REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CIVIL APPEAL NO. E010 OF 2025

JOSEPH MUREITHI……1ST APPELLANT
MUSA NYAGA…….
……2ND APPELLANT

VERSUS

LUCY WANJIKU MWANGI
(suing as personal representative of the Estate of Mwangi Kariuki)
……
……RESPONDENT

(*Being an Appeal against the Judgement of Hon.E.Ngigi (PM) delivered on 9th March 2021 in Isiolo chief Magistrate's court Civil Case No.22 of 2018)*

JUDGMENT

1. The Respondent herein filed suit before the Magistrate's court at Isiolo, seeking for damages and incidental loss suffered as a result of the road accident which occurred on 10th June, 2016 along Isiolo- Meru Road. The accident involved motor vehicle registration number KAD145S Isuzu Lorry and Josephat Mwangi Kariuki (Deceased) who was a pedestrian on the said road. The deceased succumbed to injuries on 3rd March 2017.
2. At the conclusion of the hearing, the trial court delivered judgment in which the Appellant was found fully liable for the accident, and the respondent was awarded Kshs.1,000,000/ as

general damages and Kshs.5,450/= in special damages.

Memorandum of Appeal

3. The Appellants were aggrieved by the award and proffered this Appeal . They have set out the following grounds:
   1) *That the learned magistrate erred in law and in fact in the manner that he assessed damages*
   2) *That the magistrate erred in law and fact by grossly misdirecting herself in making an award of Kenya Shillings One Million (Ksh.1,000,000/= for pain and suffering despite making a finding that there was no casual link between the 1st Appellant's negligence and the deceased's death and there was therefore no basis for an award for pain and suffering.*
   3) *The learned Trial Magistrate erred in law and in fact in awarding the plaintiffs Kshs.1,000,000/= as general damages for pain and suffering for a leg injury when such an award is not awardable under the Law Reform Act and the Fatal Accidents Act.*
   4) *The learned Trial Magistrate misapprehended the evidence and misapplied, misunderstood and or overlooked the correct legal principles and judicial precedent and the submissions by the Appellants that he made an award of Kshs. 1,000,000/= on an entirety erroneous principle with the resultant miscarriage of justice to the Appellants.*
   5) *The learned Trial Magistrate erred in law and in fact in failing to consider the Appellants*

submissions and in so doing she arrived at an erroneous decision.

4. The Appeal proceeded by way of written submissions.

Appellants Submissions.

5. It is the Appellants' submissions that the Respondent's claim was based on the provisions of the Law Reform Act(LFA) and the Fatal Accidents Act (FAA), which entitle a party to compensation for injuries and losses resulting from the death of a person through a fatal accident. That the plaintiff did not plead any injuries to the leg of the deceased, but rather on loss resulting from the death of the deceased. In this regard the Appellant has relied on the case ***Galaxy paints Co. Ltd vs Falcon Guards Ltd (2000) eKLR,*** where it was held that issues for determination generally flow from pleadings and the court may only pronounce judgment on the issues arising from pleadings or such issues as the parties have framed for determination. The case of ***Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others (2013)eKLR*** was also relied on in this regard.
6. The Appellants further submit that the cause of death was respiratory failure due to a pre-existing respiratory illness (pulmonary tuberculosis due to mycobacterial infection in HIV), and not the injuries sustained as a result of the accident. That under the Law Reform Act and the Fatal Accidents Act compensation is tied to losses that arise from the death of the deceased as a result of an accident.

That despite the trial magistrate finding that the cause of death was not the accident, he went ahead and awarded damages arising from the accident. The Appellants contend that since the injuries was not the cause of death, they ought not have formed the basis for compensation under the Law reform Act or the Fatal accidents Act.

7. It is the Appellants further submissions that the trial Magistrate failed to consider the doctrine of *novus actus interveniens*, in that the respondent failed to show how the accident contributed to or worsened the pre-existing respiratory illness. It is stated that the law does not automatically attach liability to every consequential connection between negligence and harm; that it requires that negligence is the proximate cause of the injury. The Appellants relied on the decision in the case of ***Edward Mzamili Katana v CMC Motor Group Ltd & Anor (2006) e KLR,*** to buttress their submissions in this regard.
8. In conclusion, it is submitted that the respondent failed to prove that the accident was the proximate cause of death of the deceased or aggravated the underlying respiratory illness.

Respondent's Submissions

9. The respondent has faulted the trial magistrate for arriving at the conclusion that there was no link between the death of the deceased and the accident, and urges this court to find that such a link did exists.
10. On the award of ksh. 1,000,000 on damages the respondent argues that establishing a link between the accident and death is not a prerequisite for the

award of pain and suffering. He states that it is awardable once it is established that there was an accident and the accident was caused by the negligence of the defendant. To buttress her submissions the respondent has relied on the decision in the case of ***of Kariuki & Another v Mwangi (suing a representatives of the Estate of Andrew Macharia – Deceased) (2024) eKLR and Sukari industries Ltd vs Cylde Majimbo (2016) e KLR.***

Analysis and Determination.

