REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL APPEAL NO. E005 OF 2025

LYDIA NEKESA KIKINI & BASIL ERIMA OPAMBA
(Suing as the legal Representative and
administrator as Widow and father of the estate
of STEPHEN BARAS KIKINI)
……APPELLANT

VESUS

SUKARI INDUSTRIES
LIMITED……RESPONDENT

(An appeal against the judgment of Hon Benjamin Limo (PM) delivered on the 16th December 2024 in Siaya Magistrate's Court Civil Case No. E071 of 2022)

BETWEEN

LYDIA NEKESA KIKINI & BASIL ERIMA OPAMBA
(Suing as the legal Representative and
administrator as Widow and father of the estate
of STEPHEN BARAS KIKINI)……PLAINTIFF

VESUS

SUKARI INDUSTRIES LIMITED……DEFENDANT

JUDGMENT

1. The appeal arises from the judgment and decree of Hon B. Limo (PM) in Siaya MCC No. E071/2022 dated 16th December 2024 wherein he awarded the Appellant a global sum of Kshs 800,000/= for loss of dependency and further deducted a sum of Kshs100,000/= in respect of loss of expectation of life and finally subjected apportioned liability on special damages contrary to a consent entered by the parties.

2. Aggrieved by the said decision, the Appellants filed a memorandum of appeal dated 1st January 2024 wherein they raised the following grounds of appeal:

    i) That the learned trial magistrate erred in law and in fact in making a lumpsum award in respect of loss of expectation of life and dependency when the two are different and are awardable separately.
    ii) That the learned magistrate erred in law and in fact in making a lumpsum award in respect of loss of dependency on the basis of there being no record to show earnings of the deceased yet the evidence adduced was that the deceased was working in the informal sector as a casual laborer and boda boda rider which was not disputed.

iii) That the learned magistrate erred in fact and in law in failing to appreciate the gist of the decision cited by the Appellant in their submissions in respect of the award of loss of dependency which decisions were binding on the court.

iv) That the learned magistrate erred in fact and in law in subjecting the special damages to apportionment when the consent recorded by both parties and the submissions by the parties excluded the special damages from apportionment.

The Appellant therefore sought for the following reliefs.

i) Spent.

ii) That the subordinate's judgment delivered on 16th December 2024 as regards to the lumpsum award of loss of dependency and expectation of life be set aside and the same be substituted by separate award under each head.

iii) That the subordinate's court judgment delivered on 16/12/2024 as regards subjecting of special damages to apportionment as per the agreed contribution be set aside and an order be made that the special damages ought not to be subjected to liability.

iv) That the Respondent be condemned to pay costs of the appeal.

v) That such further and or other orders or reliefs that the Honourable court will deem fit and just to grant in the circumstances.

3. Being the first appellate court, this court's duty is well spelt out namely to re-evaluate the evidence tendered before the trial court and subject it to a fresh exhaustive scrutiny so as to arrive at its own findings and independent conclusion on whether or not to uphold the decision of the trial court. In carrying out this task, the court must bear in mind that it neither saw nor heard the witnesses as they testified and therefore must give due allowance for that. (See **Selle & Another vs Associated Motor Boat Company Ltd & Others [1968] 1EA 123; Peters v. Sunday Post Ltd (1958) EA 424; Mary Wanjiku Gachigi v Ruth Muthoni Kamau (Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA); Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another Civil Appeal No. 345 of G2000.** (Okubasi, Githinji & Waki JJA).

4. The record of the lower court indicates that parties entered into a consent on liability in the ratio of 20%: 80% in favour of the Appellants and that the same was not to be subjected to special damages. The Appellants presented evidence while the Respondent did not.

5. **Lydia Nekesa Kikini (PW1)** relied on her statement dated 11th October 2023 which she adopted as her evidence in chief. She also relied on the list of documents dated 11/10/2023 which were produced as Exhibit No. 1-18 and that the amount claimed for document No. 8 was agreed to

be Kshs166,900/= while the amount in respect of document No. 11 was agreed to be Ksh200,000/=.

On cross examination, she stated that the deceased used to work and earn a sum of Kshs25,000/= per month and that she had filed documents. That the children have birth certificates.

On re-examination, she stated that they have baptismal forms for the children. That the deceased had no pay-slip.

