



**Horton (Suing as the Legal Representative of the Estate of the Late Julian Michael A. Court Horton) & another v Jubilee Jumbo Hardware Limited (Civil Case 663 & 662 of 2009 (Consolidated)) [2026] KEHC 984 (KLR) (Civ) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 984 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL CASE 663 & 662 OF 2009 (CONSOLIDATED)**  
**JN MULWA, J**  
**FEBRUARY 5, 2026**

**BETWEEN**

**JESSICA EMMA-LEE HORTON (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JULIAN MICHAEL A. COURT HORTON) ..... PLAINTIFF**

**AND**

**JUBILEE JUMBO HARDWARE LIMITED ..... DEFENDANT**

**AS CONSOLIDATED WITH**

**CIVIL CASE 662 OF 2009**

**BETWEEN**

**JESSICA EMMA-LEE HORTON (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATES OF THE LATE FIONA MARGARET HORTON, AND THE LATE JULIAN MICHAEL A') ..... PLAINTIFF**

**AND**

**JUBILEE JUMBO HARDWARE LIMITED ..... DEFENDANT**

**JUDGMENT**

1. Jessica Emma-Lee Horton, (hereafter the Plaintiff) filed two suits by Plaints dated 11/11/2009 vide Nairobi Milimani HCCC. No. 663 of 2009 and Nairobi Milimani HCCC. No. 662 of 2009 as the Legal Administrator of the two deceased estates against the Defendant in whose vehicle registration



number KPC the deceased were travelling in collided with another Registration number KAT495Q on 10/12/2006 along Waiyaki Way, causing the deceased fatal injuries.

2. The Plaintiff in the respective suits sought compensation in terms of damages to the deceased's estates both under the Law Reform Act and The Fatal Accidents Act as follows: Special damages in the sum of Kshs. 1,250,000/-; general damages under the Fatal Accident Act & Law Reform Act; costs of the suit; interest on all the above at Court's rate; and any such other relief that the Court may deem fit to grant.
3. On 10/02/2011, the parties hereto recorded a consent order before Mwera, J. (as he then was) in Nairobi Milimani HCCC. No. 663 of 2009 wherein the Defendant deposited a sum of Kshs. 1,250,000/- in a joint account in the name of both counsel for the parties, at the time.
4. On 13/03/2015 vide an order of the court -Onyancha, J. in Nairobi Milimani Misc. Civil Application No. 595 of 2014, both Nairobi Milimani HCCC. No. 663 of 2009 and Nairobi Milimani HCCC. No. 663 of 2009 were consolidated for disposal.
5. Subsequently, on 16/07/2025, when the suit came up for hearing parties recorded a further consent before this Court wherein judgment on liability was entered in favour of the Plaintiff in both suits as against the Defendant in the ratio 80:20. It was further agreed that the question of awardable damages be disposed of by way of documents filed in evidence and written submissions.

The respective parties complied whereas the Court has duly considered the rival submissions on the question of awardable damages. Ordinarily within our jurisdiction, damages awarded in a fatal accident claim arising out of a road traffic accident would entail an award under the Law Reform Act and Fatal Accident Act which damages are determined on the basis of the pleadings and the issues of fact or law framed by the parties or Court as held in the case of *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91.

6. In *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] KECA 586 (KLR) the above position was fortified by the Court of Appeal whereafter discussing relevant precedent, the Court reiterated this position by stating that -;

“It was held in the case of *Galaxy Paints Co. Limited v Falcon Guards Limited* [2000] 2EA 385 that the issues for determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for determination...”

7. In a judgement delivered recently by this Court in *Romanus Joseph Ongombe & others v Cardinal Raphael Ochieng Otieno & others (Kisumu) Civil Appeal No. 20 of 2011 (ur)* it was held that a judgment whose basis was on issues not founded on the pleadings was a nullity.
8. That said, the only issue left for this court to determine is the quantum of damages awardable to the Plaintiff in respect of the two Estates of the deceased persons based on applicable principles and sensible estimates derived from evidence tendered and pleadings. On the latter, the Court of Appeal in *Sheikh Mushtag Hassan Vs Nathan Mwangi Kamau Transporters & 5 others* (1985) eKLR cited with approval the decision in *Gammel vs Wilson* (1981) 1 ALL ER where it was held that-;

“..... if sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation, it is the balance of probability which matters...”

