



**Murby v Lobalochor (Suing as the legal representative of the Estate of Moses Lokidor - Deceased)
(Civil Appeal E033 of 2024) [2025] KEHC 15185 (KLR) (Civ) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL APPEAL E033 OF 2024
SC CHIRCHIR, J
OCTOBER 27, 2025**

BETWEEN

NOAH KIPKEMEI MURBY APPELLANT

AND

**ESTHER ETIKA LOBALOCHOR (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF MOSES LOKIDOR - DECEASED) RESPONDENT**

*(Being an Appeal from the Judgment of the Hon. E. TSIMONJERO,
(SRM) delivered on 14/11/2023 in Isiolo CMCC NO. E054 of 2022)*

JUDGMENT

1. By way of a plaint dated 28/06/2022, the Respondent herein filed suit seeking for general and special damages on behalf of the Estate, and dependants of Moses Lokidor (Deceased), who was fatally injured as a result of a road traffic accident which occurred on 05/10/2021 at the locality of Archer's post. The accident involved Motor vehicle Registration No. KBZ 212 and the deceased, who was then a pedestrian on the said road.
2. On conclusion of the trial, the court apportioned liability on liability in the ratio of 50:50. The court further awarded the Respondent damages as follows: Kshs. 100,000/- for pain and suffering, Kshs. 200,000/- for loss of expectation of life, and Kshs. 2,500,000/- as a global award, for loss of dependency.

Memorandum of Appeal

3. Aggrieved by the trial court's finding on the award of damages, the Appellant, moved to this Court via the Memorandum of Appeal dated 25/01/2024.
4. The Appellant has presented the following grounds for consideration:



- a). That the Learned Principal Magistrate erred in law and fact in making an award of Kshs. 2,500,000/- for loss of dependency, which amount is excessively high in relation to the facts and circumstances of the case.
 - b). That the Magistrate erred in law and fact in failing to consider the submissions made by the Appellants and the legal Authorities filed therewith.
 - c). That the Magistrate misdirected himself into arriving at a wrong decision on quantum and awarding damages that was obviously exaggerate and excessive.
5. The Appellant prays that the Judgment of the lower court be set aside and this court to make a fresh assessment on damages.
 6. The Appeal proceeded by way of written submissions.

The Appellant's submissions

7. On the award on Pain and Suffering, the Appellant submitted that Kshs. 100,000/- was highly excessive and proposes Kshs. 20,000/- as sufficient compensation. Authorities cited included James Gakinya Karienyé & Ano⁹ 2015) eKLR ,where a conventional sum of Kshs. 10,000/- was awarded; Eldoret Express co ltd v. William Kind Korir and Karen (2014) e KLR where Kshs. 10,000/- awarded for death occurring two months post-accident, and Moses Koome Mithika & Ano v Doreen Gatwiri & Ano. (2020) e KLR which upheld Kshs. 10,000/- for instantaneous death. The Appellant also relied on the principle noted in West Kenya Sugar Co. Limited v Philip Sumba Julaya that nominal damages are awarded if death followed immediately.
8. On Loss of Expectation of Life, the Appellant submitted that the Kshs. 200,000/- award was highly excessive and proposed the conventional sum of Kshs. 100,000/-. The proposal is made on the basis of the following decisions:
 - a). Nicholas N.M. Joseph vs James Nyakundi & 2 others (2019) e KLR, where the award was ks. 100,000. The deceased was 28 years old
 - b). Miriam Moraa vs JOO (2021) e KLR where the award was ksh. 100,000 . The deceased was 30 years old
 - c). Moses Koome vs Doreen Gatwiri (2021) e KLR - where the award was ksh. 100,000.
9. In respect to Loss of Dependency, the Appellant conceded that the global sum approach was the correct one since the deceased's employment and exact earnings, which was placed at Kshs. 1,000/- per day was not cogently established. However, the award of Kshs. 2,500,000/- was challenged as being highly excessive. The Appellant proposes a global sum of Kshs. 800,000/-. He has relied on the decisions of Florence Mumbua Ndoo & Francis Kioko (2017) e KLR where Kshs. 700,000/= global award was made for a 20-year-old; Elvina Nyevu Garama & Ano. v Samson Kahindi Kitsao & Ano (2020) e KLR where the award was Kshs. 1,000,000/- , and the victim was a 22-year-old student and Mercy Muriuki & Ano. v Samuel Mwangi Nduati & Ano (2019) eKLR, where the a ward was Kshs. 1,000,000/- in respect of a deceased who was 36 years old at the time of his demise.

