



REPUBLIC OF KENYA



**Migiro v Obara (Suing as the administrator of the Estate of the Late  
Lazarus Nyabayo Obara - Deceased) (Civil Appeal E102 of 2024)  
[2025] KEHC 15835 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15835 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E102 OF 2024  
JK NG'ARNG'AR, J  
NOVEMBER 5, 2025**

**BETWEEN**

**OMWANCHA KODEK MIGIRO ..... APPELLANT**

**AND**

**JAMES ATEI OBARA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
THE LATE LAZARUS NYABAYO OBARA - DECEASED) ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Chief Magistrate's Court at  
Ogembo (P.C. Biwott, CM) delivered on 17th April 2024 in CMCC No. E261 of 2021)*

**JUDGMENT**

1. In his plaint dated 16<sup>th</sup> November 2021, the respondent filed suit under the *Law Reform Act* and the *Fatal Accidents Act* on behalf of the estate of the deceased person namely Lazarus Nyabayo Obara. The respondent averred that the deceased was riding motor cycle registration number KMEN 424Z on 24<sup>th</sup> November 2020 along the Etago Nyamarambe road. On reaching Nduru Boys High School, the respondent contended that the appellant's motor vehicle registration number KCA 812G veered of the road and hit the deceased occasioning him fatal injuries as a result of the negligent acts of the appellant's driver.
2. Accordingly, the respondent sought general damages, loss of dependency, special damages of Kshs. 96,350.00 costs of the suit and interests. By judgment of the trial court, the appellant was found 85% liable in negligence. The respondent was accordingly awarded a net sum of Kshs. 2,568,148.00 in general damages for pain and suffering, loss of expectation of life and loss of dependency as well as special damages. The respondent was further awarded costs of the suit.
3. It is those findings that have galvanized the present appeal. The appellant filed his memorandum of appeal dated 7<sup>th</sup> June 2024. He raised eight grounds impugning the findings of the trial court. In



summary, the appellant complained that the award of general damages was grossly and manifestly excessive. He complained that in assessing the damages under the different heads, the trial court failed to apply the correct legal principles and ignored his submissions. Resulting from those complaints, the learned magistrate occasioned a miscarriage of justice. For those reasons, the appellant prayed that the award on general damages be reassessed.

4. The appeal was disposed of by way of written submissions. The appellant filed written submissions dated 18<sup>th</sup> September 2025. While acknowledging that this court should be slow to interfere with the exercise of discretion by a trial court in the award of general damages, he invited this court to do so on account of the allegation that the trial court applied incorrect principles and therefor arrived an erroneous conclusion.
5. Turning to the award on pain and suffering, the appellant cited the case of Wachira Joseph & 2 others vs. Hannah Wangui Makumi & another [2021] eKLR to submit that this court ought to award Kshs. 10,000.00 and set aside the sum of Kshs. 30,000.00 awarded. On the award of loss of expectation of life, the appellant submitted that the deceased was 26 years at the time of his death. Since no evidence of his health was adduced before the trial court, he relied on the case of Ndeti & another (suing on their own behalf and as administrators of the Estate of Gerald Ndeti Mutua (deceased) vs. Mwangangi & another [2022] KEHC 15732 (KLR) to urge this court to award the respondent Kshs. 100,000.00 under that head.
6. On damages under the *Fatal Accidents Act*, the appellant submitted that the trial court properly found that the deceased, as a bodaboda operator, would have earned Kshs. 10,000.00 monthly. The appellant adopted a multiplier of 15 years since the appellant was not in any formal gainful employment. As such, he submitted that it could not be presumed that he would have retired at 34 years of age.
7. Lastly on the dependency ratio, the appellant argued that since no marriage certificate was adduced to demonstrate that the deceased left a wife, the dependency ratio ought to be capped at 1/3. Be that as it may, a dependent was limited to a deceased's parent in line with section 4 (1) of the *Fatal Accidents Act*. Using a multiplier of 15 years, a multiplicand of Kshs. 10,000.00 and a dependency ratio of 1/3, the appellant proposed that damages for loss of dependency be awarded in the sum of Kshs. 600,000.00.
8. Finally, on special damages, the appellant cited the case of Hahn vs. Singh [1985] KLR 716 to argue that the respondent had not pleaded and proved the sum of Kshs. 71,350.00. He submitted that only a sum of Kshs. 51,350.00 had been proved since coffin and transport costs had not been proved to the required standard. For those reasons, the appellant prayed that his appeal be allowed.
9. The respondent opposed the appeal. He filed written submissions dated 10<sup>th</sup> September 2025. He urged this court to not disturb the findings of the trial court since it had not been demonstrated that the decision arrived at was based on wrong principles or that the evidence was misapprehended. For this proposition, he relied on the cases of Butt vs. Khan [1977] 1 KLR, Southern Engineering Company Limited vs. Mutia [1985] eKLR and Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 others [1986] KLR 457. He thus urged this court not to interfere with the damages awarded under the *Law Reform Act* and the *Fatal Accidents Act*.
10. Expounding further, the respondent submitted that the damages under the *Law Reform Act* were conventional figures. As such, there was no reason to set aside the findings. On damages for loss of dependency, the respondent argued that from the evidence on record, the deceased died leaving a wife and a child. He was also a bodaboda operator earning Kshs. 15,000.00 monthly. At 26 years of age, he would have worked for a long period of time beyond the retirement age. He urged this court to uphold the findings, and if it so wished to review, that the same be reviewed upwards.