9. Having set out the above, I will proceed to address the respective claims as hereunder.



10. On the part of the Plaintiff, by her submissions on the claim pursuant to the [Law Reform Act](#), under the head on pain and suffering, it was submitted that the deceased died at the scene of the accident as shown in the death certificate therefore an award of Kshs. 50,000/- was sufficient under the said sub head. The decision in Sukari Industries Ltd v Clyde Machimbo Juma [2016] eKLR was called to aid.
11. On loss of expectation of life, while calling to aid the decision in Juma Nyabuto v Evance Otieno Magaka & Another [2021] eKLR an award of Kshs. 100,000/- was urged under the said header.
12. Under the [Fatal Accidents Act](#), on loss of dependency, counsel relied on the decision in Beatrice Wangui Thairu v Hon. Ezekiel Bargetuny & Another as cited with approval in Chetan Kiriti Modi & Another v Catherine Wanjiru Gikaru (suing as an administratrix to the estate of the late Nicholas Muchai Gikaru) [2018] eKLR and Gordon Ouma Sunda & Another v Adan Abdikadir Omar & Another [2019] eKLR to submit that the deceased was working as a creative director at Lowe Scanad earning Kshs. 810,000/- per month, was 39 years old at the time of his untimely demise and could have worked until the age of 60 years meanwhile was survived by his only daughter who was 18 years at the time. It was thus submitted that the multiplier approach ought to be adopted wherein Kshs. 136,080,000/- calculated as Kshs. 810,000/- x 12 x 21 x 2/3, ought to be awarded under the said head.
13. On its part, the Defendant, on the claim pursuant to the [Law Reform Act](#), under the head on pain and suffering, counsel equally acceded to the fact that the deceased died on the spot as result of the accident as evinced in the death certificate however urged an award of Kshs. 10,000/- as being sufficient under the said head. The decisions in Rono & Another v Cheruiyot & Another (suing as the legal representative of the estate of Ronald Kirui (Deceased) [2025] KEHC 11329 (KLR) and Marboro Express Ltd v Maragwa & Another (suing as the legal representative of the estate of Evans Nyambane Amoro(Deceased) [2025] KEHC 10157 (KLR) were called to aid.
14. On loss of expectation of life, while calling to aid the decisions in Muli v Maina & Another [2025] KEHC 10095 (KLR) and Kenya Power & Lighting Company Ltd v James Muli Kyalo & Another [2020] KEHC 659 (KLR) an award of Kshs. 85,000/- was urged under the said header.
15. Under the Fatal Accident Act, counsel argued that the Plaintiff did not evince any pay slips, contract of employment or salary terms therefore in the absence of any actual earning, arguing that the prudent approach would be to assess damages under this head by applying the global award approach, proposing Kshs. 1,000,000/-. The decisions in Waweru (suing as the legal representative of the estate of the late Bernard Kamore Waweru) v Wairimu & Another [2024] KEHC 16640 (KLR) and Kwamboka (suing as a dependent and personal representative of the estate of Albert Nyabongoye Onchiri) v Okiro & Another [2024] KEHC 8442 (KLR) were relied on in the forestated regard.
16. Ex facie by the pleadings, it was averred that the deceased Julian Michael A' was survived by the Plaintiff who at the time was 21 years of age, was 39 years of age, in good health and earning a gross salary of Kshs. 810,000/- per month. That said, the Court has taken the liberty of perusing the entirety of the bundle of documents dated 12/08/2016 and further list of documents dated 09/05/2022 relied on by the Plaintiff in support of the claim of awardable damages.
17. On the award pursuant to the [Law Reform Act](#), a cursory perusal of the death certificate, it can be noted therefrom that the deceased succumbed to his injuries on the very same date the accident occurred. Consequently, considering the rival submissions and drawing some guidance from the Court of Appeal decision in Mwangi & another (Suing as the Legal Representatives of the Estate of the Late Richard Mwangi Gathoni Deceased) v Ngure & another [2023] KECA 448 (KLR), I will proceed to



award Kshs. 50,000/- under the head of pain and suffering and Kshs. 100,000/- under the head of loss of expectation of life.

