



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO. E201 OF 2021

NICHOLAS KIPCHUMBA ROP (Suing as legal representative of the estate of JACKSON ROP KIBIATOR-DECEASED).....PLAINTIFF

VERSUS

NAIVAS

LIMITED.....DEFENDANT

JUDGMENT

THE ACTION

Nicholas Kipchumba Rop (hereinafter referred to as the plaintiff) brings this action against Naivas Limited (hereinafter referred to as the defendant) as the Legal representative of the estate of Jackson Rop Kibiator the deceased person herein. In a plaint dated 27/7/2021 but filed in court on 14/9/2021, the plaintiff averred that on or about 11/12/2019 the deceased herein was driving motor vehicle registration number KBT 344Y along the Mombasa-Nairobi Highway when at Emali-Loitoktok junction, the defendant's driver drove motor vehicle registration number KCQ 101V so carelessly or negligently that the same veered off its lane and knocked down the deceased (sic) as a result of which the deceased sustained fatal injuries and suffered loss and damage.

The defendant was sued as the registered owner of motor vehicle registration number KCQ 101V at the material time. The plaintiff further averred that at the time of his death,

the deceased was aged 61 years and was very energetic and healthy. That he was self-employed and engaged in the transport business and was being relied upon by his immediate family. The plaintiff pleaded several particulars of negligence against the defendant's driver but since there is a consent on liability, I see no need to reproduce the particulars of negligence. The plaintiff thus prays for judgment against the defendant for:

- a) General damages under the Fatal Accidents Act and the Law Reform Act;
- b) Special damages in the sum of Ksh. 113,314/=;
- c) Costs of the suit;
- d) Interest on the above.

THE DEFENCE

The defendant filed a notice of appointment of Advocates on 23/2/2022 and a statement of defence on 29/9/2022 after the interlocutory judgment had been set aside. The defendant admitted the occurrence of the accident and the involvement of the two motor vehicles but denied that motor vehicle registration number KCQ 101V was driven negligently. In the alternative, the defendant averred that the accident was occasioned by the sole and/or contributory negligence of the deceased. The defendant pleaded particulars of negligence on the part of the deceased but I will not reproduce them owing to the consent on liability. The defendant denied that the plaintiff suffered any loss or damage and prayed that the plaintiff's suit be dismissed with costs.

CONSENT ON LIABILITY AND EVIDENCE

On 30/6/2025, the parties recorded a consent in which liability was apportioned at 20% against the plaintiff and 80% against the defendant. The parties further agreed to admit the documents filed by the parties in evidence without calling the makers or witnesses.

THE EVIDENCE

The Plaintiff's Case

Following the consent, the following documents were admitted in evidence on behalf of the plaintiff:

- a) Grant of letters of administration *ad litem*;
- b) Receipt for payment of fees for application of grant;
- c) Copy of certificate of death;
- d) Police abstract on the accident;
- e) Motor vehicle copy of records;
- f) Payment receipt for the copy of records;
- g) Demand letter.

The Defence Case

The defendant did not produce any documents in evidence.

MAIN ISSUES FOR DETERMINATION

In my opinion, the main issues for determination are as follows:

- i. Whether the deceased died as a result of injuries sustained in the accident;
- ii. Whether the estate of the deceased and his dependants are entitled to damages;
- iii. If so, the nature and quantum thereof;
- iv. Who should bear the costs of this suit?

