

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CIVIL APPEAL NO E035 OF 2024**

**HARRY BROWNING CHAPMAN** (*suing as the administrator of the estate of Caroline Ann Chapman-deceased*).....  
**.....APPELLANT**

**VERSUS**

**JOSEPH KIMANI WACHIURI.....1<sup>ST</sup>**  
**RESPONDENT**  
**SIBA HONSE SIBA.....2<sup>ND</sup>**  
**RESPONDENT**

**(Appeal from original Decree passed on 18/09/2024 in Nanyuki CM Civil Case No E031 of 2022 - A.R Kithinji, CM)**

**J U D G M E N T**

**1.** This is an appeal in respect to *quantum of damages* awarded in the judgment of the lower court passed on 18/09/2024. The Respondents were found to be 100% liable. The trial court awarded the Appellant damages in the following terms;

Pain and suffering-	Kshs.30,000/-
Loss of expectation of life	Kshs.100,000/-
Loss of dependency-	Kshs.1,500,000/-
Special damages-	Kshs.491,853/-
Total-	Kshs.2,121,853/-

2. Being dissatisfied with the trial court assessment of damages, the Appellant filed the memorandum of appeal dated 11/10/2024 raising the following grounds;

- i. The learned magistrate erred awarding inordinately low amount for loss of dependency of Kshs.1,500,000/- contrary to the evidence tendered in court.
- ii. The learned magistrate erred by awarding an inordinately low sum for pain and suffering of Kshs.30,000/- bearing the gruesome nature of the accident and contrary to the evidence tendered in court.
- iii. The learned magistrate misdirected himself by failing to rely on contemporary comparative decisions and authorities in awarding Kshs.100,000/- for loss of expectation of life based on comparable and the evidence tendered in court.

iv. The learned magistrate's judgment was wholly not supported by law, evidence tendered in court and legal principles.

3. The appeal was canvassed by way of written submissions. The Appellant's counsel submitted that the trial court awarded Kshs.30,000/- for pain and suffering disregarding the excruciating nature of the deceased's death since the cause of death was severe head injury and blood loss which was consistent with prolonged agony. She did not die instantly but struggled for life before succumbing on the same day indicating a slow and painful demise. He urged the court to award Kshs.150,000/- considering inflation. Reliance was placed on the case of ***Retco East Africa Limited v Josephine Kwamboka Nyachaki & another (2021)eKLR*** where Kshs.100,000/- was awarded.

4. On loss of dependency, he submitted that the trial court disregarded the Appellant's evidence proof of earnings through statements from Adecco Group which confirmed her net monthly income. That the notation on the death certificate of 'housewife' was not a legal bar to employment in UK. That that was not the

true reflection of her economic engagement. Further, the family did not have readily available employment documentation at the time and the absence of formal proof of employment at the time of death should not be construed as an absence of employment. That the entry on the death certificate was not conclusive proof of the deceased's employment and her residence and work in the UK should be taken into account. Reliance was placed on the case of ***Hussein sheriff Ali v Grace Karea Mutia (Civil Appeal 155 of 2019)*** where court stated that death certificate indicating the deceased was a peasant was not decisive of occupation or earnings.

5. He submitted that the Appellant produced payslips hence the trial court findings that the deceased did not disclose the nature of the job was unfair. The deceased was a team leader/supervisor at amazon warehouse as indicated on Adecco statements earning over 2,000 pounds per month which is equivalent to Kshs.293,768/-. He urged the court to adopt Kshs.293,768 as the deceased's net income/multiplicand. That the adoption of the global sum was unfounded and it resulted in

a paltry award of Kshs.1.5 million that cannot sustain a family in UK.

**6.** As to multiplier, he submitted that the deceased was 33 years and would have worked up to the retirement age of 60 years. He therefore urged the court to adopt 40 years as working life hence a multiplier of 7 years. On the dependency. He submitted that the deceased had 3 dependants being two minors and the Appellant and there was no evidence which contradicted the Appellant's claim that she spent 2/3 of her income on the family. That she would have returned to the UK and the trial court failed to account for higher UK wages and expenses of her children who live in the UK. He urged the court to adopt  $293,768 \times 12 \times 7 \times 2/3$  amounting to Kshs.16,451,008/-.

**7.** In rejoinder, the Respondent's counsel submitted that the trial court awarded Kshs.30,000/- for pain and suffering upon being satisfied that the deceased died on the spot/on the same day of the accident which was confirmed by the death certificate and which was admitted by the Appellant on cross examination. There was no evidence that death was prolonged. That the authority cited by the Appellant of **Hyder Nthenya Musili** was

clear that damages for pain and suffering range between Kshs.10,000 to Kshs.100,000 with higher damages if pain and suffering was prolonged before death and with lower damages if the death was on the spot. That the case of **Retco East Africa** as cited by the Appellant is distinguishable as the deceased in that case died 30 minutes after the accident whereas in the instant case, the deceased died at the scene as confirmed by the death certificate and a letter on the record indicated that she died on the spot. He urged the court not to disturb the award of Kshs.30,000/-.

