REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL NO E065 OF 2023

SHADRACK S. SIMIYU (suing as dependant and on behalf of the dependants of JAPHETHER S. WANGIRA (DCD) .....APPELLANT

VERSUS

SIFA COMPANY.....RESPONDENT

(Being an Appeal arising from the judgement and decree of the Hon. P.N Areri (SPM) delivered in Court on 23/03/2023 in Eldoret CMCC 370 of 2017)

BETWEEN

SHADRACK S. SIMIYU (suing as dependant and on behalf of the dependants of JAPHETHER S. WANGIRA (DCD)..... PLAINTIFF

VERSUS SIFA COMPANY..... DEFENDANT

Coram: Before Justice R. Nyakundi

M/s Ombima & Co Advocates

M/s Peter M. Karanja Advocates

JUDGMENT

1. The brief background of this Appeal is that the Appellant herein who was the

Plaintiff in the trial Court filed a Plaint dated 11th April 2017 which was later Amended on 17th June 2019 against the Respondent who was the Defendant in the trial Court praying for judgment against the Defendant for general damages under the Fatal Accidents Act, the Law Reform Act and special damages and costs and interests. The particulars of the case were that on or about 24/03/2017, the Plaintiff deceased was a lawful pedal cyclist riding along the Eldoret-Webuye road when on reaching at

Mabanga area, the defendant's driver, servant, agent and/or employee so negligent drove, managed and/or controlled motor vehicle Registration No. KAZ 854W ZB 920 thereby permitting the same to lose control and ram into the deceased's bicycle occasioning him fatal injuries and as a result the deceased sustained fatal injuries to which he succumbed. The Defendant entered appearance and filed a Statement of Defence dated 17th July 2017 and denied all the allegations specifically being the registered and beneficial owner and or authorized driver of motor vehicle registration No. KAZ 854W ZB 920 Mercedes Benz Trailer at the alleged material times or at all and demanded strict proof thereof. The Defendant also denied all the allegations and particulars of negligence made under paragraph 4(a) to (g) both inclusive of the Plaint and put the Plaintiff in strict proof thereof. The Defendant prayed that the Plaintiff's suit be dismissed with costs.

2. The full trial was concluded and vide a Judgment dated 23rd March 2023, the Learned Trial Magistrate held that liability was apportioned by consent in the ratio of 60:40 in favour of the Plaintiff against the Defendant and the judgment was therefore purely on quantum. I particular, the Learned Trial

Magistrate held as follows: -

In a nutshell judgment is entered for the Plaintiff as hereunder: - (a) Liability 60:40 in favour of the Plaintiff against the Defendant.

(b) Quantum

Pain and Suffering	***kshs 20,000/=***
Loss of expectation of life	***kshs 100,000/=***
Loss of dependency	***kshs 112,203.20/=***
Subtotal	***kshs 232,203.20/=***
Less 40% contribution	***kshs 92,881.28/=***

Grand Total ***kshs 139,321.92/=***

I therefore enter judgement for the Plaintiff against the Defendant for kshs 139,321.92 with interest thereon at court rates from the date of judgement until payment in full. The Plaintiff is also awarded costs of the suit.

3. The Appellant being aggrieved and dissatisfied by the Judgment and decree and decree by the Trial Court delivered in Court on 23/03/2023 appealed against the whole of the said judgment and decree on quantum vide a

Memorandum of Appeal dated 18th April 2023 based on the following grounds;

a. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant had properly pleaded and proved loss of dependency under the Fatal Accidents Act.*
b. *The Learned Magistrate erred in law and in fact by failing to appreciate and apply the applicable principles of law while determining the issue o quantum.*
c. *The Learned Magistrate erred in law and in fact by failing to consider and give sufficient weight to the Appellant's pleadings and the evidence tendered.*
d. *The Learned Magistrate erred in law and in fact by relying on the wrong principles of law in reaching his conclusion.*
e. *The Learned Magistrate erred in law and in fact by failing to find that the Appellant had proved his case on a balance of probability and failing to award the Appellant a reasonable quantum of damages.*
f. *The Learned Magistrate erred in law and in fact by failing to consider and/or take into account the submissions and authorities proffered by the Appellant in making her finding on quantum.*

g. *The Learned Magistrate erred in law and in fact by adopting and/or applying a wrong approach in computing the award for the loss of dependency.*

