



REPUBLIC OF KENYA



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**Inyangala & another v Ogola (Suing as the personal representative
of the Estate of the Late Jennipher Adhiambo Ouma) (Civil Appeal
E034 of 2024) [2025] KEHC 15227 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E034 OF 2024
WM MUSYOKA, J
OCTOBER 23, 2025**

BETWEEN

ANSELY HINGA INYANGALA 1ST APPELLANT

ELLY OMENI OKWARO 2ND APPELLANT

AND

**PETER OUMA OGOLA (SUING AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF THE LATE JENNIPHER ADHIAMBO
OUMA) RESPONDENT**

*(Appeal from the judgement and decree of Hon. EA Nyaloti, Chief
Magistrate, CM, in Busia CMCCC No. E281 of 2022, of 25th June 2024)*

JUDGMENT

1. The suit, at the primary court, was filed by the respondent against the appellants, seeking compensation, by way of damages, with respect to the death of the deceased person herein, whose estate the respondent was administering. The deceased had died, in an accident, on 20th October 2021, along the Kisumu-Busia Road, involving the deceased and a motor vehicle registration mark and number KCF 867L, owned and controlled by the appellants. The deceased was a passenger in the accident vehicle. Negligence was attributed on the appellants.
2. The appellants resisted the claim, vide their defence. They denied everything pleaded in the plaint, but averred, in the alternative, that if any accident was to be proved to have occurred, then negligence was to be attributed to the deceased, on account of his negligence, in causing or contributing to the causation of the accident.



3. An oral hearing was conducted, where the respondent presented 2 witnesses. The appellants did not avail witnesses. Judgement was delivered, on 25th June 2024. Liability was resolved at 100% against the appellants. Kshs. 3,200,000.00 was awarded for loss of dependency, Kshs. 50,000.00 for pain and suffering, Kshs. 100,000.00 for loss of expectation of life; and Kshs. 250,000.00 special damages. The total came to Kshs. 3,600,000.00.
4. The appellants were aggrieved, hence the appeal herein. The grounds revolve around their submissions not being considered; the award of Kshs. 3,200,000.00 being founded on wrong principles; section 58 of the *Law of Succession Act*, Cap 160, Laws of Kenya not being complied with; the multiplicand, of Kshs. 20,000.00, being adopted without proper justification; the award of Kshs. 50,000.00, for pain and suffering, being excessive; the award of Kshs. 100,000.00, for loss of expectation of life, being excessive; the award of Kshs. 250,000.00 special damages not being sufficiently proved; and the multiplier of 20 years being on the higher side.
5. On 5th May 2025, directions were given, for disposal of the appeal, by way of written submissions. Both sides have complied.
6. The appellants have submitted around the competence of the suit, in view of section 58 of the *Law of Succession Act*; and whether the awards, on general damages, were excessive. They have cited various judicial precedents to support their case.
7. The respondent has submitted only on the matter of the compensation, around whether the same was made in error.
8. I will start with the competence of the suit, for non-compliance with section 58 of the *Law of Succession Act*. Section 58 is about a continuing trust vesting in more than 1 administrator. That provision is in mandatory terms, with respect to a grant of letters of administration intestate. It provides that no grant of letters of administration intestate shall be made to 1 administrator alone, where there is a continuing trust. So long as a continuing trust arises, no grant of letters of administration intestate should issue to just 1 administrator, and where a grant is made to 1 administrator, contrary to section 58 of the *Law of Succession Act*, there would be a violation, and such a grant cannot provide competence to a suit, where a continuing trust arises. See *Veronica Mwikali Mwangangi vs. Daniel Kyalo Musyoka* [2005] eKLR (Ang'awa, J). A continuing trust would arise where the deceased was survived by a spouse or child still in minority.
9. For avoidance of doubt, section 58 of the *Law of Succession Act* provides, in its own words:

“ 58. Number of administrators where there is a continuing trust

(1) Where a continuing trust arises—

(a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation.