The Respondent's submissions

10. The Respondent has urged the Court not to interfere with the awards and has made reference to the established principle in the case of Catholic Diocese of Kisumu -Vs- Sophia Aclzien Tete (2004) e KLR and Butt -Vs- Khan (1981) e KLR to the effect that an appellate court should only interfere if the



trial court applied wrong principles or arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate. The Respondent argued that the award must also consider the prevailing economic environment.

11. On Pain and Suffering, the Respondent submits that the deceased sustained multiple injuries, was lying on the road for hours, and died the following day while undergoing treatment at Isiolo General hospital; that since death was not instantaneous, the higher damages were justified. The award of Kshs. 100,000/- was supported by Catholic Diocese of Machakos & Another -Vs- Janet Munaa Mutua & Ano (2021) eKLR where Kshs. 100,000/= was upheld where death occurred after the deceased had been taken to hospital.
12. On Loss of Expectation of Life, the Respondent argued that the deceased was 30 years old, in the prime of his life. The Kshs. 200,000/- award was not too high given prevailing inflation rates. This award was supported by the decision in Catholic Diocese of Machakos & Another -Vs- Janet Munaa Mutua & Another(2021) e KLR where the high court upheld an award of Kshs. 200,000/= for a 30-year-old. Comparison was also made with the awards in the decision of Daniel Kuria Nganga Vs Nairobi City Council (2013) e KLR of ksh. 300,000/, and in Citi Hoppa Bus Limited & Another -Vs- Maria Clara Rota (2021) eKLR of ksh. 200,000
13. For Loss of Dependency, the Respondent submits that the global award of Kshs. 2,500,000/= was within the court's discretion considering the economic environment. The respondent has cited Authorities with comparable awards , but which were arrived at using the multiplier approach. These include the case of New Adatia Wholesalers Limited -Vs Simiyu & 3 Others [2024] KEHC 8107(KLR), Where the award was Kshs. 2,640,000/-, and Ngania & 2 Others -Vs- Adulu [2024] KEHC 4005(KLR), where the award was Kshs. 3,600,000/-.

Analysis & Determination

14. This is an Appeal from the trial court, and therefore this court is obligated to review the evidence , do its own evaluation and arrived at its own independent decision. (see *Selle & Ano vs Associated Motor Boat Co. Ltd* (1968) E.A 123) .
15. It is trite law that assessment of damages is at the discretion of the trial court and any intervention by an appellate court is only upon certain established principles .In the case of *Kemfro Africa Limited t/ a "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] KECA 137 (KLR) the court of Appeal held: "The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages." And in the case of *Catholic Diocese of Kisumu v Tete* [2004] eKLR the same court held : "..... an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a difference figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles."

Pain and suffering

16. The court awarded ksh. 100,000 under this sub- head of damages. The police abstract indicate that the accident occurred at about 7am and according to pw1, she received a report in the evening that the deceased had died. Although the exact 'time of the evening' did not come out in the evidence the



sequence of events show that the deceased must have survived for a considerable number of hours before succumbing to injuries. What is evident however is that death was not instantaneous.

17. I have considered the Authorities that have been relied on by both parties, and my observation is that though the Authorities relied on by the Appellant are comparable, the proposal does not put into consideration factors of inflation. Thus taking into consideration inflationary trends since the decisions were made, I do not consider the award of ksh. 100,000 manifestly excessive to warrant the intervention of this court.