4. The Appellant sought the following orders from the Memorandum of Appeal;

a. *This Appeal be allowed.*

b. *The judgment and decree entered in Eldoret CMCC No 370 of 2017, Shadrack S. Simiyu (suing as a dependant and on behalf of the dependants of Japhether Mwangira) Vs Sifa Company be and is hereby set aside.*

c. *This Honourable Court to make its independent determination on quantum.*

d. *Costs for this Appeal and the lower Court proceedings.*

5. The Appeal was canvassed by way of written submissions.

Appellant's Submissions Summary

6. Learned Counsel for the Appellant, Mr. Lubanga submitted that the trial court erred in law and in fact in its assessment of quantum, particularly under the head of loss of dependency and further awarded inordinately low damages for pain and suffering. On Quantum as Awarded by the Trial Court, Counsel outlined that the trial court awarded damages as follows: -

a. Pain and suffering – Kshs. 20,000/=

b. Loss of expectation of life – Kshs. 100,000/=

c. Loss of dependency – Kshs. 112,203.20/=

d. Sub-total – Kshs. 232,203.20/=

e. Less 40% contribution – Kshs. 92,881.28/=

f. Grand total – Kshs. 139,321.92/=

7. On Loss of Dependency, Mr. Lubanga submitted that although the Appellant had proposed the global award approach due to lack of documentary proof of earnings, the trial court opted to apply the multiplier approach. He acknowledged that there are settled principles

guiding the multiplier method, as stated in ***Easy Coach Bus Services & Another v Henry Charles Tsuma & another (Deceased)***, particularly the need to determine the multiplicand, multiplier, and dependency ratio. Counsel conceded that the trial court correctly applied the minimum wage of Kshs. 14,025.40/= and a dependency ratio of 2/3, having found that the deceased left behind a wife and eight children. However, he faulted the court for adopting a multiplier of one (1) year on the basis that the deceased, aged 59 years, would have retired at 60 years.

8. It was submitted that the deceased was employed in the private sector as a security guard and was not subject to the mandatory public service retirement age of 60 years. Counsel argued that the trial court failed to consider that persons in private employment may continue working beyond 60 years, particularly where they are in good health and have dependent minor children. In support of this position, Counsel cited **David Kimathi Kaburu v Gerald Mwabobia Murungi (suing as legal representative of the estate of James Mwenda Mwobobia (Deceased))*; Osoro & 2 Others v Msango & Another (suing as legal representatives of the estate of Nicholas Brown Mwangemi (Deceased)); and* Sokoro Plywood Limited & Another v Njenga Wainaina**, where courts upheld higher multipliers for persons in private employment beyond the age of 60 years.

9. Counsel emphasized that the deceased was the sole breadwinner, had minor children, including one in high school and another with disability, and would likely have worked until at least 75 years of age. He urged the Court to adopt a multiplier of 15 years and compute loss of dependency as follows: Kshs. 14,025.40 × 12 × 15 × 2/3 = Kshs. 1,683,048/=.

10. On Pain and Suffering- On the award of Kshs. 20,000/= for pain and suffering, Counsel submitted that the amount was inordinately low. Although the deceased died on the spot, he argued that courts have consistently held that even brief pain warrants reasonable compensation. He relied on ***Sukari Industries Limited v Clyde Machimbo Juma*** **and**

Melbrimo Investment Company Limited v Dinah Kemunto & Francis Sese (suing as personal representatives of the estate of Stephen Sinange alias Reuben Sinange (Deceased)) to demonstrate that recent comparable awards for death occurring on the spot have been in the range of Kshs. 50,000/=, taking into account inflation and passage of time. Counsel therefore urged the Court to enhance the award for pain and suffering to Kshs. 50,000/=.

11. In conclusion, Mr. Lubanga prayed that this Honourable Court interferes with the trial court's assessment of damages, adopts a multiplier of 15 years in computing loss of dependency, enhance the award for pain and suffering to Kshs. 50,000/= and awards costs of the appeal to the Appellant pursuant to Section 27 of the Civil Procedure Act.

