

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL APPEAL NO.E036 OF 2025

CLIMAX COACHES

LIMIED.....APPELLANT

VERSUS

**PETER MAINDI OSANYA (Suing as a Legal Representative
on behalf of the estate of ROSELIDA ACHIENG OMBATHO
(DECEASED)**

.....RESPONDENT

(Being an appeal from the Judgment/decree of Hon. Tsimonjero
(SRM) dated and delivered on 16th May 2025 at Ukwala SPMCC
No. W115 of 2022)

BETWEEN

**PETER MAINDI OSANYA (Suing as a Legal Representative
on behalf of the estate of ROSELIDA ACHIENG OMBATHO
(DECEASED).....PLAINTIFF**

VERSUS

CLIMAX COACHES

LIMIED.....APPELLAN

T

JUDGMENT

1. On 9th September 2022, the deceased herein was a pillion passenger aboard motorcycle registration number KMEU 535B along Kisumu-Busia road when motor vehicle registration number KCU 575 A was driven recklessly, negligently and carelessly by the Appellant's driver, servant and/or employee, that it caused an accident at Sira area. The deceased succumbed to the injuries. Peter Maindi Osanya lodged a claim against the Appellant under the Fatal Accidents Act, Cap 32, and the Law Reform Act Cap. 26. He listed seven dependants. According to the Respondents herein, the dependants lost the support of the deceased who was aged 47 years and a business lady who earned an average income of Kshs. 20,000 per month. The particulars of special damages pleaded were: police abstract Kshs.

200;Death Certificate Kshs. 150;Mortuary fees Kshs. 12,550; Funeral expenses Kshs. 367, 840; and legal fees for obtaining Letters of Administration Kshs. 35,000. The Respondent prayed for: general damages, special damages, costs and interest on the damages at court rates.

2. In the judgment, since liability had been compromised through a consent at 100% as against the Appellant herein, the learned trial Magistrate proceeded to award Kshs. 10,000 for pain and suffering; loss of expectation of life at Kshs. 100,000; loss of dependency at Kshs. 2,000,000; and special damages of Kshs. 197,550 plus interest at court rates and costs of the suit.

3. Dissatisfied with the decision, the Appellant contends that:

1. The learned trial magistrate erred in law and in awarding the Respondent general damages for loss of dependency in the sum of Kshs. 2,000,000.00 an amount which was excessive in the circumstances.

2. The learned trial Magistrate erred in law in awarding the Respondents the sum of Kshs. 197,550 as special damages an amount which was not proved in the circumstances

3. The learned trial Magistrate erred in fact and in law in failing to consider the

Appellant's submissions on quantum by completely disregarding the submissions and authorities of the Appellant and as a result arrived in unjustified award.

4. The learned trial Magistrate exercise of discretion in assessment of general damages for loss of dependency was injudicious.

4. The Appellant prays that the judgment be set aside with costs and that this Court do re-assess the evidence on record on quantum and award its own decision.

5. Regarding the award of Kshs. 2,000,000.00 for loss of dependency, the Appellant submits that no material evidence was placed before the court in proof of deceased's income or even whether she had any source of income despite it being alleged that the deceased was a business lady. Reliance is placed **on Roger Dainty vs Mwinyi Omar Haji & another MSA CA Civil Appeal No. 59 of 2004(2004) eKLR.** According to the Appellant, the learned trial Magistrate ought to have used the multiplier approach and used the minimum wages as there was no proof of source of income. Reference is made to the Regulations of Wages (General) (Amendment) Order, 2022 and since the deceased was a resident of Ugunja, her wage fell under Column 4 of the General Labourers which provides a monthly income of Kshs.

8,109.90. On the multiplier, the Appellant submits that since the deceased died at 47 and taking into account the vicissitudes and vagaries of life, 8 years would be a reasonable multiplier. Reliance is placed on the case of **South Nyanza Sugar Company Limited vs Odhiambo & Another (2023) eKLR**. Regarding the awarded special damages, the Appellant contends that the receipts for catering services and public address amounting to Kshs. 149,000 produced did not bear any revenue stamp to confirm if the stamp duty was paid by the service providers as provided by the law. According to the Appellant, the Respondent only produced and proved receipts for Kshs. 35,000. 00 only. The Appellant urge this Court to find the award on general damages and special damages are manifestly excessive and this appeal should be allowed with costs.

6. In opposition to the appeal, the Respondent submits that since the deceased's income could not be proved, the learned trial Magistrate correctly applied the global sum approach. According to the Respondent, the Appellant did not demonstrate that the award was excessive as to amount to an erroneous estimate of the loss suffered by the deceased's dependants. Reliance was placed on **Collins Demba Crispas vs Emmy Makhungu Mboya & Another, Nairobi HCCA No. E262 of 2020** where the court upheld an award of Kshs. 2,000,000 using the global sum approach. In **South**

Nyanza Sugar Company Limited vs Monica Atieno Odhiambo & Another, Migori HCCA No. E001 of 2020 where there was no proof of income, and the trial court awarded the deceased Kshs. 1,800,000 using the global sum approach. Further in **Ainu Shamsi Hauliers Ltd vs Moses Sakwa & Another, MSA HCCA No. 10 of 2020** where the global sum approach method was applied to award Kshs. 2,000,000.00. According to the Respondent, the sum of Kshs. 2,000,000 cannot be too high looking at the age of the children left behind by the deceased. Regarding special damages, the Respondents submit that the Appellant does not dispute the sum of Kshs. 35,000 as legal fees and for the sum of Kshs. 12,550, a receipt generated from an Electronic Tax Register does not require affixation of revenue stamps. According to the Respondent, the body was preserved in a mortuary before the burial, thus an expense that needed no proof. The Respondents submit that Kshs. 150,000 was reasonable. Reliance is placed on **Siaya HCCA No.E064 of 2024: Jane Awino Onyang & Another vs Judith Anea Akoth**. According to the Respondent, the receipts in support of the funeral expenses having been admitted, the trial Court ought to have awarded the full value of the receipts. Reliance is placed on the case of **Kakamega HCCA No. E020 of 2022: Mohammed Idris & Another vs Dorka Ajwang Lime & Another**. The Respondents urge this Court to find the appeal is bereft of merit and that the same be dismissed with costs.