The Plaintiffs and the Defendant closed their respective cases. The learned trial magistrate later considered the matter and rendered the impugned judgment.

6. The appeal was canvassed by way of written submissions. Both parties complied.
7. The Appellant, vide submission dated 30/9/2025 submitted that the issue for determination is whether the learned Magistrate erred in fact and in law in making a lump sum award for loss of expectation of life and dependency when the two are different and are awardable separately.

8. That under the Fatal Accident Act and Law Reforms Act, the damages awardable has been categorized as special damages and general damages which is clustered into pain and suffering, loss of expectation of life and loss of dependency. It therefore follows that loss of dependency and loss of expectation of life are different since loss of expectation of life calls for compensation for the shortened

life as a result of the accident which translates to erosion of life expectation of the deceased whilst loss of dependency is awardable for the benefit of the dependents and entails the financial support that the deceased could have extended to his dependents had he lived his life fully.

9. It was submitted that the loss of expectation of life and loss of dependency are two distinct damages that ought to be awarded separately as rightly captured by both parties in their submissions found at page 61 to 65 and page 133 to 137 of the record of appeal and it therefore follows that the learned magistrate erred in fact and in law in treating the two as one as captured in his judgment found at page 5 to 6 specifically at page 6 line 11 and 12 and line 21 of the record of appeal and by making one lump sum award in the two heads instead of separate awards.

10. It was submitted that at page 17 line 16 of the record of appeal, the Appellant herein pleaded that the deceased was a casual laborer and a farmer- a fact that is also confirmed in her statement found at page 21 of the record of appeal and which was adopted as evidence in chief and which evidence was not disputed. That the above evidence was also corroborated by the death certificate produced as Pexhibit-6 found at page 36 of record of appeal. That there being proof that indeed the deceased was a casual laborer- and considering the Regulation of Wages (General) (Amendment) Order, 2018 which set the minimum wage of a casual laborer as Kshs. 7,240.95, it therefore follows that it was erroneous

for the Court to adopt the global award as it did as captured in page 5 of the record of appeal line 26 to 30. In any event, although the Court of appeal decision in the case of- ***Jacob Ayiga Maruja & another v Simeon Obayo [2005] KECA 202 (KLR)*** where it held as thus- ***"…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…"*** was cited by the Appellant herein and further, the case of ***Mosonik & another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) [2022] KEHC 11823 (KLR)*** where Olga Sewe J in appreciating the above decision by the Court of Appeal held thus- ***"…Indeed, in Hellen Waruguru Waweru (supra) the Court of Appeal cautioned that:This court has had occasion to contextualize the society in which we live in relation to the requirement for strict proof of damages. In the case of Jacob Ayiga Maruja & Another v Simeone Obayo CA Civil Appeal No 167 of 2002 [2005] eKLR the Court observed:-'We do not subscribe to the view that the only way to***

prove the profession of a person must be by production of certificates and that the only way of proving earning 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." 53. It is therefore my finding, in the light to the foregoing, that the figure of Kshs 12,000/= that the lower court worked with is not excessive in the circumstances. Hence, for loss of expectation of life, the lower courts calculation of 12,000 x 12 x 37 x 2/3 = Kshs 3,552,000/= is hereby upheld…" It was submitted that the above decision did not sway the learned Magistrate's finding which was erroneous as not only was the learned Magistrate entitled to consider the minimum wage but also to see whether the figure claimed by the Appellant of Kshs. 25,000 as a farmer and casual laborer was reasonable in the circumstances considering that in the informal sector, people hardly keep records. It therefore follows that in view of the fact that the occupation of the deceased could be told from the evidence of the Plaintiff and corroborated by the death certificate and further considering the provision of the Regulation of Wages (General) (Amendment) Order, 2018 which set the minimum wage of a casual laborer, the minimum earning of the

deceased could be established and thus it was erroneous for the learned magistrate to make a lump sum award in this limb.