(b) no grant of letters of administration with the will annexed shall be made to one person alone except where-

(i) that person is the Public Trustee or a Trust Corporation; or



(ii) in the will the testator has appointed one or more trustees for the continuing trust who are willing and able to act.

(2) Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing as chosen by the court of its own motion.”

10. For full effect, I should also cite section 81 of the *Law of Succession Act*, with respect to what happens where 1 of many administrators dies, in cases of a continuing trust. The provisions states:

“81. Powers and duties of personal representatives to vest in survivor on death of one of them Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”

11. So, what was the situation herein? The respondent herein was the surviving spouse of the deceased. To that extent a continuing trust arose, with respect to him. The deceased also had children. However, the plaintiff did not disclose their respective ages, nor indicate that they were either adult or minors. The suit was premised on both the *Law Reform Act*, Cap 26, Laws of Kenya, and the *Fatal Accidents Act*, Cap 32, Laws of Kenya, and, therefore, it was brought on behalf of the estate of the deceased, and also on behalf of the heirs and beneficiaries. A continuing trust would arise with respect to the interests of the heirs and the beneficiaries herein.

12. I note that, among the documents placed on the record, were certificates of birth for the children. A substantial number of them were minors at the date of the death of their mother, the deceased herein. It meant a continuing trust arose with respect to them. There was also a letter, from the Chief of Bumala Location, dated 23rd November 2021, showing that the deceased had 9 children, whose ages were indicated as 28, 22, 22, 16, 13, 13, 11, 10 and 8. Some of the certificates of birth indicated that the children were born in 1999, 2008, 2010, 2015 and 2013. The deceased died in 2021, which would mean that at that date 6 of the children were minors.

13. That meant that her estate was subject to a continuing trust, with respect to the 6 children. That would have required full compliance with section 58 of the *Law of Succession Act*, so that, a grant in respect of the estate of the deceased herein, had to be issued to not less than 2 administrators. A grant made in non-compliance with section 58 of the *Law of Succession Act* would be deficient, and would not confer locus standi, to the 1 administrator, to handle the continuing trusts, arising in respect of the surviving spouse and the minor children. See *Veronica Mwikali Mwangangi vs. Daniel Kyalo Musyoka* [2005] eKLR (Ang’awa, J).