Loss of Expectation of life

18. On the loss of expectation of life the trial court awarded Kshs. 200,000/-. The Appellant has proposed Kshs. 100,000/-. The Respondent defended the Kshs. 200,000/- award, while relying on cases such as Catholic Diocese of Machakos & Another and Citi Hoppa Bus Limited & Another (Supra), and drawing attention to the fact that the deceased was 30 years old, in the prime of his life.
19. The generally accepted principle is that very nominal damages will be awarded under this head. The conventional award for loss of expectation of life is repeatedly cited across various authorities, including Mercy Muriuki (Supra), as Kshs. 100,000/=. While precedents exist for higher awards, such as Kshs. 200,000/- in Catholic Diocese of Machakos and Citi Hoppa Bus Limited (Supra).
20. However, am of the considered view that conventional awards, must take into consideration factors of inflation. To keep insisting on ksh. 100,000 while the value of the Kenya shilling keep depreciating is to ignore the reality of the economic trends. In any event, consideration of inflation is also a factor in assessing damages. In view of the aforesaid consideration, I do not find the award of ksh. 200,000 too excessive to warrant the intervention of this court.

Loss of Dependency

21. The trial court adopted the global sum approach and awarded Kshs. 2,500,000/- on loss of dependency. The Appellant has argued that the award was excessive, and proposed Kshs. 800,000/-, drawing authority from comparable global awards like Kshs. 700,000/= in Florence Mumbua Ndoo & Francis Kioko, Kshs. 1,000,000/- in Elvina Nyevu Garama & another, where the deceased's income was also unproven, rendering the case unfit for the multiplier method.
22. The Respondent relied on cases involving significantly higher awards derived from the multiplier method (New Adatia Wholesalers Limited and Ngania & 2 Others). The cited cases are distinguishable as the courts used a multiplier method, whereas the present case demanded the global sum approach due to the fact that the deceased's income could not be ascertained. The Authorities by the respondent are therefore not helpful.
23. I have equally considered the Authorities cited by the Appellant and whereas they are comparable to the loss in the present case, I have noted that the decisions are between 5 to 8 years old.
24. I have further considered the decision in the case of Kirimi & Ano vs Kithinji & Ano. [2023] KEHC 17732 (KLR), in which the high court set aside the lower court award of Kshs. 900,000 and substituted it with a global sum of Kshs. 2,000,000. The deceased was 32 years old, was married, and had school going children. Also in another high court decision in Khalif vs M'Kire & Ano. [2022] KEHC 15932 (KLR), the court upheld the lower court global award of Kshs. 2,000,000. The deceased was aged 35 years old and had two minor children.



25. The above two decisions though not binding on this court are persuasive. In the circumstances, I find the award of ksh. 2,500,000 to have been too excessive. The same is hereby set aside and substituted with ksh. 2,000,000.

26. In the end the Appeal partially succeeds and I hereby proceed to make orders as follows:

a). The trial court award on damages for loss of dependency is hereby set aside and substituted with ksh. 2,000,000

b). Consequently, the final award works out as follows:

(i). Pain & sufferingkshs. 100,000

(ii). Loss of Expectation of life.....kshs. 200,000

(iii). Loss of dependency.....ksh. 2,000,000

(iv). special Damages.....ksh. 110, 550

Grand total.....kshs.2,410,550

Less 50% contribution.....(kshs.1,205,275)

Balance.....ksh. 1,205,275

e). Each party to meet their own costs on this Appeal.

f). For avoidance of doubt, the costs in the lower court suit goes to the Respondent

DATED , SIGNED AND DELIVERED AT ISIOLO THIS 27TH DAY OF OCTOBER 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Roba Katelo – Court Assistant

Ms. Kiama for the Appellant

MR. Muchiri for Ms. Kaaria for the Respondent