11. Lastly on special damages, the respondent submitted that he had pleaded and proved the sum of Kshs. 71,350.00. He prayed that in the circumstances the findings of the trial court be upheld. For those reasons, the respondent prayed that the appeal be dismissed with costs.
12. I have considered the submissions, examined the record of appeal and analyzed the law. On 2<sup>nd</sup> November 2022, parties agreed that by consent, liability be apportioned in the ratio of 85:15 in favor of the respondent as against the appellant. Parties also produced their exhibits as filed in their list of documents. Accordingly, the findings of liability are upheld with no reason advanced to interfere with those findings.
13. The appellant has invited us to reassess the award of general damages under pain and suffering, loss of dependency and loss of expectation of life heads. The Court of Appeal in the case of *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR urged our role as an appellate court to only interfere with the findings of the trial court in the following terms:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:

‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.’

14. Were the awards under the various heads fair, proper, lawful and just? On damages under the *Law Reform Act*, the trial court awarded the respondent Kshs. 30,000.00 for pain and suffering and Kshs. 200,000.00 for loss of expectation of life after considering the submissions of both parties. In awarding damages under pain and suffering, courts are urged to adopt the following yardstick as was held in *Joseph Kivati Wambua vs. SMM & another* (Suing as the Legal Representatives of the Estate of EMM-Deceased) [2021] KEHC 9632 (KLR):

“The Appellant has taken issue with the award for pain and suffering on the ground that the evidence on record showed that the deceased passed away the same day and therefore the Respondents ought to have been awarded a lesser sum. In my view what determines the award under that head is how long the deceased took before he either passed away or lost consciousness. In the instant case, there was no cross-examination of the witnesses in order to bring out this evidence. A distinction ought to be made between a case where the deceased passes away instantly and where the death takes place sometimes after the accident. In the former, the award ought to be minimal as the legal presumption is that the deceased did not undergo pain before he died. However, where the deceased dies several hours after the accident during which time he was conscious and was in pain, an award for pain and suffering would not be nominal. In this case the Appellant squandered the opportunity to



bring out this aspect and there is no basis upon which I can fault the learned trial magistrate on his award for pain and suffering.”

15. From the exhibits adduced before the trial court, it is not clear whether the deceased died on the spot. It is worthy of note however that the deceased died on the same day that the accident occurred. I therefore find that the trial court’s award of Kshs. 30,000.00 was sufficient. I will therefore not interfere with those findings.
16. On loss of expectation of life, it is trite law that the same is awardable on the basis of a conventional figure. In *Planet Motors Mombasa Ltd & another vs. Benson* (Suing as Legal Representatives of the Estate of Rhoda Sipel Lemungat (Deceased) [2023] KEHC 18322 (KLR), this court held that the award is normally conventional, and in the bracket of Shs.60,000/= to 200,000.00. In this case, the trial court awarded Kshs. 200,000.00 for the reason that the deceased died aged 26 years old. Given that it is a conventional figure, and taking into account that the deceased died at a young age, I see no reason to disturb those findings.
17. On damages under the *Fatal Accidents Act* on loss of dependency, the principles in awarding damages under his head were enunciated by Ringera, J. (as he then was) in *Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989* where it was held that:

