



**Ojwang & another (Suing as the Administrators of the Estate of the late  
Eliud Otieno Ongiro) v Mutuku & another (Civil Appeal E1111 of 2024)  
[2025] KEHC 15665 (KLR) (Civ) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15665 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1111 OF 2024**

**LP KASSAN, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**PETIT AKOTH OJWANG ..... 1<sup>ST</sup> APPELLANT**

**PETER OUMA AILA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE ELIUD  
OTIENO ONGIRO**

**AND**

**STANSLAUS MUTUKU ..... 1<sup>ST</sup> RESPONDENT**

**RADHESHYAM TRANSPORT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This is a Claim arising out of a road traffic accident in which a pedestrian sadly lost his life. The matter proceeded to full trial with the Plaintiff calling three witnesses who testified. The Defendant closed its case without calling any witness and the Trial Magistrate apportioned liability at 50:50 and awarded the Plaintiff damages under law reform and fatal accident. I need not to reiterate the duty of this Court to evaluate and reevaluate the evidence of the Lower Court. I have read the submissions and the proceedings together with relevant authorities and in order to determine this Appeal I wish to note the following;

**Liability**

2. The Plaintiff called a total of three witnesses. An eye witness (PW2) stated that he saw the Plaintiff crossing the road from Fedha Mpya stage towards Tassia where he was standing when he was knocked down off the road. He added that there were bumps and zebra crossing around 50 metres away and



that the Deceased was knocked by the left tyre of the front wheel causing him to fall on the left side of the road. The witness testified that at the time of the accident, the Deceased had crossed the road. He admitted that there was a foot bridge around 200- 500 metres away. PW1 who is a police officer testified that there was no footbridge near the scene of accident which was a distance away and that the accident occurred at Fedha stage as per the OB. The evidence of these two witnesses is crucial in determining liability. First it is agreed that there was a footbridge far from the scene of the accident and secondly, the accident occurred at a stage.

3. The OB indicates that the Accident occurred at Fedha stage Mpya but PW2 said that the accident occurred when the deceased was crossing the road from Fedha stage Mpya to Tassia- and I think that this is a contradiction that influenced the trial Magistrate's finding on liability. The fact that the deceased was crossing the road from Fedha Mpya to Tassia or vice versa means that the two, Fedha Mpya and Tassia are probably opposite each other. Being an official document, the OB takes precedence as it was the first report unless it is seriously challenged by witnesses and if we are to go by this, then the accident occurred in a stage. Drivers are generally required to exercise adequate care when approaching any stage even in a high way. PW2 said that there was a bump and zebra crossing 50 metres away and this evidence was not challenged. The defence did not ask for a scene visit to rebut this evidence and so it must be admitted. It is common to have a zebra crossing and bumps towards any stage in order to protect pedestrians who wish to access the stage and so this evidence makes sense.
4. The Trial Magistrate made a finding that since the deceased died on the spot, the driver was at high speed. This may or may not be the case but it influenced the Trial Magistrate in reaching its decision and is also supported by the evidence of an eye witness. The slight contradiction on the evidence of the eye witness with the OB on the exact spot of the accident which I find not significant since the alleged spots are opposite each other, shades a pale shadow of doubt in PW1 testimony without discrediting his entire testimony and to this end, I apportion liability at 85:15 in favour of the Plaintiff. This is coupled with the fact that the Defendant did not call any witness.

#### Quantum

- a. Pain and suffering;

The deceased died on the spot and so I award damages at Ksh 30,000/-.

- b. Loss of expectation of life

I shall award Ksh 150,000/ which I consider reasonable. Most awards in this limb is around this figure.

- c. Loss of dependency

The Trial Magistrate observed that the letter on what the deceased used to earn was never produced as an exhibit and that the certificate of death stated that the deceased was unemployed thus justifying the global award of Ksh 3,000,000/-. The deceased at the time of his death was 39 years old. I agree with the learned Magistrate that a global award would suffice under these circumstances but the figure awarded appears to be higher. When awarding global award, Courts need to consider what they could have awarded if they had adopted a minimum wage for comparison purposes especially where the deceased was still in his active age in life. On this limb and after consideration of all factors, I award the Plaintiff ksh 2,000,000/- as the global award.

- d. Special damages



The receipts on record is only for Ksh 15,000/- but however I agree that given the emotions and the delicate burial processes, receipts of purchasing some Items cannot be kept as evidence. On this I award Ksh 60,000/- making the total specials at Ksh 75,000/-.

5. The onset of the above is that the finding of the trial Court is slightly disturbed as follows;
  1. Pain and suffering Ksh 30,000/
  2. Loss of expectation of life Ksh 150,000/
  3. Loss of dependency Ksh 2,000,000/
  4. Specials Ksh 75,000/
  5. Liability 85:15 in favour of the Appellant
  6. Costs to the Appellant
6. The interest on special damages shall commence from the date this suit was filed at the lower Court and for general damages, they shall be calculated from the date the lower Court rendered its Judgement

**DATED DELIVERED VIRTUALLY AND SIGNED THIS 4<sup>TH</sup> DAY NOVEMBER 2025**

**HON L P KASSAN**

**JUDGE**

In the presence of;

Ngige for Appellant

Mageto for Respondent

Carol – Court Assistant

Order

30 days stay granted.