11. It was further submitted that the trial court did not consider the authorities presented by the Appellants found at page 61 to 132 on loss of dependency found at page 62 to 64 of the record of appeal such as the Court of Appeal decision in ***Jacob Ayiga Maruja & Another v Simeon Obayo [2005] KECA 202 (KLR)*** on the aspect of the deceased's earnings that need not be supported by documentary proof, to the High Court decision of ***Joseph Mwangi Wanyeki v. Alex Muriithi Mucoki & another (2019)eKLR*** where the Court in appreciating the Court of appeal decision allowed a figure of Kshs. 30,000 as multiplicand for a farmer and boda boda rider as well as the decision in ***Mosonik & another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) [2022] KEHC 11823 (KLR)*** where the Court upheld the multiplicand approach for a farmer with his earnings being Kshs. 12,000 which decisions are relevant to the matter on how the court ought to approach the award herein and which were binding to the Court but that the trial court disregarded the same without giving reasons thereof and considering the principle of stare decisis- where superior court decisions binds the subordinate court and further considering that the cases cited above are good law, the trial court erred in failing

to appreciate the decisions cited by the Appellants in the subordinate court.

12. As regards the trial court's action in apportioning liability on special damages, it was submitted that liability was apportioned by consent in the matter on 10th September 2024 as captured by the proceedings found at page 11 of the record of appeal line 15 to 20. It was a term of the consent that the apportionment of the liability should not affect the special damages and that it was on the same understanding that both the Appellant in his submissions found at page 61 to 65 and the Respondents submissions found at page 133 to 137 submitted that special damages should not be subjected to the contribution on liability as agreed since the consent settled the issue namely, that special damages should not be subjected to the contribution as agreed but despite the same being by consent, the learned Magistrate erred in law and in fact in subjecting the special damages to liability apportionment.

13. The above aside, it was submitted that the court disregarded the submissions of the Appellant- which cited the case of- ***Swalleh C. Kariuki & Another v. Violet Owiso Okuyu (2021)eKLR*** where Karikui J held as thus- ***"… The special damages due to their specific nature and standards required to prove them, in my view should not be subjected in apportionment…"*** a decision that was binding to the Court and which could have made the

court not to subject special damages to the apportionment of liability and thus, the learned Magistrate erred.

14. It was finally submitted that the appeal herein has merit and that this court should allow the appeal, set aside the subordinate courts judgment delivered on 16th December 2024 as regards the lumpsum award of loss of dependency and expectation of life and substitute the same by separate awards under each head, set aside the global award of loss of dependency so as to adopt a multiplier approach and enhance the same and to set aside the order subjecting the special damages to agreed liability. The Appellants urged this court to award costs of the appeal to the Appellants.

15. The Respondent's submissions are dated 29/10/2025. The Respondent gave a historical background of the matter inter alia; that on 11th October, 2022, the Plaintiff/Appellants herein moved the trial court as legal representatives of the Estate of Stephen Barasa Kikini (Deceased) vide a Plaint of even date; that the Plaintiff/Appellant stated that on or about the **7th day of December, 2021** at about 1000hours or thereabout, the deceased was a pedestrian at Dominion Farm when the Defendant's/Respondent's driver, servant, agent and/or employee so negligently, recklessly and carelessly controlled the Defendant's/Respondent's motor vehicle registration number **KCR 711F** causing the same to abruptly reverse and knock down the deceased off the road and as a result, the deceased sustained severe injuries which he succumbed to; that in response, the Defendant filed a

Statement of Defence dated 19th October, 2022 in which the Defendant denied the claims therein and stated that it was in no way reckless and/or negligent and neither did it cause its motor vehicle registration number KCR 711F to hit and knock down the deceased as alleged; that the parties recorded a consent on liability dated 6th December, 2024 where it was agreed that by mutual consent, liability be apportioned in the ration of 80:20 in favour of the Plaintiff; that the said consent was adopted as an order of the Court and thereafter, parties submitted on quantum and that the matter was fixed for judgment; that subsequently, on 16th December, 2024, the learned Magistrate delivered Judgment in favour of the Plaintiff/Appellants herein; that in the said Judgment, the learned Magistrate awarded the Plaintiff/Appellant, *inter alia*, Kshs. 800,000/- as compensation for loss of dependency and expectation of life; that the learned Magistrate held that ***in the absence of proof of earnings, it was justifiable to rely on the global sum approach as compared to the multiplier approach.***

16. On the issue of Jurisdiction of the Court**,** it was submitted that the jurisdiction of this court as an appellate court is conferred by **Article 165(3)(e)** of the Constitution of Kenya as read with Section 67 of the Civil Procedure Act. Collectively they provide that the High Court shall have appellate jurisdiction, arising from any original or part of a decree of a subordinate Court, on a question of law or fact,

as conferred on it by legislation. Therefore, the instant appeal is well within the jurisdiction of this Court.

