



Super Bargains Hardware (K) Ltd v Obwana (Suing as the Legal Representative of Nathan Obwana - Deceased) & 3 others (Civil Appeal E020 of 2024) [2025] KEHC 16470 (KLR) (6 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E020 OF 2024
REA OUGO, J
NOVEMBER 6, 2025**

BETWEEN

SUPER BARGAINS HARDWARE (K) LTD APPELLANT

AND

DEBORAH ATENGE OBWANA (SUING AS THE LEGAL REPRESENTATIVE OF NATHAN OBWANA - DECEASED) 1ST RESPONDENT

OMUSE FADHILI BARASA 2ND RESPONDENT

MICHAEL NJUGUNA MWANGI 3RD RESPONDENT

BUNGOMA LINE SACCO LTD 4TH RESPONDENT

(Being an appeal from the judgment and decree of Hon. R.K Langat (PM) delivered on 24/1/2024 in Sirisia PMCC No E011 OF 2022)

JUDGMENT

1. By way of background, the deceased died on 23 2 2019 following a road traffic accident involving the 2nd and 3rd respondents' vehicles. The deceased succumbed to the fatal injuries. The trial magistrate found the respondents 100% liable and made the following award for damages:

Pain and suffering Kshs 50,000

Loss of expectation of life Kshs 120,000

Loss of dependency Kshs 1,000,000

Special damages Kshs 1,495,000

Total Kshs 2,665,000



2. The appellant, dissatisfied with the trial judgment, has lodged this instant appeal on the following grounds:
 1. That the learned trial magistrate erred in law and fact in adopting the wrong principles in assessment of damages payable to the 1st respondent both under the Fatal Accident Act and the *akn ke act 1956 48 Law Reform Act*.
 2. That the learned trial magistrate erred in law and fact by failing to consider the appellant's submissions on the issue of quantum thereby arriving at an erroneous decision.
 3. That the learned trial magistrate erred in law and fact in awarding excessive damages for loss of expectation of life in view of the evidence on record.
 4. That the learned trial magistrate erred in law and fact by adopting a global figure of Kshs 1,000,000 - for loss of dependency which was manifestly excessive.
 5. That the learned trial magistrate erred in law and fact by awarding the 1st respondent damages for loss of dependency and yet the same was not proved.
3. This appeal challenges the damages awarded by the lower court. The appellant requests that the appeal be allowed and that the subordinate court's judgment and or award of damages under the *akn ke act 1956 48 Law Reform Act* be set aside, with the same being reassessed downwards. The damages for pain and suffering should be reduced to Kshs. 10,000 -, and the damages for loss of expectation of life should be lowered to Kshs. 100,000 -. Additionally, the award for loss of dependency should be dismissed entirely, and the appellant should be awarded costs of the appeal.
4. The circumstances under which an appellate court can intervene in the assessment of damages by a trial court were clearly outlined in the case of *Catholic Diocese of Kisumu v Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55*, where the Court of Appeal stated as follows:

“It is trite law that the assessment of general damages is at the discretion of the trial court and 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 different 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, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”
5. The appellant submits that the deceased died instantly. Therefore, awarding Kshs 50,000 as damages for pain and suffering was mistaken. The appellant contends that an award of Kshs 10,000 would be adequate. Conversely, the respondent argues that the deceased suffered multiple injuries; therefore, an award of Kshs 50,000 is appropriate.
6. On loss of expectation of life, the appellant argues that the award of Kshs 120,000 - was excessive and should be reduced to Kshs 50,000. It was contended that nominal damages are usually awarded under this head if the death occurred immediately after the accident (see *West Kenya Sugar Co. v Philip Sumba Julaya* (suing as the administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR). The respondent, in his submission, maintains that the trial magistrate's award was reasonable.



7. It is not contested that the deceased was 72 years old at the time of his death and that, following the accident, he died instantly. In the case of *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another* (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR, the court observed that:

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000 - while pain and suffering the awards range from Kshs. 10,000 - with higher damages being awarded if the pain and suffering was prolonged before death.”

8. Therefore, the award for loss of expectation of life and pain and suffering is set aside and substituted with an award of Kshs 100,000 - and Kshs 10,000 - respectively.

9. On the loss of dependency, the appellant argued that no documentary evidence was presented to show that the deceased was married and had five children. Furthermore, there was no proof of the deceased’s income. In *Voi Pleasant View School Limited v Rose Muthu & Another* [2017] eKLR, the court stated that proving income is fundamental to establishing a claim for loss of dependency under the Fatal Accident Act. Therefore, if income is not proven, no dependency award can be granted. Consequently, the trial magistrate should have dismissed the claim for loss of dependency.

10. The respondent asserts that the deceased had a wife and children, with the wife being solely dependent on him. He was previously a banker and a member of the county assembly. It was also argued that he was a farmer. They supported the lower court’s award under this head.

11. The appellant contends that the respondent failed to produce documentary evidence to establish the deceased’s earnings and the existence of dependents. However, presenting certificates and documents is not the only way to prove earnings and dependants of the deceased. In *Jacob Ayiga Maruja & another v Simeon Obayo* [2005] eKLR, the Court of Appeal held that:

“In our view, there was more than sufficient material on record from which the learned Judge was entitled to, and did draw the conclusion that the deceased was a carpenter and that his monthly earnings were about Shs. 4,000 = per month. We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things.”

12. Deborah Atenge Obwana, the deceased’s widow (Pw1), testified that she was the widow of the deceased and that they had five children. She also presented a letter from the chief confirming that the deceased had children. Furthermore, she testified that the deceased was engaged in farming and earned approximately Kshs 50,000 - per month. In *Ng’ang’a & 2 others* (Suing as Legal Representatives of the Estate of Elijah Kivuva Mutua - Deceased) v *Bunter Flora Limited & 2 others* (Civil Appeal E008 & E011 of 2023 (Consolidated)) [2025] KEHC 5358 (KLR) (29 April 2025) (Judgment), the deceased was 72 years old, and the court upheld an award of Kshs 1,000,000 - for loss of dependency. Therefore, the trial magistrate did not err in awarding Kshs 1,000,000 - under this head.



13. Consequently, the appeal partly succeeds in the sense that the award for loss of expectation of life and pain and suffering is set aside and replaced with awards of Kshs 100,000 - and Kshs 10,000 - respectively. Each party shall bear its own costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 6TH DAY OF NOVEMBER 2025.

R.E. OUGO

JUDGE

In the presence of:

Miss Muresia -For the Appellant

Mr Wattangah -For the Respondent

Wilkister -C A