THE PLAINTIFFS' SUBMISSIONS

In his submissions, the plaintiff proposed a sum of Ksh. 2,000,000/= as damages for loss of dependency. The plaintiff relied on the authority of ***Mwihaki (Suing as the personal representative of the Estate of Brian Ngure Ndung'u (Deceased) v Lengete [2023] KEHC 26603 (KLR)***, in which a global sum of Ksh. 2,000,000/= was awarded in respect of a deceased who died at the age of 21 years. For pain and suffering, the plaintiff proposed a sum of Ksh. 200,000/=, claiming that the deceased died while in hospital. The plaintiff relied on the authority of ***Alexander Okinda Anangwe (Suing as the administrator of the estate of Patricia Kezia Anangwe (deceased) versus Reuben Muriuki Kahuha, City Hopper Limited, Michael A Craig & Rueben Kamande Mburu [2015] eKLR***, wherein Ksh. 100,000/= was awarded. The plaintiff submitted sum of Ksh. 400,000/= for loss of expectation of life and Ksh. 113,314/= as special damages. The plaintiff also prayed for costs of the suit.

THE DEFENDANT'S SUBMISSIONS

The defendant also filed written submissions. For pain and suffering, the defendant submitted a sum of Ksh. 50,000/=. The defendant relied on the authority of ***Sukari Industries Limited v Clyde Machimbo Juma [2016] eKLR***, wherein an award of Ksh. 50,000/= was upheld for a deceased who died on the spot. The defendant proposed a sum of Ksh. 100,000/= for loss of expectation of life and relied on an authority whose copy was not annexed. For loss of dependency, the defendant proposed a sum of Ksh. 800,000/= and relied on a decision by a Magistrate's court and on the following authorities:

- a) ***Moses Wetangula & another v Eunice Titika Rengetiang [2018] eKLR***, wherein Ksh. 500,000/= was awarded for a deceased aged 42 years;
- b) ***Dora Mwawandu Samuel v Shabir M. Hassan [2021] eKLR***, wherein the court upheld an award of Ksh. 400,000/= for a deceased aged 59 years;
- c) ***Hashi Hauliers & another v Joel Songok & another [2021] eKLR***, wherein Ksh. 1,000,000/= was awarded for a deceased aged 38 years at the time of death;
- d) ***Mwangi v Arim [2022] KEHC 3295 (KLR)*** in which an award of Ksh. 600,000/= was upheld for a deceased aged 39 years at the time of death;
- e) ***United Millers Limited & another v Jumah [2022] KEHC 17109 (KLR)*** in which the award was reduced to Ksh. 1,000,000/= for a deceased aged 42 years at the time of death.

For special damages, the defendant urged the court to award what was specifically pleaded and proved as per the law.

ANALYSIS AND DETERMINATION

I have considered the evidence on record and given due regard to the submissions made by the parties. The issue of liability having been settled, what remains is quantum. From the contents of the certificate of death of the deceased herein, it is evident that the deceased died as a result of injuries sustained in the road accident. Given the consent on liability, his estate is entitled to damages.

QUANTUM

It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts. This Court has to bear in mind the principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd [1964] AC 326* where Lord Morris said:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional”.

I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington Area Health Authority, [1979] 1, ALL ER 332* which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School [2011] eKLR* where Wendoh, J stated that:

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;

- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;
- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

I proceed to assess and award the damages payable as follows:

1) Damages for pain and suffering

The evidence indicates that the deceased died on the same day or soon after the accident. He did not die on the spot. Damages under this head are awarded on the basis of the time the deceased suffered pain before death. The longer it took the deceased to die, the higher the damages. In most authorities, an award of between 10,000/= and 50,000/= was made for persons who died on the spot. Considering the age of most authorities coupled with the vagaries of inflation, I find that an award of **Ksh. 70,000/=** would be reasonable. I award the same. In the case of *Alice O. Alukwe v Akamba Public Road Services Ltd & 3 Others [2013] eKLR*, the deceased died on the spot following an accident and Ksh. 50,000/= was awarded.

