



Board of Management Kamuwongo Mixed Day Secondary School & another v Mwanzia & another (Suing as the Legal Representatives of the Estate of the Late Stanlaus Mwanzia Senge – Deceased) (Civil Appeal E051 of 2024) [2025] KEHC 15499 (KLR) (28 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E051 OF 2024
NIO ADAGI, J
OCTOBER 28, 2025**

BETWEEN

**THE BOARD OF MANAGEMENT KAMUWONGO MIXED DAY SECONDARY SCHOOL 1ST APPELLANT
JOHN MWANTHI MWANZIA 2ND APPELLANT**

AND

**JOSHUA SENGE MWANZIA 1ST RESPONDENT
JOSEPHINE NDULULU MWANZIA 2ND RESPONDENT
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
STANLAUS MWANZIA SENGE – DECEASED**

JUDGMENT

1. This judgement relates to the two Appeals hereinabove HCCA E051 OF 2024 and HCCA E053 OF 2024 arising from the same cause of action being a Fatal Road Traffic accident that occurred on 2nd April 2022.
2. Appeal HCCA E051 OF 2024 arises from the judgement of Hon. Paul Wechuli, PM delivered on 1st February 2024 in the Principal Magistrate’s Court at Kithimani PMCC No. E066 of 2023 Joshua Senge Mwanzia & Josephine Ndululu Mwanzia (Suing as the personal representative of the Estate of Stanlaus Mwanzia Senge (deceased) Vs The Board Of Management Kamuwongo Mixed Day Secondary School & Another.
3. Appeal HCCA E053 OF 2024 arises from the judgement of Hon. Paul Wechuli, PM delivered on 1st February 2024 in the Principal Magistrate’s Court at Kithimani PMCC No. E069 of 2023 LYDIA Kalee Nzuki & Rosemary Mwikali Mwanzia (suing As The Personal Representative Of The Estate



Of Fredrick Mwangangi Nzuki (deceased) Vs The Board Of Management Kamuwongo Mixed Day Secondary School & Another.

Liability At Trial Court

4. In both matters, liability was apportioned by consent of the parties as at 20% against the Deceased persons and 80% against the Defendants (Appellants herein).

Quantum At Trial Court

5. On Quantum, trial court made the following awards on damages under the various heads:-

In PMCC No. E066 of 2023

- a. Pain and suffering Ksh.10,000
 - b. Loss of expectation of life Ksh.100,000
 - c. Loss of dependency Ksh.2,582,460
 - d. Special damages Ksh.517,750
- Costs and interest

In PMCC No. E069 of 2023

- e. Pain and suffering Ksh.10,000
- f. Loss of expectation of life Ksh.100,000
- g. Loss of dependency Ksh.5,580,841.60
- h. Special damages Ksh.943,630

Costs and interest

6. Being aggrieved by the award of damages which is considered to be manifestly excessive, the Appellants lodged the present Appeals challenges the trial court's assessment of the quantum of damages and through the Memorandum of Appeals both dated 23rd February 2024, the Appellants mounted similar seven grounds for appeal as follows:-
 - a. That the learned Trial Magistrate erred in law in entering judgment in favour of the Respondents whereas they failed to prove their claim to the required standard.
 - b. That the learned Trial Magistrate erred in law and in fact in the assessment of damages payable.
 - c. That the learned Trial Magistrate erred in law and in fact in granting 2/3 dependency ratio to the respondents without them proving evidence on dependency.
 - d. That the learned Trial Magistrate erred in law and in fact in awarding the Respondents Ksh.2,582,460 and Kshs.5,580,841.60/= respectively and as loss of dependency which award was too excessive in the circumstances.
 - e. That the learned Trial Magistrate erred in fact and in law in failing to accord due regard to the Appellants submissions and authorities on quantum on applicable principles for assessment of damages in similar circumstances.
 - f. That the learned trial magistrate erred in law and facts in relying on extraneous evidence in arriving at the decision on quantum.



- g. That the learned trial magistrate erred in law and in fact by failing to properly evaluate the evidence on record thus reaching an erroneous decision.
7. The Memorandum of seek for orders that:
- a. The appeal herein be allowed and the judgment entered in Kithimani CMCC no. E069 of 2023 be either set aside or varied.
 - b. The Court be pleased to review the issue of quantum downwards as against the Appellants.
 - c. The costs of this appeal and costs in the trial court be borne by the Respondents.
 - d. Any further relief the Court may deem just to grant.
8. The Appeals were directed to be canvassed through written submissions. Both Parties Advocates complied and have filed their respective submissions in both Appeals.