7. This being a first appeal, the role of this court is to re-evaluate and subject the evidence to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. The court also takes note of the fact that it did not have the benefit of seeing or hearing the witnesses testify and therefore has to make an allowance for the same. See ***Selle vs. Associated Motor Boat Co. [1968] EA 123***; ***Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] e KLR.***

8. In ***Ephantus Mwangi and Another vs Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278***, the Court of Appeal held that:

“A member of an appellate court is not bound to accept the learned Judge’s findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

9. I have considered the record of appeal, the grounds in support thereof, the respective rival submissions and the law. This appeal is limited to the issue of the quantum of

damages, the issue of liability having been settled with the consent of the parties. In addressing the trial court's duty in assessment of damages, this Court in the case of **Kimatu Mbuvi t/a Kimatu Mbuvi & Bros vs. Augustine Munyao Kioko (2006) KECA 130** held:

“It is generally accepted by courts that the assessment of damages in personal injury cases is a daunting task as it involves many imponderables and competing interests for which a delicate balance must be found. Ultimately the awards will very much depend on the facts and circumstances of each case. As Lord Morris stated in H. West & Son Ltd v Shephard [1964] AC 326 at page 353.

‘The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion of judgment and of experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range of limits of current thought. In a case such as the present it is natural and reasonable for any member of an appellate tribunal to pose for himself the question as

to what award he himself would have made. Having done so, and remembering that in this sphere there are inevitably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment.’ ”

10. The Appellant challenges the award as excessive in particular under the loss of dependency and lack of proof on the special damages. It is trite that assessment of damages is an exercise of judicial discretion and the Court in assessing award of damages, should take into account, so far as possible, comparable injuries and the passage of time from when the award was made, that is the rate of inflation. The Court of Appeal observed in **Simon Taveta vs. Mercy Mutitu Njeru (2014) KECA 755 (KLR)** that:

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.” See **Arrow Car Limited vs. Elijah Shamalla Bimomo & 2 others (2004) KECA 136 (KLR)**

11. The Court of Appeal in **Kaikai v Chacha & 2 others (Civil Appeal E028 of 2020) [2025] KECA 1278 (KLR) (11 July 2025) (Judgment) Neutral citation: [2025] KECA 1278 (KLR)** had this to say:

“It is trite that each case must be determined on its circumstances as injuries suffered cannot be 100% identical. The award of general damages is not a mathematical exercise in which a court takes a calculator to add or subtract from previous awards. Each case depends on its own facts, and the award of damages is just an estimate that should be as close as possible for similar injuries. This means that unless an award is inordinately low or high, an appellate court should be slow to interfere with an award of damages by the trial court. This is because, unlike an appellate court that only relies on what is written on paper, the trial Judge has the advantage of seeing the victim of the accident assess the impact of the injuries, even as they consider the medical reports.”

12. The Court of Appeal in **Butt vs. Khan [1981] KLR 349**, held that an appellate court will only interfere with the award

of damages where it is shown that the trial court took into consideration an irrelevant fact or that the sum awarded is inordinately low or high that it must be an erroneous estimate of the damages or that a wrong principle of law was applied in awarding the damages.

13. The learned trial Magistrate was guided by previous Court decision in assessing damages for loss of dependency. It was demonstrated that the deceased had several children who depended on her, thus the dependency was lost upon the death of the deceased. In my view the sum of Kshs. 2,000,000.00 was not excessive in the circumstances. It is instructive that in the absence of evidence of income of a deceased person, the courts are guided by the Regulation of Wages (General) (Amendment) Order, for the specific period or apply the global approach. I am unable to fault the trial court for resorting to the global approach and was guided by decided cases. The large number of dependants made a case for the award of Kshs 2,000,000/ as loss on dependency.

14. Regarding the claim of special damages, it is trite that special damages must be pleaded and strictly proved. I find the awarded sum of Kshs. 197,550.00 was properly awarded by the learned trial Magistrate. I will not disturb the same.

15. The Court of Appeal in **Gilgil Hills Academy Limited v Koech & another (Suing as the legal representatives of**

the Estate of LCK - Deceased) (Civil Appeal E002 of 2021) [2025] KECA 2159 (KLR) stated that:

“As for special damages, the High Court accepted a modest claim for funeral-related expenses, correctly noting that in cases of bereavement, strict proof by receipts is not always feasible and that reasonable funeral expenses should ordinarily be allowed. That approach is consistent with decisions such as Jacob Ayiga Maruja & another v Simeon Obayo [2005] eKLR and subsequent authorities. We see no basis to upset that finding either.”

16. In the end, I find that the learned trial Magistrate properly evaluated the evidence, applied correct legal principles, and exercised discretion judiciously. I see no reason to interfere with the awards made by the learned trial magistrate.

17. In view of the foregoing observations, it is my finding that the Appellant’s appeal is devoid of any merit. The same is dismissed with costs to the Respondents.

**Dated and delivered at Siaya, this 20th day of February
2026**

D. K. Kemei

Judge

In the presence of:

M/s Ong'onga.....for Appellant

Mr Omondi.....for Respondents

M/s Maureen..... Court Assistant