Respondent's Submissions Summary

12. The Learned Counsel for the Respondent, Mr. Barasa, submitted that the appeal challenges the quantum of damages awarded by the trial court, specifically under the heads of pain and suffering and loss of dependency. He began by restating that liability had been settled by consent at 60:40 in favour of the Respondent. Counsel outlined the factual background, noting that the Appellant sued as administrator and dependant of the deceased, claiming damages under both the Fatal Accidents Act and the Law Reform Act. However, during trial, the Appellant did not produce any grant of letters of administration. Although he testified that the deceased earned Kshs. 15,000 per month as a watchman, no documentary proof of employment or income was produced.

13. On the duty of the first appellate court, Counsel cited **Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd**, **Kemfro Africa Ltd t/a Meru Express Service v A.M.M. Lubia & Another**, and **Arrow Car Ltd v Bimomo & 2 Others**, submitting that an appellate court may only interfere with an award of damages where the trial court took into account irrelevant factors, failed to consider relevant ones, or where the

award is so inordinately high or low as to represent an erroneous estimate.

14. On the Award for Pain and Suffering and Loss of Expectation of Life, Mr. Barasa submitted that there was no specific ground of appeal challenging the award for pain and suffering. More fundamentally, he argued that the Appellant was not entitled to any award under the Law Reform Act because he did not produce letters of administration. Awards for pain and suffering and loss of expectation of life, he submitted, can only be made to a personal representative of the estate.

15. Counsel further pointed out that in submissions before the trial court, the Appellant expressly stated that he was not making a claim under the Law Reform Act due to lack of letters of administration. The trial court therefore erred in law by awarding damages under that head despite the express disclaimer. Relying on Section 78(2) of the Civil Procedure Act and Order 42 Rule 32 of the Civil Procedure Rules, Counsel submitted that this Court, as a first appellate court, has power to correct that error even in the absence of a cross-appeal. He urged the Court to set aside entirely the awards for pain and suffering and loss of expectation of life as they were made without jurisdiction and contrary to the pleadings.

16. On the Award for Loss of Dependency, regarding loss of dependency, Counsel submitted that the deceased was aged 59 years and no evidence of his earnings was produced. He noted that even before the trial court, the Appellant had urged the court to apply the global sum approach due to lack of proof of income. He submitted that the trial court erred in opting for the multiplier method without giving reasons, and that the circumstances called for a global award. In support of the global approach, he cited **John Wamae & 2 Others v Jane Kituku Nziva & Another**, **Dora Mwawandu Samuel v Shabir M. Hassan**, **Moses Mairua Muchiri v Cyrus Maina Macharia**, and **Mary Khayesi Awalo v**

Mwilu Malungu, where courts adopted global awards where income could not be ascertained with precision.

17. Counsel argued that guided by comparable authorities involving deceased persons aged around 59 - 61 years, a global award of Kshs. 400,000 would have been appropriate. In the alternative, he submitted that even if the multiplier approach were to be applied, the trial court used the wrong minimum wage and the wrong regulation. The deceased died in March 2017, and therefore the applicable Regulation of Wages Order was the 2015 Order, not the 2022 Order relied upon by the trial court. Additionally, there was no evidence that the deceased worked in municipalities attracting the higher wage bracket. He further submitted that authorities such as **Jamal Aleem v Jane Chebore Too**, **Tipper Hauliers Ltd v Gladys Nanjala Namulata** and **Peter Chege & 2 Others v Joyce Litha Kitonyi** demonstrate that for a deceased aged 59 years, a multiplier of 6 years is appropriate, not the 15 years suggested by the Appellant.