Analysis Of The Law And Facts

9. I have carefully perused the trial courts' records, the Memorandum of Appeals and submissions filed by the Parties. It is quite clear from the face of the Appellant's Memorandum of Appeals and submissions that the substratum therein is only on quantum and more so on Loss of Dependency and Special damages. Liability is not challenged. I will therefore proceed to consider whether the Trial Magistrate erred in law and in fact in the assessment of damages under Loss of dependency and Special damages payable on behalf of each of the deceased's Estate which awards the Appellants claim to be excessive.
10. For an Appellant Court to interfere with an award of damages, it must be shown that the trial court in awarding damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that the wrong principle of law was applied.
11. In the case of *Maraga V Musila* (1984) 1 KLR 251, the Court of Appeal when addressing its mind to this issue expressed itself thus;
- “The assessment of damages is more like an exercise of discretion and an appellate court is slow to reverse a lower court on the question of the amount of damages unless it is satisfied that the judge acted on a wrong principle of law or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. The question is not what the appellate court would award but whether the lower judge acted on the wrong principles”.
12. The approach taken by courts in the assessment of damages is that comparable injuries should as far as possible be compensated by comparable awards although the court should bear in mind that no two cases are exactly the same. The court will also consider factors such as the state of the economy and the rate of inflation in its assessment of damages. (See *Stanley Maore v Geoffrey Mwenda* [2004] eKLR and *Ugenya Bus Service v Gachoki* [1982] eKLR).
13. I will address the damages awarded in each of the cases and determine whether the same were erroneous.
- A. In PMCC No. E066 of 2023 (HCCA E051 OF 2024), the trial court made the following awards:-
 - a. Pain and suffering -Ksh.10,000 (Not challenged)



- b. Loss of expectation of life- Ksh.100,000 (Not challenged)
- c. Loss of dependency -Ksh.2,582,460

14. The Appellants submitted that the Deceased in the instant appeal died at the age of 65 years old as enumerated in the Death Certificate. It is also evident that the Deceased was survived by 7 children. The particulars of the children were also captured in the Letter from the area chief dated 17th May, 2022.
15. On Multiplicand/Income, they submitted that it was alleged that the deceased was working as a businessman earning a monthly salary of Kshs.45,000/= as at the time of his untimely death. However, the Plaintiffs/Respondents did not adduce any evidence to demonstrate that the Deceased was a businessman and that he was earning a monthly income of Kshs.45,000/= which he used to sustain his alleged dependants. Further according to his death certificate, the deceased was found to have worked as a casual labourer. In the absence of proof of income, the Appellants urged the court to apply the minimum wage of a general labourer for a person working outside the designated cities given that the Deceased hailed from Kituluni within Matungulu District as provided in the applicable Regulation of Wages (General) (Amendment) Order. 2018 at Kshs.7,240.95/=. The Appellants noted that the accident occurred on 2nd April, 2022; a one month before the new provisions of the Regulation of Wages (General) (Amendment) Order, 2022 came into force on 1st May, 2022. The Appellants therefore urged the court to find that the multiplicand of Kshs.7,240.95/= is applicable and would be reasonable compensation under this head in the circumstances.
16. On Multiplier, the Appellants submitted that the Deceased died at the age of 65 years. The trial court adopted a multiplier of 10 years. The Appellants humbly note that in arriving at the multiplier, the Learned Magistrate did not factor in vicissitudes/ vagaries of life. As submitted in the Appellants submissions before the trial court, a multiplier of 5 years would have been more appropriate in the premises considering uncertainties of life. Reliance was placed on the case of John Muchiri Njoroge And Another V Monicah Asami [2021] eKLR, where the Deceased passed on at the age of 65 years. In this instance, Justice H. I. Ong'udi went ahead to apply a multiplier of 5 years while noting that:-
- “...Alongside the age of the deceased I have also taken into account life’s other vicissitudes not restricted to ill health that could cut short one’s working life. For such vicissitudes I would adopt a multiplier of five (5) years”
17. As to whether the Learned Magistrate erred in law and fact in granting 2/3 Dependency Ratio, the Appellants submitted that in the Complaint dated 30th March, 2023, the Respondents pleaded that the Deceased was survived by 7 dependants including; Dorcas Mbula Mwanzia - daughter, Josephine Ndululu - son, Joshua Senge Mwanzia - son, Rosemary Mwikali Mwanzia - daughter, Joyce Syevithe Mwanzia - daughter, Benard Mutie Mwanzia - son as well as Irene Mukii Mwanzia - daughter. In as much as the Respondents herein pleaded that the deceased had 7 children, the Appellants strongly submitted that the Respondents herein failed to tender any documentary evidence in form of birth certificates to affirm that the aforementioned children were indeed the Deceased person's biological children. From the foregoing, it is clear that no evidence of dependency by the adult children on the deceased during his lifetime was adduced before the court.
18. The Appellants further submitted that no evidence was adduced to show that the Deceased indeed supported the dependents or point out to the fact that the deceased had an income which went to the expenses of sustaining the alleged dependants. The Appellants also noted that the Respondents pleaded that the Deceased was a businessman. Be that as it may, the Respondents did not make any efforts to furnish the court with documentary proof to confirm that one Stanslaus Mwanzia Senge was earning a monthly income of Kshs.45,000/=. In other words, no financial statement was tendered