14. Consequently, as the grant, in respect of the deceased person herein, was made to only 1 person, the same was defective, and a suit filed, on behalf of the estate and the survivors and beneficiaries, would be incompetent. The trial court should have taken that into account. The grant obtained could and did not vest the estate of the deceased on the respondent, and he could not maintain a competent suit on that account.
15. On the compensation, the appellants appear to only raise issue with the general damages, that is around pain and suffering, loss of expectation of life, and loss of dependency.
16. On pain and suffering, the trial court awarded Kshs. 50,000.00. The appellants argue that that was on the higher side, given that the deceased died on the spot, suggesting that she experienced no pain, hence her estate was only entitled to minimal damages on that account. I do not know where the appellants got that from, given that the 2 witnesses who testified, were not eyewitnesses to the accident. They were not at the scene when the accident happened. They could not tell who died on the spot, or instantaneously. The appellants did not call evidence, so they did not adduce evidence on who died instantly, or on the spot, or at the scene.
17. The witness statement, filed by the respondent, and which was adopted at trial as evidence, stated that the deceased was rushed to Ambira Level 4 Hospital, where he, the respondent, found her alive and in pain, and that she died while undergoing treatment. There was some evidence, that the deceased did not die instantly, and that meant that she did experience pain. However, the evidence was minimal, as to the duration the deceased experienced the pain and suffering, before she died. I would have no basis to interfere with the award by the trial court. The conventional figure is Kshs. 100,000.00, sometimes going up to Kshs. 150,000.00. See *Sukari Industries Limited vs. Clyde Machimbo Juma* [2016] eKLR (Majanja, J). If the deceased died at the scene of the accident, as suggested by the appellants, an award of Kshs. 50,000.00, for pain and suffering, would not be unreasonable.
18. For loss of expectation of life, the trial court awarded Kshs. 100,000.00. This accounts for the fact that the life of the deceased was cut short, and that she was denied a chance to live out her life to old age, enjoying herself to the fullest in the circumstances. The award is a conventional Kshs. 100,000.00. something of a token, explained on the basis that the dependants of the deceased get somewhat compensated by awards for loss of dependency and lost years. Kshs. 100,000.00 is apparently constant, and unchanging for the last couple of years. See *Commercial Transporters Limited vs. Dorcas Adoyo Owiti & another* [2017] eKLR (PJ Otieno, J), *Franco Mwirigi vs. Patrick Musyoki Munyoki & Duncan Mbole Munyoki* (suing on behalf of the estate of Maurice Wambua (Deceased) [2018] eKLR (Korir, J), *Beatrice Mukulu Kang'uta & Another vs. Silverstone Quarry Limited & Another* (2016) eKLR (Nyamweya, J) and *Caleb Juma Nyabuto vs. Evance Otieno Magaka & another* [2021] eKLR (Wendoh, J).
19. Although the appellant raises issues around the award on loss of expectation of life, in his grounds of appeal, they appear to have abandoned the grounds around this award, in the written submissions. I shall leave it at that.
20. On loss of dependency, which is a claim for the benefit of the beneficiaries, for loss of the financial and other support they were getting from the deceased, on account of the death, the trial court awarded Kshs. 3,200,000.00. The court arrived on that figure after working out a multiplier of 20 and a multiplicand of Kshs. 20,000.00. It was said that she died at the age of 45 years, and could have continued living till she was 65. No judicial decisions were cited, to explain how the trial court arrived at the multiplier of 20 and a multiplicand of Kshs. 20,000.00. The trial court noted that the respondent had not produced documentary evidence, to prove that the deceased earned Kshs. 45,000.00 from her business, and it concluded that she earned Kshs. 20,000.00 monthly from her hustles. No basis,



however, was laid, for that conclusion. No evidence was tendered on that, and there is a sense that these figures were plucked from the air. The appellants have justification to raise issue with the award under this head.