18. On the award under the *Fatal Accidents Act*, from the material adduced in support of the award, the Plaintiff relied on a contract of employment dated 10<sup>th</sup> July, 2005 between the deceased and Lowe Scanad wherein the latter had been engaged as an Executive Creative Director of the Agency. The agreement therein at Clause 5 on remuneration captured the deceased's earning as a gross salary of Kshs. 810,000/- per month. It is equally not disputed that the deceased was survived by the Plaintiff and was 39 years old at the time of his untimely demise.
19. That said, in assessing the applicable award under this header I will draw some guidance from the decision on Chuni bhai J Patel and Another vs PF Hayes and Others (1957) EA 748, 749 wherein it was pithily put that-;

“The court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependant, the net earnings power of the deceased i.e. his income and tax and the proportion of his net income which he would have made available for his dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying a figure representing so many years' purchase. The multiplier will bear a relation to the expectation of the earning life of the deceased and the expectation of life and dependency of the widow and children.....”

20. Subsequently, the same Court in Sheikh Mushtag Hassan Vs Nathan Mwangi Kamau Transporters & 5 others (1985) eKLR cited with approval the decision in Gammel vs Wilson (1981) 1ALLER where it was held that-;

“..... if sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation, it is the balance of probability which matters.....”

21. Recently, the Court of Appeal in Cherangany Hills Ltd & another v Wanyama (Suing as the Administrator to the Estate of Brian Khisa Wanyama) [2025] KECA 1030 (KLR) observed that -;

“27. As we search for an answer to the above question, it is important to mention that court decisions under the *Law Reform Act* and *Fatal Accidents Act* emphasize the need for courts to consider the "vagaries of life" when calculating damages, particularly in cases involving loss of dependency or earning capacity. This means accounting for unforeseen events, changes in circumstances, and the potential for the deceased's or plaintiff's circumstances to improve or worsen over time or even death. Therefore, whether a court uses a "multiplier" to estimate future earnings, or a global award, it must always bear in mind factors such as the deceased's age, skills, and potential for advancement, while also considering the possibility that these factors might change to the worse, or even death.

28. Predicting someone's future earnings with absolute certainty is impossible. There are various factors that can affect earning potential, including health, employment opportunities, and economic conditions. The "vagaries of life" concept recognizes these uncertainties. For example, a person might be promoted, lose their job, face an illness, or experience other life events



that could alter their earnings. When calculating damages, courts must consider these potential changes and make reasonable assumptions about the future.....”

22. It is trite that an award under the Fatal Accident Act is premised on factual material and evidence presented to the court to shore up the pleadings. From the material presented before this Court, to buttress her claim on earnings the Plaintiff relied on a contract executed as between the deceased and Lowe Scanad company Limited showing earnings of Kshs. 810,000/- per month.
23. Firstly, it can be gathered from the material presented before this Court that the deceased was an Australian national.
24. Secondly, the contract purportedly executed by the deceased and exhibited before this Court, was wanting in many parameters. It was poorly scanned and thus illegible whereas it lacked certain pages for the Court’s benefit.
25. Thirdly, there was no other material placed before the Court such as the deceased’s certified bank statements or all, letter of acceptance or a work permit to shore up on the fact that the deceased actually earned the sums supposedly pleaded, any evidence that the deceased accepted and or took up the job in question as an Executive Creative Director or that he was actually working for Lowe Scanad at the time of his untimely demise.
26. At the risk of repetition, it is not in contention that the deceased was a foreign national and somewhat made a living. Therefore, it was incumbent upon the Plaintiff to place cogent material, other than an illegible contract, to shore up her claim on the deceased’s earnings. In any event, nothing hindered the Plaintiff from obtaining documentation like a copy of the payslip or a witness from Lowe Scanad company to demonstrate that the deceased took up the job in question and or was indeed employed by the former at the time of his untimely death.
27. Whereas, the Plaintiff was in a position to obtain the deceased employment contract, she ought to have gone an extra mile, to try, shore up her claim on the deceased’s earnings with specificity and or particularity. The contract evinced before this Court does not aid the Plaintiff’s cause and or offer succor in respect of the earnings pleaded. This is so , in the court’s view, that a party may execute a work contract and not take up the job thereafter. A bank Statement would have shed some light to show that indeed the deceased was actually working for the company, was earning and his salary was being paid through a bank account, whether a local or foreign bank.
28. It is trite that a court of law does not work on assumptions of material facts. All allegations of fact ought to be proved to the required standard of proof in civil litigation, which is upon a balance of Probabilities. Consequently, the court is unable to adopt the multiplier approach due to lack of specificity. This leaves the court with only one option; to adopt, a global award approach, which would be the best approach given the aforestated circumstances.
29. Therefore, applying my mind to the facts of the case, the earlier discussion herein and the Court of Appeal decision 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 [2025] KECA 620 (KLR) wherein on appeal, the Court sustained a global award in the sum of Kshs. 5,500,000/- for a 21-year-old about to complete his training as a licensed private pilot. I proceed to award Kshs. 6,000,000/- in the said subhead.