- before court in support of the allegation that the Deceased was earning that amount of money and therefore the court should treat the same as a mere allegation.
19. In as much as Section 4 of the *Fatal Accidents Act* provides that the Deceased's children are part of his dependant, the Appellants herewith submits that the Respondents have not presented any evidence in court in support of the relationship between the Deceased and dependants listed in the Plaintiff. In light of the above, the Appellants retaliated that dependency has not been proved and the Respondents have further failed to confirm to the court that the Deceased person aged 65 years had children who were below the age of majority and he in fact provided for their upkeep. As such, the Appellants submitted that the dependency ratio of 1/3 would suffice as the Deceased would have used 1/3 of his income to cater to the family's needs. It is well observed by the appellate courts that life is not a straight line and therefore it is necessary to reduce the remaining years to attaining the statutory retirement age through factoring in vagaries of life.
20. The Appellants thus worked out the applicable award as follows:
 $7,240.95/= \times 12 \times 5 \times 1/3 = 144,819/=$
21. Reliance was placed on the case of *Mwanzia Ngalali V Mutua Kenya Bus Ltd Cited In Albert Odawa V Gichumu Githenji* [2007] ECLR, the court further noted as follows:-
“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”
22. As such, in the event that this Court is inclined to employ the global sum approach in making an award in this instant appeal, the Appellants herein implores upon this court to refer to the case of *Moses Mairua Muchiri V Cyrus Maina Macharia (suing As The Personal Representative Of The Estate Of Mercy Nzula Maina (deceased))* [2016] ECLR, wherein the Court stated as follows-
“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”
23. Also in the Appeal lodged at the High Court at Mombasa in *Dora Mwawandu Samuel (suing On Her Behalf And On Behalf Of The Estate Of Samuel Muweliani Jumamosi - Deceased) V Shabir M. Hassan* [2021] ECLR, the Appellant pleaded that the trial court had erred in applying the global award principle as opposed to the multiplier approach in awarding general damages for the deceased who had passed on at age of 59 Years. While arriving at his determination, Learned Justice Mwangi observed that the deceased was a farmer but no documents were produced to support the deceased's monthly income. In the Judgment of the appellate court, Justice Mwangi upheld the decision of the Trial Court in applying a global award principle in the matter and noted that the award of KShs.400,000/= was both reasonable and sufficient.



24. On the same account, the Appellants pray that this court does make an award of Kshs.300,000/= under the global sum approach while noting the age of the Deceased and further taking into account the vagaries of life.

Special damages Ksh.517,750

25. On special damages, the Appellants submit that the award of Kshs.517,750/- as applied by the trial court was high as the Respondent had pleaded Kshs.514,750/= as special damages. Further, the Respondent filed receipts submitted amounting to Kshs.460,340/= in support of their special damages claim.
26. The Appellants pray that this Court to only award the amount that had been proven by the production of receipts.
27. In conclusion the Appellants submitted that, in light of the foregoing, this court does find that the Honourable Magistrate misdirected himself by failing to properly analyse the submissions as well as evidence adduced in the matter during trial and did not properly apply the law to the facts of the case.
28. The Appellants therefore pray that this Appellate Court be pleased to find that the trial court made excessive award under the heads of general damages and thus proceed to set aside the awards with commensurate/fair award of general damages on the highlighted aspects in the Appeal.

Finally, the Appellants pray for costs of this Appeal.