**8.** He submitted that the deceased's income was not proved and the death certificate indicated that she was a housewife. That the explanation given by the Appellant was not raised during the hearing and even in their submissions before the trial court hence the information amounts to counsel giving testimony in submissions. The evidence did not support that the deceased earned 2000 pounds monthly and the documents filed to prove earnings were for the year 2020 whereas the deceased died in 2021. The only document which indicated her status was death certificate which stated that she was a housewife. No

reasons advanced as to why recent payslips were not filed. The Appellant should have rectified the death certificate before filing. Further, the trial court correctly held that there was no designation in the documents filed as proof of income, the documents were not signed by the alleged employer, no bank statements and the alleged income statements were not supported by a certificate of electronic evidence. He submitted that the Appellant wishes this court to make a finding on speculation.

9. I have considered the rival submissions together with the authorities relied thereon. This being a first appeal, the duties of an appellate court were well enunciated in the case of ***Selle & Another v Associated Motor Boat Co. Ltd. & Others (1968) EA 123*** in the following terms:

***“An appeal to this court from a trial by the High Court 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 allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to***

***take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”***

**10.** The Appellant’s concern is only on the assessment of damages in respect to pain and suffering and loss of dependency.

**11.** It is trite law that an appellate court will not disturb an award of damages unless it is demonstrated that the trial court applied the wrong principles while awarding damages. This was held in the case of ***Butt v. Khan Civil Appeal No. 40 of 1997*** thus: -

***“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect, and so arrive at a figure which was either inordinately high or low.”***

**12.** It is therefore the law that this court will only interfere with the trial’s court award of damages if the Appellant demonstrate that the same was inordinately low or the trial court proceeded on wrong principles.

**13.** On pain and suffering, the trial court awarded the Appellant Kshs.30,000/- for reason that the deceased died on the spot. The court while awarding this amount relied on the case of ***Sukari Industries limited vs Clyde Machimbo Jumba (2016) eKLR*** where the court held that nominal damages will be awarded if death occurred immediately after death and higher damages if pain was prolonged. The court also noted that the amount under this head ranges from Kshs.10,000/ to Kshs.100,000/-.

**14.** The Appellant's contention is that though the deceased died on the same day, her death was not instant and she endured prolonged struggle before her death. That her death was slow and painful. He urged the court to award an amount of Kshs.150,000/- considering inflation and the fact that her death was not instant. Reliance was placed on the case of ***Recto Africa Limited v Josephine Kwamboka (supra)*** where an award of Kshs.100,000/- was awarded for a deceased who died 30 minutes after the accident.

**15.** There is no dispute that the deceased died on the same day of the accident. The Appellant's contention is that she did

not however die on the spot as held by the trial court. The Appellant testified in court that the deceased died on the same day. A letter from the chief which forms part of the record shows that she died on the spot.

**16.** Whether she died on the spot or after few minutes or hours does not negate the fact that she must have endured pain before her death. The court in ***Sukari Industries Limited v Clyde Machimbo Juma (supra)*** held that;

*“It is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased’s estate is entitled to compensation.”*

**17.** In ***Abdullahi t/a Wajir Fresh Vegetables Enterprises v Kagendo (Suing as the legal representative of the Estate of David Muchiri Nyaki-Deceased) & another [2025] KEHC 3249 (KLR) 29*** the court held that;

*“This court is minded that even where the death is instantaneous, some form of pain is still endured. Therefore, the award of Ksh.50,000 made by the trial court under this head was fair.”*

**18.** In ***Makoko (Suing as the wife and personal representative of the Estate of Emmanuel Robert Mbinda***

**- Deceased) v Fuga Feeds Kenya Limited & another [2022] KEHC 15087 (KLR)** the court stated that;

*“On pain and suffering, it is my considered view that the deceased died on the spot and therefore he did not suffer much before he died. I agree with the defendants and the authority they have relied, Hyder Nthenya Musili & another that an award of Kshs 100,000 is on the higher side. For this I will and do hereby award Kshs 40,000 for pain and suffering.”*

**19. In Kiptanui & another v Maina (Suing as a personal representative of the Estate of Sarah Wangui (Deceased) [2024] KEHC 765 (KLR)** the court stated thus;

*“As for damages under the Law Report Act, it was established that the deceased died on the same day of the accident. The trial court awarded a sum of Kshs.50,000/= for pain and suffering. This was neither unreasonable nor excessive in the circumstance and so was the award of Kshs.100,000/= for loss of life expectation. Both awards are hereby affirmed.”*

**20. And in Chege & another v Murithi & another [2023] KEHC 2187 (KLR)** the court held;

*“Under the head pain and suffering the trial Court awarded kshs. 10,000/= on the basis that the deceased died on the same day of the accident. I find the award of Kshs. 10,000/= as proper compensation. I will not interfere with the trial court’s award.”*

**21.** In view of the foregoing and based on the above comparable awards, am persuaded that the trial court failed to

consider recent comparable awards and the invite to interfere with the award of damages for pain and suffering is well taken. In my view an award of Kshs. 50,000 would suffice under this head.

