



REPUBLIC OF KENYA



**KENYA LAW**  
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**Musau v Njoroge & another (Sued as the legal representative of the Estate of Sammy Kumenya - Deceased) (Civil Appeal E067 of 2024) [2026] KEHC 2796 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2796 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E067 OF 2024  
AN ONGERI, J  
MARCH 5, 2026**

**BETWEEN**

**MARTIN KYUMWA MUSAU ..... APPELLANT**

**AND**

**MOSES NJOROGE & GRACE WANGARI NJIRU (SUED AS THE  
LEGAL REPRESENTATIVE OF THE ESTATE OF SAMMY KUMENYA -  
DECEASED) ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. D. Wangeci (SPM) in  
Wundanyi SPMCC No. E026 of 2022 delivered on 10th July 2023)*

**JUDGMENT**

1. The respondents are personal representative of Sammy Kumenya (deceased) who sustained fatal injuries when the appellant's motor vehicle registration no. KCP 257Q Toyota Allion hit motorcycle registration number KMFP 266V on which the deceased was riding.
2. The accident occurred on 1<sup>st</sup> June 2022 along Voi-Mwatate road at Merry Land area.
3. The respondents alleged that the motor registration no. KCP 257Q was so negligently, carelessly and recklessly driven at high speed without any due care, regard and or attention the appellant of his agent.
4. The appellant was sued vicariously for the acts and/or omissions of his driver, servant and/or agent. The respondents relied on the provisions of the [Traffic Act](#), the Highway Code and the doctrine of res ipsa loquitor.
5. The Respondent's evidence was that deceased was 30 years old, unmarried and working with Solfin Solutions Ltd as an operator of Sany excavator earning a sum of kshs.63,206 per month.



6. The respondents evidence was that on the material day, the motor vehicle registration no. KCP 257Q was being driven by the appellant going the same direction as the motor cycle registration no. KMFP 266V which the deceased was riding.
7. PW 2 said the motor vehicle suffered a tyre burst on the front left side and it lost control and hit the deceased's motor cycle which was unregistered.
8. The deceased died on the spot. The accident was witnessed by PW 4, BENJAMIN NZIOKI who said the motor vehicle was being driven at high speed and that it failed to keep distance.
9. The appellant said he was driving motor vehicle registration no. KCP 257Q at 70km/hr when he suffered a tyre burst. He said the deceased was hit by the side of the bonnet.
10. The trial court found the appellant 100% liable in negligence and assessed damages as follows;

Kshs.

General damages for pain & suffering 10,000

Loss of expectation of life 100,000

Loss of dependency

$50,000 \times 30 \times 12 \times 1/3$  6,000,000

Special damages 81,550

Total 6, 191,550

11. The appellant has appealed against the said judgment on the following grounds;
  - i. The learned trial Magistrate erred in law and in fact to disregard the auditor's report by the firm of Kasamba PL & Company which demonstrated that the Respondent had produced forged and fraudulent payslips and NSSF deductions slips.
  - ii. The learned trial Magistrate erred in law and in fact not to consider the credibility of the payslips in question and the glaring inconsistencies established by the expert opinion the firm of Kasamba PL & Company.
  - iii. The learned trial Magistrate erred in law and in fact to disregard the evidence tendered by the Kenya Revenue Authority demonstrating that Respondent was not an employee of Solfin Solution Limited and no income taxes have been made for years.
  - iv. The learned trial Magistrate erred in law and in fact to hold that a Certified Fraud Examiner Report was necessary to prove the allegations of fraud.
  - v. The learned trial Magistrate erred in law and in fact to disregard the Standard on Auditing(SA) 500 'Audit Evidence' relied by the Auditor firm of Kasamba PL & Company which led to the conclusion that the documents relied in prosecution of the suit were forged and fraudulent.
  - vi. The learned trial Magistrate erred in law and in fact by not taking into account the evidence brought forth on the allegations of fraud and forgery.
  - vii. That the learned trial Magistrate erred in law and in fact by holding that here being no outcome of the Police Investigation or charges against the Respondents the standard of proof was not met.