18. Counsel therefore proposed that under the multiplier method, the correct computation would be based on the 2015 minimum wage of Kshs. 6,970.40,

a multiplier of 6 years, and a dependency ratio of 2/3. In conclusion, Mr. Barasa urged the Court to: -

a. *Set aside the awards for pain and suffering and loss of expectation of life in their entirety as they were made contrary to law.*
b. *Set aside and substitute the award for loss of dependency with either:*
    a) *A global award of Kshs. 400,000 subject to the agreed 40% contribution; or*
    b) *In the alternative, a recalculated multiplier award based on the 2015 minimum wage and a multiplier of 6 years.*
c. *Order that each party bear its own costs, as the errors complained of arose from the trial court's misapplication of the law.*

Analysis and Determination

19. This is an appeal on quantum as liability was well settled by the parties themselves by apportioning it at 60:40%. Before delving into issue of quantum, the following principles are of significance as laid down in the case of **Mrs Phoebe Ndunda and Others v Mwaniki Ranching Co. (2010) CAK**

"in exercising the unfettered discretion over inferior courts or tribunals this court would only be entitled to interfere with the exercise of discretion of it is shown that in the process of exercising the discretion, the trial magistrate or Chairman of the Tribunals has taken into account an irrelevant matter which he/she ought not to have taken into account, or that he/she failed to take into account a relevant matter which he/she ought to have taken into account or that of these that his/her decision is plainly wrong and could not have been arrived at by a reasonable tribunal property directing itself for the evidence and the law applicable.

20. The issue in contestation by the Appellant is whether the learned trial magistrate exercised the discretion judiciously in arriving at the assessment of the general damages which he was awarded to the Respondent. *In assessment of damages the general method of approach should be that comparable injuries should as far as possible be compensated by comparable award keeping in mind the level of awards in similar cases. (**See H. West and Son Ltd v Shephard (1964) AC 326.***

*The general approach is that for the court of Appeal to interfere with an award of the Superior Court it must be shown that a relevant factor was not taken into consideration or that on irrelevant factor was taken into account, or that the trial Judge did not appreciate the importance of some material evidence or that the aware is so inordinately low or high that some such like mistake must be assumed. (**See Salim S Zein t/a Eastern Bus Service and Another v Rose Mulee Mutua civil appeal number 147 of 1994.***

In guiding the appellate court whether or not to reverse an award of damages by the lower court eh principle laid down by the court of Appeal in Butler v Butler civil appeal 49 of 1983 are that the lower court acted on wrong principles that the court has awarded so excessive or so little damages that no reasonable court would and that the court has taken into consideration matters he ought not to have considered or not taken into account matters be ought to have considered, and in the result arrived at a wrong decision.

21. This case originates from a fatal accident scenario involving the deceased's father to the Appellant. The contentious issues revolve around computation of the award for loss of dependency and the adoption of the multiplier which in essence this court being invited to review and interfere with it. The facts upon that invitation are that the deceased during his life's time worked as a security guard with Robinson Security earning a monthly salary of Kshs 15,000. The arguments then are that the Appellant that decision making process was ultra-vires the laid down principles in **Easy Coach Bus Services & Another v Henry Charles Tsuma & Another (Suing as the administrators and personal representative of the Estate of Josephine Wenyanga Tsuma-deceased) (2019) eKLR.** Therefore, this court is being asked to make a finding that the deceased by the time of his demise was survived with a wife and Eight children as dependents and would not be a subject of the 60 year retirement age which is applicable in the Public Service.

22. This position taken by the Appellant became a subject of possession by the Respondent Counsel who agitated to the court that placing reliance on the following cases would demonstrate that proper factors were taken into account by the learned trial Magistrate. **Jecinta Ruguru v Beatrice Muthoni Muthike (Suing as the legal Representative of the Estate of the Late Isaac Muthike Nyaga)(2021) eKLR, John Wamae & 2Others v Jane Kituki**

Nziwa & Another (2017) eKLR, Dora Mwawandu Samuel (supra), Moses Mairrua Muchiri v Cyrus Maina Macharia (Suing as a Personal Representative of the Estate of Mercy Ngula Maina (deceased) 1016 eKLR , Mary Khayesi Awalo & Another v Mwilu Malungu & Another (1999) eKLR

23. Generally, if a person has wrongfully injured another and caused the injured person to die or sustain either soft tissue or serious injuries, or decrease his or her laboring capacity or increase the necessary leaving expenses, the tortfeasor shall compensate the victim of the fatal accident, or the injured person within the laid down principles. When it comes to pain and suffering, my first conjecture base on discussion with other Judges and Magistrates is that they both consciously base the amount of pain and suffering damages on the severity of the injury. The severity of injury or injuries is mainly associated with certain quantified measures such as medical expenses, and level of injury.

