Wages General Amendment Order 2018). I have assumed the deceased would have worked up to about 40 years of age seeing as he was not gainfully employed. I have relied on the reasoning of the court in Evanson Ndungu Mukunya v JNM & MWAN (Suing as the legal representatives of the estate of JMN)[2022] eKLR

9. In summary, I enter judgment in favour of the Plaintiffs on the following terms:

1. Liability at 100%;
2. Special damages – Kshs 54,050/-
3. Damages under the Law Reform Act-Kshs 100,000/-
4. Damages under the Fatal Accidents Act 17,561 (per month) 12 (no of months) 18yrs 1/3 =Kshs 1,264,392/-
5. Costs of the suit.
6. Interest on numbers 3,4 and 5 above at court rates from the date of judgment until payment in full.



**ADUKE JEAL PRAXADES ATIENO  
SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED AND DELIVERED THIS 03<sup>RD</sup> APRIL 2023 IN THE PRESENCE OF THE  
PARTIES AT 11.30 AM**

**In the presence of :**

- 1. Court Assistant: ...Benjamin Kombe  
(Name, Signature, Date)
- 2. Counsel for the Plaintiff- .....N/A.....  
(Name, Signature, Date)
- 3. For the Defence: .....N/A.....  
(Name, Signature, Date)