**22.** On loss of dependency, the Appellant's contention is that the trial court erred by disregarding the documentary evidence of the deceased's income from Adecco group confirming her net monthly income. That the reliance by the trial court on the death certificate which indicated that she was a housewife was perverse as this was not a legal bar to employment in UK. That the entry on the death certificate was made in urgency by the family as their priority then was for swift repatriation of her remains. The family did not have readily available employment documents at the time.

**23.** The Respondents' counsel on the other hand argued the explanation by the Appellant was not raised during the hearing and even in their submissions before the trial court hence, the information amounts to counsel giving testimony in submissions. The evidence did not support that the deceased earned 2000 pounds monthly and the documents filed to prove earnings were for the year 2020 whereas the deceased died in

2021. The only document which indicated her status was death certificate which stated that she was a housewife. Further, the documents were not supported by a certificate of electronic evidence.

**24.** The court while awarding damages under loss of dependency adopted the global sum approach. In doing so, the trial court noted that there was no proof of monthly income and PW2 did not testify on the nature of the job she was handling with Adecco group.

**25.** The Appellant produced documents from Adecco Group dating from 04/09/2020 to 25/12/2020 bearing the deceased's name and some amount were indicated in the said documents and also the net pay. They were as follows;

*04/09/2020 net pay 192*

*11/09/2020 net pay 366*

*18/09/2020 net pay 366*

*25/09/2020 net pay 366*

*02/10/2020 net pay 367*

*09/10/2020 net pay 490*

*16/10/2020 net pay 371*

*23/10/2020 net pay 490*

*30/10/2020 net pay 371*

*06/11/2020 net pay 429*

*13/11/2020 net pay 490*

*20/11/2020 net pay 627*

*27/11/2020 net pay 358*

*04/12/2020 net pay 605*

*25/12/2020 net pay 544*

**26.** What is to be noted is that the documents attached did not reflect the monthly net income as it appears they were based on the days she was working. It is also noteworthy that the last net pay was on 25/12/2020. The deceased died on 11/04/2021. There was no document attached to show that immediately prior to her demise, she was engaged in any gainful employment. It is not clear whether she had stopped working with Adecco group or not. What is clear is that from 25/12/2020, there was no other document that was produced to show that she was gainfully working in the year 2021 up to her demise.

**27.** As noted by the trial court, the death certificate noted that she was a housewife. The contention that the death certificate was filled at the time of grief and with no regards to her occupation was not raised before the trial court. Further, as

submitted by the Respondent, the documents from Adecco were computer generated and they were not accompanied by a certificate of electronic record, an issue he raised before the trial court but it appears that the trial court brushed off that issue.

**28.** It is the law that whoever alleges proves. The duty was on the Appellant to prove the case on the question of employment to the required degree.

**29.** The burden of proof lies on the plaintiff throughout, pursuant to sections **107, 108 and 109 of the Evidence Act (Cap 80 Laws of Kenya)**. This burden does not shift merely because a defendant fails to testify or because the matter proceeds by way of formal proof.

**30.** In **Charterhouse Bank Ltd (Under Statutory Management) v Frank N. Kamau [2016] eKLR**, the Court of Appeal reiterated that even where a matter proceeds by formal proof, the plaintiff must still discharge the burden of proof on a balance of probabilities.

**31.** In the case of **Kirugi and Another v Kabiya & 3 others [1987] KLR 347** the Court of Appeal held that,

***“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”.***

**32.** Likewise, failure by a defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard hence in **Gichinga Kibutha v Caroline Nduku [2018] eKLR** the Court held that;

***“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”***

**33.** On the material before court, the following salient issues that required prove and cannot be wished away come to the fore. The indication that the deceased was a housewife in the death certificate and without any attempt to correct the anomaly (if at all) is on its own enough evidence on the matter. The death certificate is an official government document whose contents are binding in the absence of a competent challenge thereto.

**34.** The second salient issue is the necessity to prove that the deceased was in employment at the time of death. From the evidence tendered the last net pay was on 25/12/2020. The deceased died on 11/04/2021. There was no document

attached to show that immediately prior to her demise, she was engaged in any gainful employment. It is not clear whether she had stopped working with Adecco group or not. What is clear is that from 25/12/2020, there was no other document that was produced to show that she was gainfully working in the year 2021 up to her demise.

**35.** On the third aspect of the evidence adduced, the documents from Adecco were computer generated and they were not accompanied by a certificate of electronic record. This is an issue that the defence raised at trial but it appears the court did not pronounce itself on the same. Without the necessary certificate, the documents are inadmissible in evidence.

**36.** Based on the foregoing, and for reasons above stated, the trial court appreciated the law and the facts and fell into no error by adopting the global sum approach.

**37.** The result is that the appeal herein lacks merit and is dismissed save for the enhancement of damages for pain and suffering to Kshs. 50,000.

**Dated signed and delivered virtually this 11<sup>th</sup> day of  
February 2026.**

**A.K. NDUNG’U**

**JUDGE**