24. In the case at bar, assessment of fatal accidents claims involve the application of the fatal accident Act and the Law Reform Act which provides for compensation to Dependents of a deceased person. The key elements assessed include loss of dependency, loss of earning capacity, funeral expenses, and in limited circumstances pain and suffering. The relevant principles were articulated by **Lord Diplock in Cookson-v knowles (1979) AC 556 at 571 "**Quite apart from the prospects of future inflation, the assessment of *damages in fatal accidents can at best be only rough and ready because of the conjectural nature of so many of the other assumptions upon which it has to be based. The conventional method of calculating it has been to apply what is found upon the evidence to be a sum representing "the dependency", a multiplier representing what the judge declared to be the appropriate number of years purchase. In times of stable currency the multipliers that were used by judges were appropriate to interest rates of 4 percent to 5 per-cent whether the judges using them were*

onscious of this or not. For the reasons I have given I adhere to the opinion Lord Pearson and I had previously expressed which was applied by the Court of Appeal in Young v Percival [1975] 1WLR.27-29, that the likelihood of continuing inflation after the date of trial should not affect either the figure for the dependency or the multiplier used. Inflation is taken care of in a rough and ready way by the higher rates of interest obtainable as one of the consequences of it and no other practical basis of calculation has been suggested that is capable of dealing with so conjectural a factor with greater precision."

25. In Kenya based on recent decisions the assessment of Fatal Accident claims under the Fatal Accident Act Cap 32 and Law Reform Act has shifted towards more conservative global sum approaches for Dependency especially where the deceased was young and evidence of income is weak. In terms of overview assessment of Fatal Accident Claims in Kenya the following cases give a panoramic view of the approach taken by courts:

a) *Osano Simpson Nyambane (Civil Appeal No E029 of 2024, High Court Okwany J: The court set aside a formulaic multiplier approach (Kssh 1.8) and substituted it with a global sum of Kshs 2,000,000 for a 24 years old deceased with a wife and young children.*

b) *High Plateau Limited v Namalwa & 2Others (2025) KEHC 10311 (KLR). Reduced a lower court award to a global sum of Kshs 2,000,000 for a 23 years deceased with a wife and four children*

c) *Rono v Kipserem (2025) KEHC 8550 (KLR) the court noted that while the multiplicand approach is standard, the global approach is preferred when evidence of earning is weak.*

d) *Komoni v Jefunea & Another (2025) KEHC 2767 (KLR) set aside a lower award for loss of dependency, reducing it to a lump sum of Kshs 1,000,000 for a deceased, emphasizing that lower courts must consider the vagaries and vicissitudes of life. When using high multipliers*

26. Presumably and rightly so even in Fatal Accident Claims the following limbs are considered for purposes of compensation and assessment of damages for pain and suffering /Loss of Expectation of Life:

a) Conventional Award: *The awarded for Loss of Expectation of Life is currently Kshs 100,000*

b) Instant Death: *Where the deceased dies immediately, awards for pain and suffering are minimal, often ranging from kshs 10, 000 to Kshs*
50,000

c) Komoni v Jefunea ^& Another (2025) KEHC 2767 (KLR): *Reduced an award for pain and suffering from 100,000 to 40,000 and Loss of Expectation of life from 200,000 to 100,000 to match established precedents*

27. It is trite that under the Fatal Accident Act, a claimant can claim compensation for pain, suffering and loss of amenity between the accident and death, financial loses suffered between the accident and death, loss of earnings, medical expenses which include funeral expenses. In this appeal, the assessment of damages under the Fatal Accident Act, may take the model of a multiplicand approach being net income x Dependency Ration x years to Retirement or a global sum approach. In the real sense, unless the watchman the victim of the Accident was employed in the Public Section retirement age at 60 does not necessarily apply as the capping period. Such employees in the private sector work a little bit longer. The assessment principles for elderly workers factor in the following, the multiplier effect, together with the multiplicand. The multiplicand usually is calculated as 2/3 of the net income being monthly salary x 12 months. For instance, the Court in **Okiro & Another v Manani & Another (2023) KEHC 4041** the court in the context of a 56 year old accident victims who suffered Fatal Injuries applied the global sum of 1million for Dependency rather that a strict mathematical calculation due to the age in determining

exact future earnings. In most cases, loss of expectation of life conventionally is tagged at Kshs 100,000 whereas pain and suffering sometimes ranges between 50,000 – 200,000. The court in Benham v Gambling (1941) AC 157 held that only moderate award should be granted for loss of expectation of life for the following reasons:- " *In assessing damages for this purposes, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages ae in respect of loss of life, not loss of future pecuniary prospects*