2) Damages for loss of expectation of life

The evidence on record indicates that the deceased died at the age of 61 years. This was indicated in the copy of the death certificate produced in evidence. The trend in the authorities indicates that the younger the deceased at the time of death, the higher the award. I have, on my part, considered the authority of *Marion Njeri Kago v Kenya Railways Corporation [2014] eKLR* in which Ksh. 100,000/= was awarded where the deceased was aged 53 years at the time of death. I have also considered the authority of *Mutuku Mbithi v Coast Bus Safaris Ltd & Another [2012] eKLR* in which an award of Ksh. 100,000/= was awarded as the deceased had died at the age of 57 years. In *Philip Musyoka Mutua v Veronica Mbula Mutiso [2013] eKLR*, the deceased died at the age of 65 years. The court awarded Ksh. 100,000/=. On the basis thereof and taking into consideration the vagaries of inflation, I make an award of **Ksh. 150,000/=** under this head

3) Damages for loss of dependency

Section 4(1) of the Fatal Accidents Act provides as follows:

"Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct".

The plaintiff listed the widows and children of the deceased as his dependants. These are proper dependants under the Act. In the case of **Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another (Nairobi HCCC No. 1438 of 1998 (unreported)**, and referred to in **Rev. Fr. Leonard O. Ekisa & Another v Major Birgen [2005] eKLR**, Ringera J (as he then was) said, *inter alia* -

"...The extent of dependency is a question of fact to be established in each case..."

Other than the plaintiff, it is not clear whether the other children of the deceased were adults at the time of his demise. However, since the plaintiff was the only legal representative, it is presumed that the children were all adults since the law of succession requires more than one legal representative where a deceased is survived by dependants who are minors.

It was alleged that the deceased was self-employed. That he was a driver in the transport business. Nothing was said about how much he earned nor was there any evidence of his earnings. In the case of **Jacob Ayiga Maruja & another v Simeon Obayo [2005] eKLR**, the Court of Appeal held as follows:

"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".

Both parties urged the court to adopt the global sum approach in awarding damages under this head. There are conflicting decisions particularly in the High court on how damages under this head ought to be awarded in the absence of proof of exact earnings of the deceased. Some Judges adopt the global award approach whereas others adopt the multiplier approach. I will highlight some of the authorities:

a) Ann Njoki Njenga v Umoja Floor Mills & Another [2006] eKLR.

In this case, the deceased was said to be a businessman at the time of his death. It was said that he earned about Ksh. 120,000/= per month. No documentary evidence was adduced to prove his earnings. Musinga J (as he then was) adopted a figure of Ksh. 10,000/= as the multiplicand.

b) Mwita Nyamohanga & another v Mary Robi Moherai suing on behalf of the estate of Joseph Tagare Mwita (Deceased) & another [2015] eKLR.

In this case, Majanja J (as he then was) held that proof of earnings by way of testimony was sufficient evidence. The court relied on the oral testimony of what was said to be the deceased's earnings.

c) Phillip Musyoka Mutua v Veronica Mbula Mutiso [2013] eKLR.

In this case, the deceased was said to be a businessman at the time of death earning about Ksh. 40,000/= per month. There was no documentary proof of his earnings. Mutende J held that in the absence of evidence of monthly earnings of the deceased the estimate would be like for any unemployed person where the rate set is usually like for a wage of an unskilled employee.

d) Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR.

In this case, the deceased was said to have been a businessman prior to his death. There was no documentary proof of his earnings. Ngaa J held as follows:

"It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case".

The court proceeded to make a global award under this head.

e) *General Motors East Africa Limited v Eunice Alila Ndeswa & another [2015] eKLR.*

In this case, the deceased was said to be a mechanic at the time of death but there was no documentary proof of his actual earnings. Aburili J held as follows:

"There is an established formula for calculating loss of dependency and giving global figures is not one of them. On that basis, I fault the trial magistrate for applying wrong principles of law in assessing general damages for loss of dependency..... where there is no documentary evidence of employment, the court would consider reasonable income for a casual labourers as a base for income because it would have been unreasonable not to allocate any sum of income to the deceased who used to go out and eke out a living daily. The case of WAMBUA VS PATEL AND ANOTHER, [1980] KLR 336 cited with approval in KIMATU MBUVI VS AUGUSTINE KIOKO CA203/2001 is clear that it is not just documentary evidence that can prove earnings and that to maintain that stand would do a lot of injustice to many illiterate Kenyans who do not keep records and yet earn livelihoods in various ways".