29. I have read the trial court judgement on the awards for Loss of dependency and special damages in this particular appeal. On loss of dependency, the trial magistrate stated that the Plaintiff had no formal employment. He died at the age of 65 years old as per the death certificate on record. The same document indicates that he was a businessman. Though he was said to earn Kshs.45,000 per month as a business, his income could not be ascertained by evidence. The trial magistrate relied on the Court of Appeal decision in *Isaack Kimani Kanyangi & Another (suing As The Legal Representative Of The Estate Of Loise Gathoni Mugo (deceased) Vs Hellena Wanjiru Rukunga (2020) EKLK* where it was held that a minimum wage ought to be adopted as a multiplicand where the monthly income could not be ascertained.
30. The trial magistrate went on to state that the deceased was said to have a business in Tala Town. That evidence was not controverted. I find that the monthly minimum salary for a cashier as per the Kenya Gazette of 1.7.22 of Ksh.32,280.75 is to apply. Further since the deceased died at 65 years old, given the vicissitudes of life, a multiplicand that considers a further life span of 10 years is most appropriate since there is no evidence of any disease that could have lowered his life expectancy or that his job was risky. The trial Magistrate also applied a dependency ratio of two thirds.
31. On the foregoing, I observe that the trial Magistrate appreciated the fact that the deceased was said to be a businessman and that his income could not be ascertained by evidence. This notwithstanding the trial magistrate proceeded to equate the deceased to an employee being a cashier and applied the monthly salary for a cashier as per the Kenya Gazette of 1.7.22 of Ksh.32,280.75. I find this position by the trial Magistrate to be erroneous for the reasons that first; there was no mention of the specific business the deceased was engaged in which would have convinced the court that truly, the deceased was a business man, Second; a businessman and a cashier are completely different occupations and it was wrong for the trial magistrate to convert the deceased who was said to be a businessman into a cashier.



32. I find that the decision by the trial magistrate that the multiplier approach to calculation of the award for loss of dependency was not suitable in the current case for the simple reason that the deceased's earnings were not proved or ascertained.
33. In the circumstances of this case and being guided by the decision in *Dora Mwawandu Samuel (suing On Her Behalf And On Behalf Of The Estate Of Samuel Muweliani Jumamosi - Deceased) V Shabir M. Hassan* [2021] EKLK cited by the Appellants I find that the global award principle would have been applied.
34. I therefore award a global sum of Kshs.600,000/= while noting the age of the deceased and further taking into account the vagaries of life.
35. On special damages, the trial court stated that special damages pleaded and proved are Ksh.517,750 and awarded the same. The Appellants did not substantiate in this appeal or outline how they arrived at the contrary amount on special damages. I will therefore not disturb this award.
 - B. In PMCC No. E069 of 2023 (HCCA E053 OF 2024), the trial court made the following awards:-
 - a. Pain and suffering -Ksh.10,000 (Not challenged)
 - b. Loss of expectation of life -Ksh.100,000 (Not challenged)
 - c. Loss of dependency Ksh.2,582,460
36. The Appellants submitted that the Deceased in the instant appeal died at the age of 26 years old as enumerated in the Death Certificate. It is also evident that the Deceased was survived by a mother, wife and a brother. The particulars of the dependants were also captured in the Letter from the area chief dated 19th May, 2022.
37. On Multiplicand/Income, it was alleged that the deceased was working as a businessman earning a Kshs.45,000/= per month as at the time of his untimely death. However, the Plaintiffs/Respondents did not adduce any evidence to demonstrate that the Deceased was a businessman and that he was earning a monthly income of Kshs.45,000/= which he used to sustain his alleged dependants. In the absence of proof of income, the Appellants urged the court to apply the minimum wage of a general labourer for a person working outside the designated cities given that the Deceased hailed from Kituluni within Matungulu District as provided in the applicable Regulation of Wages (General) (Amendment) Order 2018 at Kshs.7,240.95/=. It was also noted that the accident occurred on 2nd April, 2022, one month before the new provisions of the Regulation of Wages (General) (Amendment) Order, 2022 came into force on 1st May, 2022. The Appellants therefore urged the court to find that the multiplicand of Kshs.7,240.95/= is applicable and would be reasonable compensation under this head in the circumstances.
38. On Multiplier, the Appellants submitted that the Deceased died at the age of 26 years. The trial court adopted a multiplier of 34 years. The Appellants noted that in arriving at the multiplier, the Learned Magistrate did not factor in vicissitudes/ vagaries of life. As submitted in the Appellants submissions before the trial court, a multiplier of 23 years would have been more appropriate in the premises considering uncertainties of life. Reliance was placed in the case of *Mitra Enterprises Ltd V Kennedy Ukiru Isigi & Rose Vosebwa Samson* [2025] eKLR where the deceased passed on at the age of 29 years. In this instance, Justice Kamau went ahead to apply a multiplier of 20 years.
39. On whether the Learned Magistrate erred in law and fact in granting 2/3 dependency, the Appellants submitted that in the Plaint dated 30th March, 2023, the Respondents pleaded that the Deceased had 4