28. However, when it comes to compensation under the Fatal Accidents Act, the court in **Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another- Nairobi HCC. No 1638 of 1988** *made the following observations on the principles applicable to an assessment of damages under the Fatal Accidents Act are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchases. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation for earning life of the deceased, the expectation of life and dependency of the dependents and the chances of life of the deceased and dependents. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature*"

29. With the strength of the above principles, and placing reliance on the evidential material adduced before the trial court, certain facts are not disputed: The deceased was involved in a Road Traffic Accident on 24.3.2017 with Motor Vehicle KAZ 854 W Z B 920. Apparently, the deceased was at the material time working as a Watchman with Robinson Security Company aged 59 years earning a basic salary of Kshs 15,000 per month from which he supported the following nuclear family members:

a) Agnes Natili Wife
b) Patrick Simiyu Son
c) Shadrack Simiyu Son
d) Peter Simiyu Son
e) Pamela Simiyu Daughter
f) Salome Simiyu Daughter
g) Tom Simiyu Son
h) Priscah Simiyu Daughter.

30. The issue of liability was settled at the ration of 60:40% meaning that the deceased was to shoulder 60% contributory negligence as against the Respondent. The learned trial Magistrate considered the evidence of PW1 Shadrack Simiyu a casual worker who filed the claim on behalf of his fathers estate seeking compensation under the Fatal Accident Act and Law Reform Act. In his evidence PW1 presented before court documentary evidence in the form of the death certificate, postmortem report and the burial permit which was later produced as documentary exhibits. The witness PW1 went further to present before court the police abstract the NTSA record of the offending motor vehicle and some birth certificates. It appears as if the Respondent did not call any witness in view of the consent agreed upon on liability as stated elsewhere in this Judgement. This is how the learned Magistrate went about pronouncing himself on the justiciable issues which were placed before him in so far as assessment of damages is concerned.

1. *Pain Suffering and Loss of amenities: The deceased was hit by a vehicle and died on the spot. According to the deceased suffered minimal pain.*
   Under this limb I will award Kshs 20,000
2. *Loss of expectation of life: Taking into consideration the state of our economy, the rate of inflation and the practice in our courts I will award a global sum of Kshs 100,000*
3. *Loss of dependency: The deceased was 59 years old and the retirement age is 60 years. The deceased would have worked for 1 more year before he retired. It is alleged that he was working as a guard earning a monthly salary of Kshs 15,000 but no evidence was adduced to support the same. In Kenya under the labour institution Act No 12 of 2007, the minimum wages regulations 2022 the minimum monthly wages for a watchman is Kshs 14,025.40. Considering that he had seven children an wife it is possible that a bulk of his salary perhaps two thirds of his net monthly salary was spent on his family. Talking a multiplicand of 1 year and the ratio of 2/3 I will calculate loss of dependency as follows:*
   KSHS 14,025.40 x 12 x 1 x 2/3 = 112.203.2

The Plaintiff did not plead or prove any special damages and none is a warded. This award is subject to 40% agree contribution in a nutshell judgement is entered for the plaintiff as hereunder:- (a) Liability

60:40 in favor of the plaintiff against the defendant

(b) Quantum

- *Pain and suffering* *Kshs 20,000*
- *Loss of expectation of life* *Kshs 100,000*
- *Loss of dependency* *Kshs 112,203.20*

Subtotal *= Ksh 232,203.20*

Less 40% contribution - Kshs 92,881.28

Grand Total = Kssh 139, 321.92

I therefore enter judgement for the plaintiff against the Defendant for Kshs 139, 321.92 with interest thereon at court rates from the date of judgment until payment in full. The Plaintiff is also awarded costs of the suit.