11. This is a first Appeal, and this court's mandate is to review the evidence, carry out its own analysis and arrive at its own conclusion. (see ***Selle & Another Vs Associated Motor Boat Co. Ltd***. ***&. Others [1968] EA 123)*** . Upon consideration of the memorandum of Appeal and parties submissions, it is evident that this Appeal challenges the award of damages for pain and suffering, only.
12. The Appellants argument is that to the extent that the trial magistrate arrived at the conclusion that the accident was not the cause of death, there was no basis upon which the court made the award on pain and suffering. It is further submitted that parties are bond by their pleadings, and that there was no plea that the deceased suffered a degloving injury.
13. It is trite law that parties are bound by their pleadings. It is also true that there was no plea of any degloving injury to the leg. The trial Magistrate however went ahead and awarded damages for the said injury. Indeed the fact that he relied on the decision of ***Hellen Kwamboka vs John Oyoo***

(2010) e KLR, in which an award of ksh. 800,000 was made for a similar injury, is instructive. The court was clearly addressing the pain caused by degloving injury. To the extent that no such injury was pleaded, it was erroneous as such a finding did not flow from the pleadings. Consequently, the award is hereby set aside.

14. However, the question still remains; was the Respondent entitled to damages for pain and suffering under the Law Reform Act, and what, ordinarily, is the nature of such a claim under the aforesaid Act, if any?

15. In the case of ***Hyder Nthenya Musili & Another v China Wu Yi Limited & Another [2017] eKLR***, the court explained it as follows: *"As regards damages awarded under the Law Reform Act, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death....." . Also* in the case of ***Sukari Industries Limited V Clyde Machimbo Juma Homa Bay HCCA NO. 68 of 2015 [2016] EKLR*** , Majanja J. held : "*On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation....."*

16. In the instant case, it was proven before the trial court that an accident occurred and the deceased suffered an injury as a result, save that that injury was not the cause of his death. My answer to the entitlement of the damages therefore, is in the affirmative anthe Law Reform Act is damages of pain

and suffering occasioned to the deceased prior to his death . Did the degloving injury caused pain and suffering to the deceased prior to his death? It did. And he is entitled to damages for that, which damages is payable to the estate. Am persuaded by justice Majanja's decision as set out above in this regard. And it matters not that the estate is not entitled to damages for loss of expectation of life and lost years, or loss of dependency by his dependents, as the latter two loses had no links to the subject accident. I have also noted that the damages for pain and suffering under the Law Reform Act, was duly pleaded to under paragraph 10 of the plaint.

17. Thus, the award of damages for pain and suffering was based on a wrong principle. The award should have been based on the *period,* of pain and suffering suffered by the deceased prior to his demise. Such consideration however also takes into account the nature of the injury, the severity and whether there were any medical interventions, like surgeries prior to the deceased's demise.

18. The next question however is how long could the deceased suffered from degloving injury? It is not known. This is a case in which the pathologist ought to have been called to testify. He or she would have been in a position to shed light on these grey areas. In the circumstances one can only consider the findings of the Autopsy report. One of the injuries noted was a wound on the left leg extending from mid-thigh to the ankle joint. This was the injury site as per the medical report. Instructively the pathologist described it as a "*wound"* as opposed to a "*scar*". That evidence was not controverted. It

follows that at the time of the deceased's death, the wound had not healed. The deceased got injured on 12.7.2016 and died on 5.03.2017. That was a period of 6 months within which he suffered. The persistence of the wound could have been due to the other ailment(s), but since the document was produced without calling the maker, there was no clarity provided. In the circumstances, the court will treat the pain and suffering caused by the accident to have lasted for 6 months. The court also appreciates that a degloving injury is fairly a severe injury.

19. The guiding principles in assessment of damages is that comparable loss should attract comparable awards. In the case of ***Peter Mule Muthungu (Suing as the administrator and personal representative of the estate of Jane Mueni Ngui v Kenyatta National Hospital*** **[2020] KEHC 7803 (KLR)**, an award of ksh. 2,000,000 was made in respect of pain and suffering where the deceased died after 5 months. However, in the said case, there were many medical procedure s that were done prior to the death of the deceased. In the present case what is available in evidence is the length of suffering and nature of injury. There is no evidence of what medical interventions, if any, were done during the period.

20. Taking everything into consideration and doing the best I can, I consider ksh. 800,000 a reasonable compensation for pain and suffering, and I award the same.

21. The Appeal has partially succeeded, and therefore each party to meet their own costs.

Dated , signed and delivered virtually at Nairobi this 24th day of November 2025.

S. Chirchir

Judge .

In the presence of:

Roba Katelo- Court Assistant

Mr. Mwangi for the Respondent

Ms Jayo for the Appellant.