“The court must find out as a fact what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings. There is no conventional fractions to be applied, as each case must depend on its own facts. When a court adopts any fraction that must be taken as its finding of fact in the particular case and in considering the reasonable figure, commonly known as the multiplier, regard must be considered in the personal circumstances of both the deceased and the dependant such as the deceased’s age, his expectation of working years, the ages of the dependants and the length of the dependant’s expectation of dependency. The chances of life of the deceased and the dependants should also be borne in mind. The capital sum arrived at after applying the annual multiplicand to the multiplier should then be discounted by a reasonable figure to allow for legitimate concerns such as the widow’s probable remarriage and the fact that the award will be received in a lump sum and if otherwise invested, good returns can be expected.”

18. In determining whether to apply the global sums approach or the multiplier approach the court in *Frankline Kimathi Maariu & another vs. Philip Akungu Mitu Mborothi* (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR held:

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.” ...the global sum approach would be an estimate informed by the special circumstances of each case. “

19. Under this head, the respondent submitted that the deceased died at 26 years of age. He was working as a bodaboda operator earning Kshs. 15,000.00 monthly. That he died leaving his wife and one child. The trial court found that the deceased died earning Kshs. 10,000.00 monthly and would have worked for 34 years. The court further found that he left a dependency ratio of 2/3. Using those figures, the trial court awarded Kshs. 2,720,000.00 for loss of dependency.



20. Looking at the record of appeal, it is important to point out that the figures relied upon were purely conjectures based on the respondent's proposals. It was clear that the respondent issued a rough estimate of the deceased's earnings and further failed to prove that the deceased died as a bodaboda operator. Of rudimental importance, the respondent failed to adduce evidence of the deceased's earnings. As such, this case is a candidate for applying the global sums approach. I will therefore interfere with the trial court's findings.
21. In *Ainu Shamsi Hauliers Limited vs. Moses Sakwa & another* (suing as the Administrators of the Estate of the Ben Siguda Okach (Deceased) [2021] KEHC 4971 (KLR), this court upheld an award of Kshs. 2,000,000.00 where the deceased was 29 years old and left a wife and two children. In *Frankline Kimathi Baariu & another vs. Philip Akungu Mitu Mborothi* (suing as the Administrator and Personal Representative of Antony Mwiti Gakungu Deceased) [2020] KEHC 5897 (KLR), the deceased was aged 36 years and had two young children. An award of Kshs. 1,300,000.00 was given.
22. Taking the above comparable authorities into account, the current market inflation, the fact that the deceased died at 26 years of age leaving a widow and a young child, I exercise my discretion to interfere with the findings on loss of dependency. The same is substituted with a gross award of Kshs. 1,800,000.00 and shall be subjected to the 85:15 ratio to a net amount of Kshs. 1,530,000.00.
23. On special damages, the respondent pleaded for the sum of Kshs. 71,350.00. However, looking at the receipts produced in evidence, I find that the respondent proved a sum of Kshs. 51,350.00 accounting for Kshs. 1,000.00 as advance from Tabaka Mission Hospital, Kshs. 40,000.00 as legal fees for obtaining the grant ad litem and Kshs. 10,350.00 for service and mortuary fees. As rightly pointed out by the appellant, the sum of Kshs. 45,000.00 though pleaded as coffin and transport costs, was not proved.
24. The upshot of the above appeal is that the same partially succeeds to the extent set out in paragraphs 22 and 23 above. The final computation is as below: -
- General Damages Kshs 1,800,000/=
- Add special damages Kshs 51,350/=
- Kshs 1,851,350/=
- Less 15% Contribution Kshs 277,702.50/=
- Total Kshs 1,573,647.50/=
25. Since the appeal partially succeeds however, each party shall bear their own costs of the appeal.
- It is so ordered.

**JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of;

Siele (Court Assistant).

Ameso holding brief the Appellant

Maronga for the Respondent