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30. On the part of the Plaintiff, by her submissions on the claim pursuant to the *Law Reform Act*, under the head on pain and suffering, it was submitted that the deceased died at the scene of the accident as shown in the death certificate therefore an award of Kshs. 50,000/- was sufficient under the said head. The decision in Sukari Industries Ltd (supra) was called to aid. On loss of expectation of life, an award of Kshs. 100,000/- was urged under the said header with reliance equally being placed on the decision in Juma Nyabuto (supra)
31. Under the Fatal Accident Act, on loss of dependency, it was submitted that the deceased was a qualified chef who worked in catering at BHP Australia. She was survived by the Plaintiff who was 18 years at the time of her untimely demise and that the deceased was 38 years old with the possibility of working until she was 60 years.
32. It was further submitted that at the time, Larder Chefs in catering earned an average annual pay of 60,000 Australian Dollars. Counsel relied on the decision in Jacob Ayiga Maruja & Another v Simeon Obayo [2005] eKLR to submit that documents or certificates are not the only ways to prove earnings and or profession of a person. Therefore, applying an annual earnings of 60,000 Australian Dollars and a dependency ratio of 2/3 and multiplier of 21 years and a current exchange rate on the Australian Dollars of Kshs. 85.39, this Court ought to award damages in the sum of Kshs. 71,727,600/- under this head.
33. On the part of the Defendant, on the claim pursuant to the *Law Reform Act*, under the head on pain and suffering, counsel equally acceded to the fact that the deceased died on the spot as result of the accident as evinced in the death certificate however urged an award of Kshs. 10,000/- as being sufficient under the said head. The decisions in Rono & Another (supra) and Marboro Express Ltd (supra) were called to aid.
34. On loss of expectation of life, while calling to aid the decisions in Muli (supra) and Kenya Power & Lighting Company Ltd (supra) an award of Kshs. 85,000/- was urged under the said header.
35. Under the Fatal Accident Act, counsel submitted that the Plaintiff did not provide any pay slips, contract of employment or salary terms therefore in the absence of any actual earnings the prudent approach would be to assess damages under this head by applying the global award approach, to wit, the same ought to be assessed at Kshs. 500,000/-. The decisions in M'itwarucho & Another (suing as legal representative of the estate of Henry Mutuma - deceased) v Mutindwa Enterprises Ltd [2025] KEHC 8844 (KLR) and Murithi & Another (legal representative of the estate of John Macharia Njoki - deceased) v Rentco East Africa Ltd & Another [2024] KEMC 186 (KLR) were relied on in the foretated regard.
36. Ex facie by the pleadings, it was averred that the deceased was survived by the Plaintiff who at the time was 21 years of age. Whereas the deceased at the time of her untimely demise was 38 years of age, in good health and purportedly earning a salary of Kshs. 110,000/- per month. That said, the Court has taken the liberty of perusing the entirety of the bundle of documents dated 12/08/2016 and further list of documents dated 09/05/2022 relied on by the Plaintiff in support of the claim of awardable damages.
37. On the award pursuant to the *Law Reform Act*, a cursory perusal of the death certificate, it can be noted therefrom that the deceased succumbed to her injuries on the very same date the accident occurred. Consequently, considering the rival submissions and drawing some guidance from the Court of Appeal decision in Mwangi & another (Suing as the Legal Representatives of the Estate of the Late Richard Mwangi Gathoni Deceased) (supra) I will proceed to award Kshs. 30,000/- under the head of pain and suffering and Kshs. 100,000/- under the head of loss of expectation of life.