The court adopted the minimum wage of an ungraded mechanic artisan.

f) *Mwanzia v Ngalali Mutua and Kenya Bus Services (Msa) Ltd & Another.*

In this case, which was quoted with approval in *Albert Odawa v Gichimu Gichenji NKU HCCA No. 15 of 2003[2007] eKLR*, Ringera J (as he then was) held as follows:

"The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its

application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

g) Mary Khayesi Awalo & Another v Mwilu Malungu & Another [1999] eKLR.

In this case, Nambuye J (as she then was) observed as follows:

“As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books.”

h) Daniel Mwangi Kimemi & 2 others v J G M & another (the personal representatives of the estate of N K (DCD) [2016] eKLR.

In this case involving a deceased minor, the trial court had estimated the expected earnings of the minor and applied the multiplier approach. On appeal, Gikonyo J held that in such circumstances, the court’s obligation would have been to achieve the assessment of a fair award in the circumstances of the case for loss of dependency rather than courting an obsession to applying a multiplier to facts which are not apt. That the least income adopted by the trial magistrate lacked a foot on which to stand. The multiplier was also inappropriate in this case.

i) Violet Jeptum Rahedi v Albert Kubai Mbogori [2013] eKLR.

The deceased herein was said to be a business man but there was no clear evidence of his earnings. Hatari Waweru J (as he then was) made an estimate of the monthly earnings and adopted the multiplier method.

The existence of divergent views on the issue as highlighted herein above poses a dilemma especially on the lower courts who are bound to follow decisions of higher courts by virtue of the doctrine of *stare decisis*. While grappling with the issue, I came across the

English decision of the House of Lords in the case of *Gammel v Wilson [1981] 1 ALL ER 578* wherein Lord Scarman observed as follows:

"The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in Gammell's case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a 'conventional' award in a case of alleged loss of earnings for the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach a mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell's case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessable claim. In the case of a young man, already in employment (as was young Mr Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man well established in life, like Mr Picket, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it".

In my exploration in a bid to establish the legal position, I came across the Court of Appeal decision in the case of *Theta Tea Company Limited & another v Florence Njau Njambi [2002] eKLR* wherein the court affirmed the decision of the trial Judge who had awarded a lump sum in respect of damages for loss of dependency in circumstances where the deceased's earnings could not be quantified. The Court of Appeal held as follows:

".....where it is proved that a claimant was dependant on a deceased party but the amount of the dependency is not quantifiable, that does not necessarily mean that the

claim must fail. If that were to be so, a lot of Kenyans would be denied substantial justice, taking into account our level of literacy and such like factors. The Privy Council did, to some extent, recognise this when they said:

'The question of damages for the loss of support is essentially a jury question. Mathematical calculations can never lead to a precisely accurate estimate for the loss suffered' - see GULBANU KAJABALI KASSAM V KAMPALA AERATED WATER CO. LTD [1965] EA 587.

By calling it "a jury question" we understand their Lordships to have been saying that the issue is one of facts to be decided on broad principles. The respondent proved her dependency and that of her children on the deceased. She was not able to quantify the amount of the dependency. The learned trial Judge was, in our view, perfectly entitled, in the circumstances, to arrive at a lump sum".

Given the Court of Appeal decision, I am inclined to adopt the principle that where it is proven that the deceased was engaged in some income generating activity but the earnings cannot be quantified or proven, a court is entitled to award a global sum for loss of dependency provided the fact of dependency has been established. The circumstances of this case do not favour the multiplier approach. In the premises, I will adopt the global sum approach. Considering the age of the deceased and number of his dependants, and the fact that the deceased was also expected to pay taxes and be subject to other statutory deductions, I find that a sum of **Ksh. 1,000,000/=** would be reasonable. I award the same. It is also a fact that human life is not permanent and the court has to take into account the vicissitudes of life. I am mindful of the principles applicable in assessing damages as espoused herein above. I have further taken consideration of the fact that the plaintiff has already been awarded damages under the Law reform Act.