17. Further, it was submitted that the exercise of the jurisdiction of this Honourable Court as the first appellate court is to re-evaluate, re-analyze and re-consider the evidence and draw its own conclusions. Nonetheless, we humbly submit that this Court ought to bear in mind that it did not see witnesses testifying and subsequently, give due allowance for that. These principles was well espoused by the **Court of Appeal** in the case of **Gitobu Imanyara & 2 others v Attorney General [2016] eKLR** where the Court ***(Quorum: Visram, Sichale, & J. Mohammed, JJ. A)*** stated as follows:

> ***"This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial …. is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See Selle and Another v Associated Motor Boat Company Limited and others [1968] EA 123 and Williamson Diamonds Ltd. V. Brown [1970] E.A.L.***

As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in Peters –vs- Sunday Post Ltd [1958] EA 424. In its own words: -

> ***"Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ..."***

18. From the onset, the Respondent invites this Honourable Court to re-evaluate, re-analyze and re-consider the evidence and draw its own conclusions in this matter taking into account that this is the first appeal from the Judgement and Decree of the Magistrate Court. The Court should also be guided by the fact that it has neither seen nor heard the witnesses and should make due allowance in that respect**. (See Kenya Ports Authority vs. Kuston (Kenya) Limited [2009] 2EA 212)**

19. It was submitted that, the main issues that renders itself for determination are:

a) *Whether the learned Magistrate was correct in law and in fact when he applied the global sum approach as opposed to the multiplicand approach in awarding a global aggregate sum of Kshs. 800,000/- as compensation for both loss of expectation of life and dependency.* ***(Ground (i), (ii), (iii) and (v) of the Memorandum of Appeal)***

b) *Whether the learned Magistrate was correct in law and in fact when he subjected the aggregate sum due to the Appellant which was inclusive of special damages to apportionment in the ration of liability at 80:20.* ***(Ground (iv) of the Memorandum of Appeal)***

20. As regards the first issue, it was submitted that from the onset, the learned Magistrate correctly held at page 1 and 2 of the Judgment that the multiplicand approach was not applicable for want of proof of the deceased's income prior to his death. As such, the global sum approach was the most appropriate in the circumstances as can be seen by the finding of the learned trial magistrate:

> ***"The issue of loss of dependency arises from the record, the deceased died aged 40 years of age. From the statement of the Plaintiff, he was earning Kshs. 25,000/= per month. No actual details of the deceased earnings were availed to the Court.***

As such, in the present case unfortunately, no conclusive evidence was tendered to demonstrate what income of the deceased was making at the time of his death in his farming activities or such other daily occupations.... In view of the foregoing, this Court shall exercise discretion and shall adopt the lumpsum approach."

21. The **Court of Appeal's** decision in **Cherangany Hills Ltd & another v Wanyama (Suing as the Administrator to the Estate of Brian Khisa Wanyama) (Civil Appeal 243 of 2019) [2025] KECA 1030 (KLR) (5 June 2025) (Judgment)** ***(Quorum: JM Mativo, PM Gachoka & GV Odunga, JJA)*** was cited wherein the Court held that the global sum approach was justifiably applicable since the multiplier and the multiplicand were not ascertainable by the subordinate court. In its analysis, the Court quoted the decision in ***Roger Dainty vs. Mwinyi Omar Haji & Ano. [2004] eKLR*** where the **Court of Appeal** held as follows:

"…to ascertain a reasonable multiplier in each case, the court should consider relevant factors like the income of the deceased, the kind of work he was engaged in before his death, the prospects of promotion and his expectations of working life. However, the Court held that if the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is not

a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case."