38. On the award under the Fatal Accident Act, from the material adduced in support of the award, the Plaintiff relied on various job advertisements in respect of a Chef with suggested earning therein averaging 60,000 Australian dollars yet by her pleadings an award of Kshs. 110,000/- was urged. It is equally not disputed that the deceased was survived by the Plaintiff and was 38years old at the time of her untimely demise.
39. Further, while the Court acquiesces to the fact that the deceased must have somewhat earned a living, it is equally apparent that no tangible evidence was presented on earnings. It is trite that in cases where a Court is faced with no evidence to support a claim under the *Fatal Accidents Act*, the applicable modulus would be a global award. See Court of Appeal decision in *Roger Dainty vs. Mwinyi Omar Haji & Another* [2004] KECA 147 (KLR) and *Kenya Breweries Ltd vs. Saro* [1991] KECA 12 (KLR). See also-; *Cherangany Hills Ltd & another v Wanyama* (supra)
40. Therefore, applying my mind to facts of the case, taking due cognizance of the rival submissions and the Court of Appeal decision in *Francis K. Righa v Mary Njeri* (Suing as the Legal Representative of the Estate of James Kariuki Nganga [2021] KECA 710 (KLR) wherein the Court awarded a global award of Kshs. 1,000,000/- for a 59-year-old, meanwhile factoring the age of the deceased, inflationary trends and that loss of life cannot be monetarily quantified, this Court reasonably believes the sum of Kshs. 2,000,000/- would be a sufficient award under the Fatal Accident Act.
41. On the award of special damages this Court reiterates the dicta of Chesoni, J (as he then was) in the case of *Ouma v Nairobi City Council* (1976) KLR 304 held that -:

“Thus, for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence. As to the particularity necessary for pleading and the evidence in proof of special damage the court’s view is as laid down in the English leading case on pleading and proof of damages, *Ratcliffe v Evans* (1892) 2 QB 524 where Bowen L J said at pages 532, 533;-

The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much 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.”

See also-; *David Bagine vs. Martin Bundi* [1997] eKLR and *Hahn -v- Singh* [1985] KLR 716.

42. That said, in both cases HCCC No. 663 of 2009 and HCCC No. 662 of 2009, the sum pleaded in special damages in the respective cases was a total of Kshs. 739,336.27/- consisting of costs of coffins, preservation of the bodies, transportation of and funeral expenses. A cursory review of the Plaintiffs list of documents, appearing at pages 81-82 are cheques dated 15/11/2007 paid to Olsens Funeral, TayLaw Solicitors & Antony Parisi totaling 33,649.31 Australian Dollars. Further Invoices 9411 & 9412 from Olsens Funeral appearing at pages 83 and 101 respectively capture expenses towards last rights for the deceased, which total amount tallies with cheque dated 15/11/2007 paid out to Olsens Funeral. However, despite the above, what was pleaded by the Plaintiff in each case was Kshs. 739,336.27/-.



43. It is trite that the Court can only award special damages that have been pleaded and specifically proved. Consequently, the Court is constrained to award only that which was specifically pleaded by the Plaintiffs being Kshs. 739,336.27/- in special damages for each case.
44. It would equally be important to note at this juncture that prior to the hearing of the matter the Defendant had deposited the sum of Kshs. 1,250,000/- in a joint account in the name of both counsel for the parties at the time, towards special damages.
45. In the end, the Court believes it has reasonably addressed itself to the issue presented for determination, to wit, the Court will proceed to award damages as set out earlier in this judgment.

### **Final Disposition**

46. Accordingly, judgment is entered in favour of the Plaintiff in each of the cases as against the Defendant in the following terms -:

A. HCCC No. 663 of 2009 - Julian Michael A. Court Horton (deceased)-

Damages under the *Law Reform Act*

- a. Pain and Suffering Kshs. 50,000.00/-
- b. Loss of Expectation of Life Kshs. 100,000.00/-
- c. Damages under the  
Fatal Accident Act Kshs. 5,000,000/-
- d. Special damages Kshs. 739,336.27/-
- e. Sub-total Kshs. 5,889,336.27/-
- f. Less 20% liability Kshs. ....1,177,867.25/-
- g. Grand Total Kshs. 4,711,469.02/-

B) HCCC No. 662 of 2009 - Fiona Margaret Horton (deceased)

Damages under the *Law Reform Act*

- a. Pain and Suffering Kshs. 30,000.00/-
- b. Loss of Expectation of Life Kshs. 100,000.00/-
- c. Damages under the Fatal  
Accident Act Kshs. 2,000,000.00/-
- d. Special damages Kshs. 739,336.27/-
- e. Sub-total Kshs. 2,869,336.27/-  
Less 20% liability.....Kshs. 573,867.25/-
- f. Grand Total Kshs. 2,295,469.02/-

1.



C) Special damages at (d) above in both cases shall attract interest at court rates from the date of filing this suit, while general damages shall attract interest at court rates from date of this judgment in both cases.

48. Finally, on the costs of the two cases, upon applying my mind to the provisions of Section 27 of the *Civil Procedure Act*, I award costs of the suit in favour of the Plaintiff in each case to be borne by the Defendant.

Orders Accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**JANET MULWA.**

**JUDGE**