dependants including; Rosemary Mwikali Mwanzia- wife, Lydia Kalee Nzuki - mother, Henry Enard Nzuki - brother, Gift Mwangangi Nzuki - son. In as much as the Respondents herein pleaded that the deceased had 4 dependants one of which was his son, we strongly submit that according to the Chief's letter dated 19th May, 2022, the deceased son, Gift Mwangangi passed away as a result of the same accident. From the foregoing, it is clear that the deceased was not survived by any children during his lifetime. We further submit that no evidence was adduced to show that the Deceased indeed supported his mother, brother and wife or point out to the fact that the deceased had an income which went to the expenses of sustaining the alleged dependants.

40. The Appellants further noted that the Respondents pleaded that the Deceased was a businessman. Be that as it may, the Respondents did not make any efforts to furnish this Honourable court with documentary proof to confirm that one Fredrick Mwangangi Nzuki was earning a monthly income of KShs.45,000/=. In other words, no financial statement was tendered before court in support of the allegation that the deceased was earning that amount of money and therefore the court should treat the same as a mere allegation. In as much as Section 4 of the *Fatal Accidents Act* provides that the Deceased's children are part of her dependants. In light of the above, we retaliate that dependency has not been proved and the Respondents have further failed to confirm to the Honourable court that the deceased person aged 26 years had other surviving children who were below the age of majority and he in fact provided for their upkeep. As such, the Appellants submitted that the dependency ratio of 1/3 would suffice as the deceased would have used 1/3 of his income to cater to the family's needs.
41. The award would thus work out as follows;
 $7,240.95 \times 12 \times 23 \times 1/3 = 666,167.40/=$
42. Reliance was placed on the case of Mwanzia Ngalali V Mutua Kenya Bus Ltd Cited In Albert Odawa V Gichumu Githenji [2007] EKLR, the court further noted as follows-
- “The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation: where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”
43. As such, in the event that this Court is inclined to employ the global sum approach in making an award in this instant appeal, the Appellants herein implore upon this court to refer to the case of Moses Mairua Muchiri V Cyrus Maina Macharia (suing As The Personal Representative Of The Estate Of Mercy Nzula Maina (deceased) [2016] EKLR, wherein the Court stated as follows:-
- “It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”
44. The Appellants prayed that this court does make an award of Kshs.800,000/= under the global sum approach while noting the age of the Deceased and further taking into account the vagaries of life.