22. Similarly, in **Waweru (Suing as the Legal Representative and Administrator of the Estate of Brian Waweru Mwaura (Deceased)) v Bonafide Clearing and Forwarding Company Limited & another (Civil Appeal E506 of 2023) [2025] KECA 620 (KLR) (4 April 2025) (Judgment)** ***(Quorum: W Karanja, J Mohammed & AO Muchelule, JJA)*** the **Court of Appeal** dismissed the appeal with costs for being unmeritorious. In its analysis, the Court stated as follows at paragraph 20:

"Under those circumstances where the multiplier approach was not supported by evidence, the trial court was correct in adopting a global figure in arriving at the loss of dependency. The actual or expected income of the deceased, for instance, was a question of fact to be proved by the appellant. The same for ages of the deceased's parents, whether the deceased was their only child, whether they had any income, and so on."

23. Flowing from the above, it was submitted that the Appellant merely asserted without any proof that the deceased was earning an income of Kshs. 25,000/-. That the Appellant

failed to produce any bank statement or document as evidence to corroborate their claim for Kshs. 25,000/-. That it is trite law that he who alleges must prove and accordingly, the Appellant failed to discharge this statutory duty as required in law.

24. Notwithstanding this and without prejudice to the foregoing, it was submitted that the learned Magistrate cannot be faulted for merely exercising his mandate in assessing damages since the multiplicand approach is only a tool for assessment and not a principle of law. It was submitted that to insist on multiplier approach without any tangible evidence will result to an injustice.

25. This position was buttressed in the case of **Stephen Murathi v Brenda Makena (Suing as the legal representative of the estate of Andrew Muthuri (deceased) [2021] KEHC 7303 (KLR)** where this Court held that the trial Court cannot be faulted for relying on the global approach due to insufficient evidence on income. The Court in its analysis, cited the decision in ***John Wamai and Two Other Vs. Jane Kituku Nziva and Another (2017) eKLR*** where it was held that:

> ***"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."

Counsel urged the Court to find that the learned Magistrate correctly held that the global sum approach was applicable as opposed to the multiplicand approach as that would result to mere guess work which is not based on any tangible evidence.

26. Turning to the issue of loss of expectation of life, it is our submitted that the learned Magistrate correctly held at page 1 of the Judgment that the award of Kshs. 100,000/- was appropriate since the deceased had responsibilities for his family. It read as follows:

"Loss of expectation of life

I shall award a sum of Kshs. 100,000/- under this head for a man who had responsibilities for his family."

27. On this issue, counsel reiterated the contents of **Ground (i)** of the Memorandum of Appeal as follows:

i. The Learned Magistrate erred in fact and in law in making a lumpsum award for loss of expectation of life and dependency when the two are different and are awardable separately.

28. It was submitted that the Court, in its discretion, took into consideration various factors including the vagaries of life that befell the deceased as a result of the said road accident and the current life expectancy rates in the country and correctly held that the global award of Kshs. 800,000/- was justifiable under both heads ***(See the Court of Appeal decision in Roger Dainty vs. Mwinyi Omar Haji & Ano. (Supra))***. **Page 2** of the Judgment holds as follows:

> **"Taking into account the vicissitudes and uncertainties of life and the current life expectancy rates in the country, I do find that a sum of Kshs. 800,000/- would be justifiable in the circumstances. The global award should take care of dependency and for the loss of expectation of life.**
>
> **Under this head, I shall award a sum of Kshs. 800,000/- for loss of dependency and for the loss of expectation of life.**
>
> **In view of which, I shall discharge the sum of Kshs. 100,000/- awarded under Law Reform Act as above."**

a) The learned Magistrate correctly held that the aggregate sum due to the Appellant which was

inclusive of Special damages was subject to apportionment in the ration of liability at 80:20

29. It was submitted that from the onset, it was their view that the learned Magistrate correctly held at page 2 of the Judgment that the Appellant is entitled to an award of Kshs. 245,870/- as special damages which was computed in finding the aggregate sum of Kshs. 1,195,870/- that was subject of apportionment.

30. Further, it was submitted that the apportionment of liability was only made on the wholesome amounts. The Court did not isolate special damages and proceeded to apportion on it. On the contrary, the Court made the award of special damages and considered it in the aggregate sum which was subject of apportionment.

31. Reliance was placed in **Kiprop v Wakhungu & another (Suing as the Legal Representatives of the Estate of Peter Lusweti Masengeli – Deceased) (Civil Appeal 87 of 2021) [2025] KEHC 10633 (KLR) (23 June 2025) (Judgment)** this Court tabulated the award due to the Appellant as an aggregate sum of Kshs. 2,871,160/- which included the special damages at Kshs. 14,200/-. Thereafter, the Court awarded a net sum of Kshs. 2,296,928/- less 20% liability.