- viii. The learned trial Magistrate erred in law and in fact by finding that no sufficient reasons were proffered to warrant the grant of orders sought.
12. The parties filed written submissions as follows; That the appellant challenges a ruling delivered on 4th November 2024 by the Senior Principal Magistrate’s Court at Wundanyi, in which the learned trial magistrate refused to set aside a judgment entered against the appellant on 10th July 2023.
  13. That judgment awarded the respondents a sum of Kshs. 6,191,550 as damages for loss of life following a road traffic accident involving the deceased, Sammy Kumenya.
  14. The award was calculated based on the respondents’ representation that the deceased was a permanent and pensionable employee of Solfin Solutions Limited earning a gross monthly salary of Kshs. 50,000.
  15. After judgment was entered, the appellant obtained evidence from the Kenya Revenue Authority and a forensic audit report from Kasamba PL & Company, both of which demonstrated that the deceased had never been an employee of the said company and that the payslips and other documents relied upon by the respondents were forged.
  16. Despite this evidence, the trial court dismissed the application to set aside the judgment, holding inter alia that fraud could only be proved by a certified fraud examiner or through police investigations. Being aggrieved, the appellant filed the present appeal.
  17. As a first appellate court, the appellant submits that this honourable court has the duty to re-evaluate the evidence on record and draw its own conclusions.
  18. The appellant identifies three main issues for determination.
  19. Firstly, whether the trial court erred in law by imposing a standard of proof higher than that required in civil cases. It is argued that while allegations of fraud must be proved with cogent and clear evidence, the standard remains below proof beyond reasonable doubt but above the ordinary balance of probabilities.
  20. The appellant contends that the forensic audit report and the KRA documents provided clear and cogent evidence of fraud, thereby discharging the required burden. By demanding police investigations or criminal charges, the trial court improperly elevated the standard of proof and denied the appellant the opportunity to prove fraud through independent expert evidence.
  21. Secondly, the appellant submits that the trial court erred in disregarding the auditor’s report and the KRA documents. The *Evidence Act* provides that documentary evidence, especially certified copies of public documents, carries high probative value.
  22. The KRA records are public documents within the meaning of section 79 of the Act, and under section 83, certified copies are presumed genuine. The auditor’s report, prepared by a firm of accountants and auditors applying auditing standards, constituted expert evidence under section 48 of the *Evidence Act*.
  23. These documents demonstrated conclusively that the deceased was never employed by Solfin Solutions Limited and that the payslips and NSSF records were fraudulent.
  24. The trial court’s failure to consider this evidence led to a miscarriage of justice, as the award of Kshs. 6,191,550 was anchored on a false multiplier. A judgment built on a fraudulent foundation, the appellant argues, is a nullity and cannot be allowed to stand.



25. Thirdly, the appellant challenges the trial court's finding that only a certified fraud examiner could prove the allegations of fraud. Section 48 of the Evidence Act recognises as experts persons specially skilled in any science, art, or profession.
26. Accountants and auditors, by virtue of their training and practice, are experts in verifying financial records, including payslips. The trial court therefore erred in elevating the threshold and insisting on a report from a certified fraud examiner when the auditor's report was both relevant and admissible. The respondents did not object to or controvert this expert evidence.
27. In conclusion, the appellant submits that fraud unravels everything and that a court of law cannot allow itself to be used to perfect a fraud. The evidence presented strikes at the very root of the respondents' claim and warrants the setting aside of the judgment. The appellant prays that the appeal be allowed in its entirety.
28. These are the submissions made on behalf of the respondents in an appeal originating from a case at the Wundanyi Senior Principal Magistrates' Court.
29. That the original suit was filed by the respondents following a fatal road traffic accident in June 2022, for which they sought damages under the Fatal Accidents Act and the Law Reform Act.
30. The appellant was properly served with all pleadings, including the payslips that are now being contested, in August of that year.
31. When the appellant failed to respond or file a defence, an interlocutory judgment was entered, and the case was scheduled for a formal hearing.
32. It was only on the date of that hearing that the appellant's legal representatives formally came on record.
33. This Court has carefully re-evaluation of the evidence and the submissions made by both parties.
34. The appellant's challenge is not against the finding of liability, but against the quantum of damages, which was calculated based on documentary evidence that has since been demonstrated, through cogent and credible evidence, to have been fraudulent.
35. The duty of this court, as the first appellate court, is to subject the entire evidence to a fresh analysis and draw its own conclusions, bearing in mind that it did not have the advantage of seeing the witnesses testify.
36. In this case, the sole issue for determination revolves around the admissibility and probative value of new evidence uncovered after the trial, which goes to the very foundation of the respondents' claim for damages.
37. The respondents' entire claim for loss of dependency was anchored on the assertion that the deceased was a permanent employee of Solfin Solutions Limited earning a gross monthly salary of Kshs. 63,206, with the trial court adopting a figure of Kshs. 50,000 as the multiplicand.
38. However, the appellant, after judgment was entered, obtained a forensic audit report from the firm of Kasamba PL & Company and official records from the Kenya Revenue Authority (KRA).
39. These documents, which the appellant sought to introduce in their application to set aside the judgment, provided compelling evidence that the payslips and NSSF documents presented in court were forgeries and that the deceased had never been an employee of the said company.