45. In conclusion, the Appellants submit that the Honourable Magistrate misdirected himself by failing to properly analyse the submissions as well as evidence adduced in the matter during trial and did not properly apply the law to the facts of the case. The Appellants therefore pray that this Appellate Court be pleased find that the trial court made excessive award under the heads of general damages and thus proceed to set aside the awards with commensurate/fair award of general damages on the highlighted aspects in the Appeal. Finally, the Appellants pray for costs of this Appeal.
46. I have equally read the trial court judgement on the awards for Loss of dependency and special damages in this particular appeal. On loss of dependency, the trial magistrate stated that the Plaintiff had no formal employment. He died at the age of 26 years old as per the death certificate on record. The same document indicates that he was a businessman. The trial magistrate observed that although he was said to earn Kshs.45,000 per month as a business, his income could not be ascertained by evidence Since the deceased was said to have a business from where he sold various products and also ran a shop in Nairobi, the trial magistrate found that the minimum monthly salary for a shop assistant as per the Kenya Gazette supplement No.114 of 1.7.22 of Ksh.20,517.80 applied. The trial magistrate further stated that since the deceased died at age 26 years old, given the vicissitudes of life, a multiplicand that considers a further life span of 34 years is most appropriate. In so finding the trial magistrate relied on the decision in *Annalisa Muigai & Another V Beatrice Waithera Gitiri & Another* [2020] EKLK in which it was stated that:
- “On the contrary, many courts use the retirement age of 60 years as the upper limit unless it is demonstrated that the deceased suffered from particular disease which could have lowered his life expectancy or that he was engaged in a particular risky occupation”
- Neither issue are factors here.
47. The trial court adopted the age of 34 years since there was no evidence of any disease that could have lowered his life expectancy of the deceased or that his job was risky. The deceased was married. He had a wife and other dependants. The ratio applied was two thirds. The loss of dependency was calculated as follows:
- $$20,217 \times 12 \times 34 \times 2/3 = 5,580,841.60$$
48. On the foregoing, I also observe that the trial Magistrate appreciated the fact that the deceased was said to have a business from where he sold various products and also ran a shop in Nairobi and that his income could not be ascertained by evidence. This notwithstanding, the trial magistrate proceeded to equate the deceased to a position of an employee being a shop assistant and applied the monthly salary for a shop assistant as per the Kenya Gazette of 1.7.22 of Ksh.20,517.80. I find this position by the trial Magistrate to be erroneous for the reasons that first; there was no mention of the specific business or products that the deceased was engaged in or the type of shop in Nairobi which would have persuaded the court that truly, the deceased was a business man. Second; a businessman and a shop assistant are completely different occupations and it was wrong for the trial magistrate to convert the deceased who was said to be a businessman into a shop assistant.
49. It is my finding that the decision by the trial magistrate based on multiplier approach to calculation of the award for loss of dependency was not suitable in the current case for the simple reason that the deceased’s business or earnings were not proved or ascertained.
50. In face of the conflicting evidence as to what the deceased did for a living and what he earned, I am of the view that the trial court should have awarded a global sum for loss of dependency. In *Antony Njoroge Ng’ang’a* (Legal representative of the Estate of the late Fred Nganga Njoroge aka Fred Ng’ang’a



Njoroge) v James Kinyanjui Mwangi & 2 others [2022] eKLR, Chemitei J awarded a global sum of Kshs.400,000/= for loss of dependency while citing Albert Odawa vs Gichimu Gichenji [2007] eKLR) and John Wamae & 2 others v Jane Kituku Nziva & another [2017] eKLR where global lump sums of Ksh.400,000/= were made. In Intex Construction Company Ltd v John Mbere Iguna & Japhet Mugambi Iguna (Suing as legal representative of John Kiura Iguna (Deceased) [2020] eKLR, Limo awarded a lump of Kshs.650,000/= for loss of dependency. In M'rarama M'nthieri v Luke Kiumbe Murithi (2015) eKLR, Gikonyo J made a global award of Kshs.500,000/= for loss of dependency.

51. I therefore award a global sum of Kshs.1,000,000/= while noting the age of the deceased and further taking into account the vagaries of life.

Special damages -Ksh.517,750

52. On special damages, the Appellants submitted that the sum of Kshs.943,630/- was awarded by the trial court. However, the Respondents filed receipts amounting to Kshs.460,340/= in support of their special damages claim. The Appellants pray that this court to only award the amount that was proven by the production of receipts.

53. The trial court stated that special damages pleaded and proved are Ksh.517,750 and awarded the same. Again, I find that the Appellants did not substantiate in this appeal or outline how they arrived at the contrary amount on special damages. I will not disturb this award.

54. Doing the best I can and in view of the authorities I have cited, the appeal succeeds partly. It is therefore hereby ordered:

- a. Liability at 80%: 20% in favour of the Respondents
- b. The sum of Kshs.2,582,460 awarded for loss of dependency in Kithimani Magistrate court in PMCC No. E066 of 2023 is set aside and substituted with an award for Kshs.600,000/-.
- c. The sum of Kshs.5,580,841.60 awarded for loss of dependency in Kithimani Magistrate court in PMCC No. E069 of 2023 is set aside and substituted with an award for Kshs.1,000,000/.
- d. Damages for pain and suffering, Loss of expectation of life and Special damages in both appeals, shall remain as awarded by the trial court.
- e. Apportionment of liability shall not apply to special damages.
- f. Each party shall bear its own costs of this appeal but the Appellants will bear costs and interest of the trial in the Magistrate's Court.
- g. Thirty days (30) stay of execution is granted.

Orders accordingly

JUDGMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 28TH OCTOBER 2025.

NOEL ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 28TH OCTOBER 2025

In the presence of:

Ms. Matuku for Appellants

N/A for Respondents