32. In summary, it is was submitted that the apportionment of liability after calculating the aggregate sums to be awarded

was only meant to ensure clarity in the judgment so as to save the parties the agony of seeking to interpret the award thereafter.

33. It was submitted that that this court should find that the learned Magistrate correctly held that the Appellant was entitled to the aggregate sum of general and special damages at Kshs. 1,195,870/- less 20% liability.

34. It was finally submitted that the decision of the learned trial magistrate is without error and that the instant appeal is devoid of merit and that the Honourable Court should dismiss the same with costs.

35. I have considered the record of appeal as well as the submissions tendered and authorities cited. I find the issue for determination is whether the appeal has merit.

36. It is noted that the Appellants' bone of contention is that the trial magistrate made a lumpsum award on loss of dependency and expectation of life as well as subjecting the special damages to apportionment despite the consent entered into by the parties to the contrary. This is the gist of the appeal.

37. As regards the award under the Fatal Accident Act and Law Reforms Act, it is noted that damages awardable has been categorized as special damages and general damages which is clustered into pain and suffering, loss of expectation of life and loss of dependency. It therefore

follows that loss of dependency and loss of expectation of life are different since loss of expectation of life calls for compensation for the shortened life as a result of the accident which translates to erosion of life expectation of the deceased whilst loss of dependency is awardable for the benefit of the dependents and entails the financial support that the deceased could have extended to his dependents had he lived his life fully. That being the position, the loss of expectation of life and loss of dependency are two distinct damages that ought to be awarded separately as rightly captured by both parties in their submissions found at page 61 to 65 and page 133 to 137 of the record of appeal and it follows that the trial court treated the two as one as captured in his judgment found at page 5 to 6 specifically at page 6 line 11 and 12 and line 21 of the record of appeal where he made one lump sum award in the two heads instead of separate awards.

38. It transpired from the pleadings and evidence that the deceased was a casual laborer and a farmer- a fact that is also confirmed in the Appellants' statement found at page 21 of the record of appeal and which was adopted as evidence in chief and which evidence was not disputed. That the above evidence was also corroborated by the death certificate produced as Pexhibit-6 found at page 36 of record of appeal. That there being proof that indeed the deceased was a casual laborer- and considering the Regulation of Wages (General)

(Amendment) Order, 2018 which set the minimum wage of a casual laborer as Kshs. 7,240.95, it therefore follows that it was erroneous for the trial Court to adopt the global award as it did as captured in page 5 of the record of appeal line 26 to 30. The Court of Appeal in the case of- ***Jacob Ayiga Maruja & another v Simeon Obayo [2005] KECA 202 (KLR)*** it held that- ***"…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…"***

39. Also in the case of ***Mosonik & another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) [2022] KEHC 11823 (KLR)*** it was held: ***"…Indeed, in Hellen Waruguru Waweru (supra) the Court of Appeal cautioned that:This court has had occasion to contextualize the society in which we live in relation to the requirement for strict proof of damages. In the case of Jacob Ayiga Maruja & Another v Simeone Obayo CA Civil Appeal No 167***

of 2002 [2005] eKLR the Court observed:-'We do not subscribe to the view that the only way to prove the profession of a person must be by production of certificates and that the only way of proving earning 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." 53. It is therefore my finding, in the light to the foregoing, that the figure of Kshs 12,000/= that the lower court worked with is not excessive in the circumstances. Hence, for loss of expectation of life, the lower courts calculation of 12,000 x 12 x 37 x 2/3 = Kshs 3,552,000/= is hereby upheld…" It is noted that the above decision that was presented before the trial court did not sway the learned Magistrate who was to consider the minimum wage as well as consider whether the figure claimed by the Appellant of Kshs. 25,000 as a farmer and casual laborer was reasonable in the circumstances considering that in the informal sector, people hardly keep records. It therefore follows that in view of the fact that the occupation of the deceased could be gleaned from the evidence of the Appellants and corroborated by the death certificate and

further considering the provision of the Regulation of Wages (General) (Amendment) Order, 2018 which set the minimum wage of a casual laborer, the minimum earning of the deceased could be established and thus it was erroneous for the learned magistrate to make a lump sum award on this limb of the damages.