31. In this Judgement subject matter of the appeal, the learned trial Magistrate admits that no evidence was adduced to proof the monthly income of the deceased as no effort was made to even summon the Director of Robinson Security Company. The star witness for reasons which are practical did not manage to secure the documentary evidence of his father the deceased. The presumptive application of the minimum wage factor is evidence applied by the trial court which to me I consider misapprehension of the law on such matters. This is what the court said in in the cases of

Mwanzia v Ngalali Mutua Kenya Bus Ltd and quoted in **Albert Odawa -Vs Gichumu Githenji NKU HCCA NO 15 OF 2003 (2007) KLR.** Justice Ringera as he then 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."*

32. In a Fatal Accident case where there are more dependents than one wholly dependent on the deceased's workman compensation payable must be appropriately, fairly , and proportionately assessed by the trial court. This is one case I take the view that the learned Magistrate could have adopted the approach commonly known as a global approach.

Similarly, the findings that the deceased died on the sport and therefore suffered no pain is a scale of assessment tilted more on a subjective score compared with the objective evaluation of the circumstances involving a road Traffic Accident. The courts in **C&C Construction Company Ltd v Okhai and also George Wimpu & Co. (1950) 2 ALL ER 331** remarked as follows in assessing damages for Pain and Suffering: " *Pain is an intangible agonizing traumatic experience deeply internalized in the suffer...there has not yet been devised, invented or developed a met a method medially or scientifically assessing the pain of a suffer in such a way that the device can be tendered in evidence. The word pain along with the twin term if suffering is a malaise which could be debilitating in its ferociousness if the pang is excruciation as in someone whose leg is crushed and had to have the leg amputated or it could be a mild pain which the victim may bear with fortitude but the common characteristic is discomfort and sometimes misery leading to depression and anguish of the body and even of the mind leading even to a state of unhappiness and distressfulness.*

33. In the same vain, in the true sense the measure by the learned trial Magistrate to award Kshs 20,000 for pain and suffering, was a deprivation of taking into account various factors capable of assessing that limb on a reasonable and fair basis. There is no question here that there was an erroneous assessment of damages which invariably led to some kind of average damages outside the legal spectrum as provided by the various decisions of the High Court. It must be recognized and conceded that the fullness and adequacy of damages awarded by the trial court would in each case depend on proven solid facts presented by the Plaintiff discharging the burden of proof under Section 107, 108, & 109 of the Evidence Act.

34. The trial court on admission of material and cogent evidence has the duty to apply the principles of assessment which include:

a) ***Determine Net Income:*** *Identify the net income of the deceased available to support dependents.*

b) ***Deduct Personal Expenses****: Deduction the part of the income the deceased spent on themselves*

c) ***Calculate Multiplier****: Apply a years purchase multiplier based on the deceased's expected working life and the dependency duration.*

d) ***Deduct Pecuniary Advantages****: Deduct any financial benefits accrued to the dependents solely because of the death (e.g life insurance payout, thought some laws vary of this)*

35. When a claim for damages in included in an action, the plaintiff or claimants is required under the law to provide evidence in support of the claim and to give facts upon which the damages could be assessed. Simply put before assessment of damages could be made, the plaintiff or claimant must first furnish evidence to warrant the award of damages. He must also provide facts that would form the basis of assessment of the damages he would be entitled to. His failure to do so would be fatal to his claim for damages. That is why in all actions where damages is one of the reliefs claimed, the plaintiff or claimant is always called upon to give evidence in support of the claim for damages after interlocutory judgment is entered in his favor upon the failure of the defendant to either enter appearance or to defend the action. This appeal shall be tested within the parameters of these guidelines so as to inform the court whether indeed the impugned decision by the learned trial magistrate can be faulted by this appeals court.