21. I have looked up a number of judicial authorities on the assessment of a suitable multiplier, for a deceased person aged 45, as at the time of their death, as against the multiplier of 20 adopted by the trial court.
22. In *Robert Nyakundi Mandieka (Suing as father and legal representative of the Estate of Winnie Nyanchama Nyakundi) vs. Bernard Masita Nyakundi & another* [2019] KEHC 896 (KLR) (Ougo, J) and *Kenya Power & Lighting Co. Limited vs. Tuva* [2024] KEHC 3335 (KLR) (Ongeri, J), a multiplier of 20 was adopted for persons who died at the age of 28 years. In *DKM (Suing as Legal Representative to the Estate of JMM – Deceased) vs. Mehari K. Towolde* [2018] KEHC 2061 (KLR) (Muriithi, J) and *Evaline Chepkirui (suing as the Legal Representatives of the Estate of the Late Kiprotich Cheruiyot) vs. Stella Asuga & another* [2021] KEHC 7456 (KLR) (Gikonyo, J), the deceased persons died at age 36, and a multiplier of 20 was adopted. While in *Paul Ouma vs. Rosemary Atieno Onyango & another (Suing as the Legal Representative in the Estate of Joseph Onyango Amollo (Deceased))* [2018] KEHC 7123 (KLR) (JA Makau, J) and *Bash Hauliers vs. Dama Kalume Karisa & another* [2020] KEHC 4270 (KLR) (N. Mwangi, J), the courts adopted a multiplier of 20, for individuals who died at the ages of 38 and 32 years, respectively.
23. It would seem that a multiplier of 20 years would be more suited for younger persons in their 20s and 30s, and may be on the higher side for individuals who are older.
24. In *Tobias Odoyo Oburu vs. Callen Kwamboka Okemwa & another (suing as the legal representatives of Obed Okemwa Obwoye) (Deceased)* [2018] KEHC 4231 (KLR) (Majanja, J), where the deceased died at 45 years, the court adopted a multiplier of 12. In *Hellen Gesare Ayoti (suing as the legal representatives of the Estate of the Late Justus Momanyi Ayot) vs. PN Mashru Ltd* [2016] KEHC 1722 (KLR) (J. Mulwa, J) and *Njoroge & another vs. Ombima (Suing as the Administrators of the Estate of the Late Robert Nyongesa Ombina)* [2025] KEHC 4984 (KLR) (Ng'etich, J), the courts adopted a multiplier of 15, for persons who died at age 45. In *Elizabeth Nduta Muthee vs. Oliver Karongo Ngari & Another* [2000] KEHC 130 (KLR) (K. Mulwa, J), the deceased died at 45 years, and the court adopted 16 as the multiplier.
25. It would seem that the average multiplier for persons who live to the age of 45 is 15. That is what the trial court should have considered.
26. On the multiplicand, the trial court should have considered the Government Regulations on minimum wage, for the type of work the deceased was doing. She was said to be in business, but it was not made clear what her academic and professional qualifications were, and what sort of formal employment she would have been engaged in. She should be, in the circumstances, have been treated as qualified for casual labour, and a multiplicand generated from that, after considering the relevant or applicable Government minimum wage regulations.
27. The applicable Government minimum wage regulations applicable then was the Regulation of Wages (General) (Amendment) Order, 2018, published as Legal Notice No. 2, in the special Kenya Gazette of 8th January, 2019. I find, from that Order, that a general or casual labourer would have earned Kshs. 7,240.95, monthly, in Busia, and that is the figure that the trial court should have worked with, as a multiplicand.
28. Before I leave the issue of loss of dependency, let me comment on something that I found baffling about the judgement of the trial court. In the paragraphs, where the trial court makes its analysis and