40. The trial court's refusal to set aside the judgment was founded on the erroneous view that such fraud could only be proved by a certified fraud examiner or through police investigations. This was a misdirection on a point of law.
41. The trial court imposed a standard of proof that is not recognized in our civil procedure.
42. While it is true that allegations of fraud must be proved on a standard higher than the ordinary balance of probabilities—requiring evidence that is clear and cogent—this standard falls far short of proof beyond a reasonable doubt, which is reserved for criminal trials.
43. The learned magistrate erred by demanding the outcome of police investigations or criminal charges.
44. The civil court has the jurisdiction to investigate and make a finding on fraud based on the evidence placed before it.
45. The appellant's evidence met this threshold. The auditor's report from Kasamba PL & Company, prepared by professionals skilled in the verification of financial records, constitutes expert evidence as recognized under Section 48 of the *Evidence Act*.
46. Such experts are indeed persons "specially skilled" in their profession, and their opinion is admissible to assist the court in forming its conclusion.
47. The trial court's elevation of the requirement to a "certified fraud examiner" was an unnecessary and incorrect fettering of its own discretion.
48. Furthermore, the evidence from the Kenya Revenue Authority is of paramount importance.
49. These are public documents, and under Sections 79 and 83 of the *Evidence Act*, certified copies of such public records are presumed to be genuine and carry high probative value.
50. They demonstrated that no income taxes were remitted on behalf of the deceased by Solfin Solutions Limited, fundamentally contradicting the claim of formal employment.
51. In the face of this uncontroverted documentary evidence, the trial court's finding that the allegations of fraud were not proved cannot stand.
52. The principle that fraud unravels everything is a bedrock of our jurisprudence.
53. A judgment obtained through the presentation of forged documents is a nullity, as it is a judgment procured by deceit on the court.
54. A court of law cannot allow itself to be an instrument of fraud, and it is its duty to safeguard its processes from such abuse.
55. Having set aside the trial court's award on quantum, this court is now tasked with assessing the appropriate damages payable to the respondents based on the evidence that remains credible.
56. The respondents still have a valid claim under the *Fatal Accidents Act* and the *Law Reform Act* for the death of the deceased, which occurred as a result of the appellant's negligence.
57. The fraudulent payslips having been expunged from the record, the court must now determine the loss of dependency without proof of the deceased's actual earnings.
58. In such circumstances, where there is no reliable evidence of income, the courts have consistently adopted the global sum approach for loss of dependency rather than the multiplier approach, which requires proof of income.



59. Where there is paucity of evidence of actual income, the global award approach in respect to loss of dependency is the most appropriate and just in the circumstances.
60. This court finds that a global award of Kshs. 2,800,000 for loss of dependency is fair and reasonable.
61. This figure takes into account the inflationary trends and the need to compensate the dependents for the loss of their breadwinner, while also reflecting the uncertainty surrounding the exact income.
62. The conventional awards for pain and suffering and loss of expectation of life must also be considered. The evidence indicates that the deceased died on the spot.
63. More recent decisions have pegged this figure at Kshs. 100,000 to Kshs. 120,000. Given the age of the deceased and the need for consistency with current jurisprudence, this court adopts the sum of Kshs. 100,000 for loss of expectation of life.
64. The special damages of Kshs. 81,550 as pleaded and proved before the trial court remain undisturbed, as they were not directly tainted by the fraud and were incurred as funeral and litigation expenses.
65. Finally, it is a well-established principle that where damages are awarded under both the Law Reform Act and the Fatal Accidents Act to the same estate and dependents, the award under the Law Reform Act must be deducted from the total to avoid double compensation.
66. The rationale is that the benefits under the Law Reform Act are for the estate, while those under the Fatal Accidents Act are for the dependents, and since the same persons are ultimately benefiting, there should be no duplication. Accordingly, the awards for pain and suffering (Kshs. 10,000) and loss of expectation of life (Kshs. 100,000) will be deducted from the total award.
67. In the result, this court makes the following orders:
68. The appeal is allowed.
69. The judgment delivered on 10th July 2023 is hereby set aside and substituted with a judgment for the respondents against the appellant as follows:
  - i. Pain and suffering: Kshs. 10,000 (to be deducted)
  - ii. Loss of expectation of life: Kshs. 100,000(to be deducted)
  - iii. . Loss of dependency (global award): Kshs. 2,800,000
  - iv. Special damages: Kshs. 81,550Total: Kshs. 2,881,550
70. The net award of Kshs. 2881,550 shall attract interest at court rates from the date of the lower court's judgment until payment in full.
71. The appeal partially succeeded, each party to bear its own costs of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**

.....  
**A. N. ONGERI**

**JUDGE**

In the presence of:



Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