36. There is no dispute about the age of the Appellant and that he died out of a road traffic accident in which liability was apportioned at 60:40%. The learned Magistrate in his wisdom applied a multiplicand of 2/3 and one year purchase giving rise to 112203 as the award of loss of dependency. The evidence on record, no doubt demonstrate that the deceased was working as a private security officer generally referred to as watchmen within the local area network. The learned Magistrate in

applying the one year purchase approach to quantify the loss of dependency for the deceased beneficiaries was wrong exercise of discretion and the applicable law. There was no concrete evidence that a security officer or watchman not in government service is deemed to retire at the age of 60 years. This contracts of employment depends purely on the terms set by the employer as agreed with the employee in terms of fulfilling the contractual obligations and not mainly capped at age of exit of 60 years primarily a policy framework within the Public Service. Based on recent 2025 - 2026 Kenya Court decisions the life expectancy of a man is often calculated using a combination of average statistical data and personal circumstances such as health and employment to determine a multiplier for employment. In the year 2025 which has just been considered as expired projected life expectancy for males to be a round 61-64 years though courts often use a 60–65year marker for retirement bases on calculations and research carried out from the World Health Organization.

37. The key findings within our legal system and the jurisprudential trajectory with regard to life expectancy and damages can be viewed from the following case-law.

a) ***High Plateau Limited v Wamalwa & 2 Others (2025) KEHC 10311(18 July 2025***): *The High Court considered damages for a 24 – year old deceased, confirming that courts must look at the vicissitudes of life.*

b) ***Rono v Kipserem (2025) KEHC 8550 (18 June 2025***) . *The High Court upheld a Magistrates ruling that used a 60-year old retirement age as a guide for the multiplier (working life) of a deceased person.*

c) ***Deceased) v Mbote (2025) KEHC 3978 (27 March 2025***). *The Court addressed life expectancy in cases of premature death, using a global sum approach for dependence rather than a strict*

mathematical multiplier noting that for a 59 -year old, the potential life expectancy is approaching retirement, reducing the multiplier.

d) ***Civil Appeal E005 of 2003 -Kenya Law (2025 April 2024****: A case involving a 29 year old where the court approved a 20- YEAR multiplier suggesting an expected working life up to approximately 49-5- years, factoring in the nature of employment*

e) ***Kariwo V Republic (2024) KEHC 4268 (3 May 2024):*** *In a criminal appeal, the court noted that life expectancy for a man is considered to be around 70 years in certain contexts which is often used to calculate if a sentence is equivalent to a life sentence.*

38. First I have looked at the evidence on record which was never challenged by the Respondent as to the age of the victim of the accident, the employment record and the survivorship all that tested within the standard and burden of proof of a balance of probabilities. This is one case where and appeal's court finds reason to interfere with discretion of the trial court on assessment of damages. This was the position taken by the Court of Appeal in **Mbogo & Another vs Shah (1968) EA 93**

39. I am alive to the fact that some reasons were alluded to by the learned trial Magistrate in making the findings in favor of the Appellant. The general principles concerning this aspect of the law is better summarized by the persuasive case law in **Hunter V Transport Accident Commission 2005 43MVR 130,136** where his Honor wrote: *" while the extent of the reasons will depend upon the circumstances of the case, the reasons should deal with the substantial points which have been raised- include findings on material questions of fact- refer to the evidence or other material upon which those finding are based- and provide an intelligible explanation of the process of reasoning that has led the judge from the evidence to the findings and from the findings to the ultimate conclusion. « Above all the judge should bear steadily in mind that reasons are not intelligible if they leave the reader to wonder*

which of a number of possible routes has been taken to the conclusion expressed. Failure to expose the path of reasoning is an error of law"

40. A close analysis of the evidence and the case law points towards allowing this appeal more fundamentally on loss of dependency whin in my view in its formulation rendered the final award to be so low amounting to an erroneous on points of facts and law. Here the question is, whether in the making of the decision the learned trial Magistrates failed to take into account certain material facts on life expectancy, age of retirement of the deceased and the years of purchase culminating into a wrong assessment. The answer this this question therefore that the years of purchase of 1 year is reviewed and substituted with the formular of global approach on the award of this limb of damages. In this approach, relying on the essential characteristics on assessment of damages is set aside the multiplicand model and on the facts of this case quantify damages on loss of expectancy at Kshs 1million. The other limbs shall remain undisturbed as founded by the learned trial Magistrate. The costs of this appeal shall be share equally by each party.

41. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 17TH DAY OF FEBRUARY 2026

R. NYAKUNDI

JUDGE