4) Funeral and related Expenses

The plaintiff pleaded a sum of Ksh. 30,814/= for funeral/burial expenses under the head of special damages. In the case of **Damaris Mwelu Kerewoi v Mbarak Kijan Ali, MOMBASA HCCC NO. 776 OF 1995** Hayanga J (as he then was) observed that the court can take judicial notice of the fact that funeral expenses are usually incurred and that where they are not

proved, the court can award a nominal amount. In the case of *Marion Njeri Kago v Kenya Railways Corporation [2014] eKLR*, the court held as follows:

"Funeral expenses, though usually claimed as special damages, are a proper claim under the Law Reform Act. That way the court is able to award a reasonable sum, depending on the Deceased's station in life and other factors, without the confines of strict proof."

Section 2(2)(c) of the Law Reform Act provides as follows:

"Where a cause of action so survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included".

Similarly, section 6 of the Fatal Accidents Act provides that:

"In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection (1) of section 4, damages in respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought".

The above implies that funeral expenses can be awarded under the two Acts. This way, the court will assess the same depending on the circumstances of the case without insisting on strict proof as in special damages. I am aware of the nature of African funerals. It is highly possible that more than what was pleaded was expended during the funeral. However, since the plaintiff pleaded **Ksh. 30,814/=**, I award the same as funeral expenses.

5) Special Damages

In his plaint, the plaintiff pleaded special damages of Ksh. 82,500/= (apart from the funeral expenses) being the mortuary bill and legal fees for obtaining letters of administration. It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* the court said:-

“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”

In *Ouma v Nairobi City Council [1976] KLR 304* after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L.J’s Judgment on page 532 and 533 in *Ratcliffe v Evans [1832] 2Q.B. 524* an English leading case on pleading and proof of damage:

“ The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

Similarly, in the case of *Hahn v Singh [1985] KLR 716*, it was held that:

“... special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves.”

There is no receipts in support of the claim for the mortuary bill. Consequently, I award **Ksh. 50,000/=** only as pleaded and proved special damages.

DISPOSITION

In summary, I find that the plaintiff has proven his case on a balance of probability against the defendant. Consequently, I hereby make the following awards:

- a) Damages for pain and suffering.....Ksh. 70,000/=
- b) Damages for loss of expectation of life.....Ksh. 150,000/=
- c) Damages for loss of dependency.....Ksh. 1,000,000/=
- d) Funeral expenses.....Ksh. 30,814/=
- e) Special damages.....Ksh. 50,000/=
- Total.....Ksh.1,300,814/=

Less 20% contribution.....Ksh. 260,162.80/=

Balance due to the plaintiff.....**Ksh. 1,040,651.20/=**

The plaintiff is also awarded interest on the damages as well as costs of the suit. The guiding principles in respect of interest are set out in section 26 of the Civil Procedure Act which provides that:

“(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated that:

“First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.

Second, Under Section 26(1) of the Civil Procedure Act, the Court has discretion to award and fix the rate of interests to cover two stages namely:

- a. The period from the date the suit is filed to the date when the Court gives its judgment; and***
- b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”***

Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omunyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015))* stated in part, as follows:

“It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)

From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see *Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR)*.

Consequently, interest on the damages for pain and suffering, loss of expectation of life and dependency shall accrue at court rates from the date of judgment/decreed until payment in full and on funeral expenses and special damages, from the date of filing suit to the date of judgment/decreed.

DATED, SIGNED AND DELIVERED VIA CTS THIS 4TH DAY OF NOVEMBER, 2025.

Y.A. SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.