- decision on loss of dependency, it notes that “The deceased was unmarried with no children.” I find that confounding, for I am unable to find what the trial court based that holding on.
29. In the plaint, the respondent pleaded, at paragraph 9, under particulars under the *Fatal Accidents Act*, that the deceased was his spouse, and she had been survived by 9 children, whose names were listed in that paragraph. In the witness statement, filed simultaneously with the plaint, the respondent averred, at paragraph 2, that he was the widower of the deceased. There are other relevant documents, filed simultaneously with the plaint, which form part of the material that was before the trial court. The letter from the Chief identifies the 9 children of the deceased. A bundle of the certificates of birth, for those children, are on record, which indicate the deceased as their mother.
 30. It could not be true, therefore, that the deceased was unmarried and had no children. The plaint was anchored on the fact of her marriage and motherhood.
 31. The remark, by the trial court, that the deceased was unmarried and did not have children, when the pleadings, and the evidence filed with it, loudly and overwhelmingly said otherwise, is disturbing and concerning. Questions arise. Was the trial court really on top of the matter? Did the trial court appreciate the pleadings that had been filed, and in respect of which the matter was to be determined? Did the trial court appreciate the evidence that had been filed contemporaneously with the plaint? Did the trial court appreciate what the suit was really about? The principal claim was for loss of dependency, and the contest, at trial court, turned around that. Yet, if the deceased was unmarried, and did not have children, then who were her dependants, and on what basis was the court awarding loss of dependency for an unmarried woman with no children?
 32. On special damages, I note that 1 of the grounds of appeal is founded on this. Yet, in the written submissions, the appellants appear to have abandoned the ground. Their case, in the grounds of appeal, is that no documentary evidence, by way of receipts, was presented. Special damages are required to be strictly pleaded, and strictly proven. See *Hahn vs. Singh* [1985] KLR 716 (Kneller, Nyarangi, JJA & Chesoni Ag JA), *Mbaka Nguru & Another vs. James George Rakwar* [1998] eKLR (Omolo, Tunoi & Shah JJA), *Kenya Bus Services Ltd vs. Gituma* [2004] EA 91 and *Simon Taveta vs. Mercy Mutitu Njeru* [2014] eKLR (Visram, Koome & Otieno-Odek JJA).
 33. In the plaint, there was a claim of Kshs. 226,700.00, broken down into expenses on burial, police abstract, succession cause, certificate of death, motor vehicle search and postage of demand letter. In the bundle of documents, I see receipts for payments made to the County Government of Busia, for the businesses the deceased purportedly operated. I also see receipts for the burial event, being for foodstuffs, coffin, transport, mortuary and catering.
 34. The only receipts, filed together with the plaint, and produced at trial, related to funeral expenses. The respondent testified that he spent Kshs. 180,000.00, on the burial or the funeral. The courts are generally flexible on funeral expenses, and do not usually require strict proof. The only award, on special damages, that should have been awarded, should have been on the funeral expenses, of Kshs. 180,000.00. The other expenses were not strictly proved, and should not have been awarded.
 35. The appellants did not raise issue of liability in their grounds of appeal. I sit as a first appellate court. I am required by *Peters vs. Sunday Post Limited* [1958] EA 424 (Sir Kenneth O’Connor P, Briggs VP & Sir Owen Corrie, Ag JA), *Selle and Another vs. Associated Motor Boat Company Ltd & Others* [1968] EA 123 (Sir Clement de Lestang, VP) and *In re Estate of Charles Macharia Muraguri (Deceased)* [2025] KEHC 4849 (KLR) (Odero, J), to review the evidence afresh, and conduct a sort of re-trial, founded on the facts that were before the trial court. As an appellate court, I am not bound by the findings of fact by the trial court, if it appears, from the material on record, that the trial court did not consider certain facts.



36. I raise this because what I have seen, in the trial record, is that the respondent called 2 witnesses, himself and another. None of them, that is the respondent and his witness, were eyewitnesses to the accident. None of them could tell the court exactly what happened, at the precise time of the occurrence of the accident, so that, using that information, the court could evaluate whether or not the appellants were liable in negligence. No police witness was called, to place before the court the impressions made by the police, upon conducting investigations into the accident, particularly on the cause and circumstances of it. The only evidence, the trial court had, was that an accident happened, in which the deceased was fatally injured. There was no evidence on what exactly transpired, to explain the causation of the accident, or describe the circumstances of its occurrence. No evidence of how the accident happened was led. There was no evidence of who was at fault for the accident. There was no basis upon which fault or liability, founded on negligence, could be attributed on the appellants.
37. It is still trite, that there is no liability without fault, in the Kenyan jurisdiction. A person, agitating a case founded on the tort of negligence, in this jurisdiction, is under an obligation to lead evidence on fault, or liability, or negligence. Without such evidence, there would be no basis for finding anyone liable for the accident. The mere occurrence of an accident is not, ipso facto, evidence of negligence. The trial court, based on the material that was before it, therefore, had nothing upon which to find the appellants liable, in negligence, for the demise of the deceased.
38. I trust that what I have so far said is enough, to demonstrate that the appeal herein is merited. I hereby allow it. The result shall be, and is, that the orders made in the judgment by the trial court, in Busia CMCCC No. E281 of 2022, delivered on 25th June 2024, finding the appellants liable for negligence, and awarding damages at Kshs. 3,600,000.00, against them, and in favour of the respondent, is set aside. It is hereby substituted with an order dismissing the suit. Each party shall bear their own costs, here and at the court below. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 23RD DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Theldred Wesonga, instructed by Kairu & McCourt, Advocates for the appellants.

Mr. Iddi Nandwa, instructed by Nandwa & Company, Advocates for the respondent.

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