40. It is noted that several authorities were presented by the Appellants on loss of dependency found at page 62 to 64 of the record of appeal such as the Court of Appeal decision in ***Jacob Ayiga Maruja & Another v Simeon Obayo [2005] KECA 202 (KLR)*** on the aspect of the deceased's earnings that need not be supported by documentary proof, to the High Court decision of ***Joseph Mwangi Wanyeki v. Alex Muriithi Mucoki & another (2019)eKLR*** where the Court in appreciating the Court of Appeal decision allowed a figure of Kshs. 30,000 as multiplicand for a farmer and boda boda rider as well as the decision in ***Mosonik & another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) [2022] KEHC 11823 (KLR)*** where the Court upheld the multiplicand approach for a farmer with his earnings being Kshs. 12,000 which decisions are relevant to the matter on how the court ought to approach the award herein and which were binding to the Court but that the trial court disregarded the same without giving reasons thereof and considering the principle of stare decisis- where superior court decisions binds the subordinate court and further

considering that the cases cited above are good law, the trial court erred in failing to appreciate the decisions cited by the Appellants in the subordinate court. I find that the trial court ought to have used the Regulation of Wages (General)(Amendment) Order 2018 which set the wages of a casual labourer as Kshs 7, 240.95/ as the multiplicand and subject it to a multiplier as well as dependency ratio so as to arrive at the net award on loss of dependency. Even though learned counsel for the Respondent has submitted that the courts have held that without documentary evidence of proof of income. However, the same courts have held that even without such evidence of income, the courts can resort to Regulation of Wages (General) (Amendment) Regulations for the respective period. I find that the trial court ought to have used this in coming up with the amount of the multiplicand and eventual loss on dependency.The deceased died at the age of 40 years and was a casual worker. That being the position, I find that he could have worked up to the age of retirement of civil servants (60 years) but owing to the vagaries of life, I find that a multiplier of 18 years would be reasonable. As regards the dependency ratio, it is noted that the deceased supported seven children who were still minors and hence the ratio of 2/3 should be factored. Hence the award on this limb would be 7, 240.95/ x 12 x 18 x2/3= 1,042, 696.8/=. To that extent, the trial court's award must be set aside.

41. It is also noted that the Appellants had sought for loss of consortium and that the trial court gave an award of Kshs 100,000/=. I find this sum to be reasonable as a one off payment since it is impossible to replace a deceased spouse with a monetary award regarding matters of consortium. In any event, a widow or widower is at liberty to remarry and move on with life. The award is just a way of sympathizing with the surviving spouse. Hence, the said award by the trial court must be upheld. It is noted that the other awards on pain and suffering and loss of expectation of life are not contested and thus they will remain intact.

42. As regards the trial court's action in apportioning liability on special damages, it is noted that liability was apportioned by consent in the matter on 10th September 2024 as captured by the proceedings found at page 11 of the record of appeal line 15 to 20. It was agreed by the parties that the apportionment of the liability should not affect the special damages. Hence, the learned Magistrate erred in subjecting the special damages to apportionment on liability. The same ought to have been left intact. Hence, the decision must be set aside.

43. In view of the foregoing observations, it is my finding that the Appellants' appeal has merit. The same is allowed. The judgement of the trial court dated 16/12/2024 is set aside and substituted with the following orders:

i) Pain & suffering……Kshs 50,000

ii) Loss of expectation of life……Kshs 100,000

iii) Loss of dependency……Kshs 1, 042, 696.8/

iv) Loss of consortium……Kshs 100,000/

TOTAL……**Kshs 1, 292,696.8/**

20% contribution……Kshs 258, 539.36/

Kshs 1,034,157.44/

Add special damages**…… Kshs** 245, 870.00/

GRAND TOTAL…… **Kshs 1, 280, 027.44/**

The Appellants are awarded costs of the appeal and in the lower court.

Dated and delivered at Siaya this 3rd day of December, 2025.

D.KEMEI

JUDGE

In the presence of:

N/A Anwar……for Appellants

Ochieng Opiyo……for Respondent

Maureen……Court Assistant