



REPUBLIC OF KENYA



**Ligosi & another v Amolo and another (Suing as the Legal Representatives
of the Estate of Oscar Oduor Asanda) (Civil Appeal E042 of 2024)
[2026] KEHC 2343 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E042 OF 2024
DK KEMEL, J
FEBRUARY 27, 2026**

BETWEEN

STEPHEN MIYANA LIGOSI 1ST APPELLANT

JOSEPH ONYNAGO OSEMBO 2ND APPELLANT

AND

**JAMES ASANDA AMOLO AND CAROLINE AKINYI ODUOR (SUING AS
THE LEGAL REPRESENTATIVES OF THE ESTATE OF OSCAR ODUOR
ASANDA) RESPONDENT**

*(Being an appeal from the Judgment and Decree of the Hon. Tsimonjero
(SRM) delivered on 14th August 2024 in Ukwala PMCC No.E036 of 2022)*

JUDGMENT

1. The Appeal arises from the Judgment and decree of Hon. Tsimonjero (SRM) delivered on 14th August 2024 in Ukwala PMCC No.E036 of 2022.
2. Vide a Complaint dated 4th May 2022, the Respondents prayed for: general damages under the Fatal Accident Act and the [Law Reform Act](#); special damages of Kshs. 392,750.00; costs of the suit; and interest on damages at court rates. It was pleaded that Oscar Oduor Asanda (deceased) while riding a motorcycle, was involved in an accident on 29th January 2022 with the 2nd Appellant's motor vehicle registration number KBY 871R driven by the 1st Appellant along Kisumu-Busia Road at Simenya area. That he succumbed to the injuries. The Respondents blamed the 1st and 2nd Appellants for the death of the deceased herein.
3. The Respondents lodged the claim on their behalf as father and widow to the deceased and for the benefit of Wilkister Aloo (Mother) and Eugene Omondi (Son). It was pleaded that the deceased was



- 20 years old, a mechanic earning an average income of Kshs. 20,000.00 per month. According to the Respondents, since the deceased was the sole breadwinner of the family, they lost the deceased's support and have suffered loss and damage.
4. In her statement dated 4th May 2022, Caroline Akinyi Oduor stated that on the material date, she was travelling with her husband (deceased) on a motorcycle when the accident occurred. She stated that the motor vehicle being driven from Kisumu general direction facing Busia direction lost control and veered off the road to the right side where they were and collided with their motorcycle. That upon gaining consciousness, she found herself at Rang'ala Mission Hospital and that she was informed that the deceased had died shortly after the accident. She blamed the driver of the motor vehicle for speeding, which left the rider with no room to escape.
 5. PW1 James Asanda Omolo stated that the deceased aged 20 years was his son. He stated that the deceased was born on 13th November 2019. He stated that the deceased died on the spot. He stated that the deceased was a farmer but he could not estimate his monthly income from the sale of farm produce.
 6. PW2 Caroline Akinyi Oduor stated that she got married to the deceased on 19th June 2021. She stated that on 29/9/2022 they were going to church from Busia directions towards Luanda Maseno Kisumu via a motorcycle. That she was a passenger while the deceased was the one riding. That they were riding on the right side. She stated that they had a child but who was from a different mother.
 7. PW3 No. 71710 Pc Eugene Monika, was the investigating officer who stated that the accident occurred on 29/1/22 at Rangala along Busia Highway at 10.30 am. He stated that the deceased died on the spot while the pillion passenger was seriously injured. He stated that the motor vehicle was coming from Kisumu to Busia while the motorcycle was from Busia to Kisumu. He stated that at the scene, there was a pothole which caused the driver to swerve from the left lane to avoid the pothole and collided with the oncoming motorcycle in the opposite lane. Consequently, the rider and pillion passenger were pushed to the right side of the road while facing Busia direction. He stated that the motor vehicle went off the road to the right, facing Busia direction. On being cross-examined, he stated that he visited the scene immediately after 10 minutes. He stated that the rider was not licensed to ride. He stated that the rider was not supposed to be on the road and that the rider and passenger were not wearing a helmet or a reflector jacket. He stated that the motor vehicle rested on the right side facing Busia. In re-examination, he stated that in his view the accident was caused by the pothole, which made the driver to swerve from his lane.
 8. PW4 stated that he worked at Ogolla Odhiambo General Shop where James Asanda was issued with a receipt for Kshs. 138, 400.00 for goods purchased. He stated that the money was paid in cash and not via Mpesa, but he did not bother to know for which funeral. He stated that the shop sold general merchandise and not fish which appeared in the receipt.
 9. PW5 Vitalis Ojaka stated that he sold two cows at Kshs. 40,000.00 and Kshs. 45,000.00 to James Asanda Amolo at Simero Market as per the receipt number 11548461 issued by the County for which he paid Kshs. 100. PW6 Simon Ojwang Ogutu stated that under Nyakua Wood Finishers, he prepared a coffin for James Asanda at a cost of Kshs. 30,000.00 and charged Kshs. 7,000 for the hearse. PW7 Charles Owino Ogao stated that he offered James Asanda catering services for the funeral at a cost of Kshs. 89,000.00 under his company called Lala na Mwenzake as per the receipt dated 11th February 2022. He stated that the receipt did not bear the name of James Asanda or any person. He stated that he was first paid a deposit of Kshs. 52,000.00 in cash and the balance later after the service. He stated that he was paid by the Committee. He stated that the receipt bore his stamp but did not indicate his name.
 10. The 1st and 2nd Appellants filed defence dated 1st July 2022. The Appellants denied the allegations of negligence against them and contended that if the accident occurred, it was solely and/or substantially



- contributed to by the deceased's own negligence. The Appellants prayed that the suit be dismissed with costs.
11. The Appellants case was closed without calling any witness.
 12. In his judgment, the learned trial Magistrate found the 1st Appellant wholly to blame for the accident while the 2nd Appellant was effectively vicariously liable. According to the learned trial Magistrate, the point of impact was on the deceased's lawful lane, and that the deceased, who did not dig the pothole on the road, could not be blamed. It was held that the most prudent thing the 1st Appellant, as a competent driver, could have done was to wait for the opposite lane to clear before making the decision to swerve to his right into the opposite lane to avoid the said pothole, thus the 1st Appellant did not exercise the skill and due care expected of him as a competent driver. According to the learned trial Magistrate, the failure to have the insurance certificate and driving license by the deceased did not interfere with the 1st Appellant's control of the suit motor vehicle.
 13. On quantum of damages, the learned trial Magistrate awarded Kshs. 50,000.00 for pain and suffering, loss of expectation of life at Kshs. 100,000.00, loss of dependency at Kshs. 3,000,000.00 and special damages of Kshs. 388,400.00 plus costs and interest on the total award of Kshs. 3,038,400.00 at court rates from the date of the judgment. On loss of dependency, the learned trial Magistrate found that the deceased' income was not known since there was no evidence of him having a garage or being employed in any garage, thus a multiplier approach was not suitable for the case. The learned trial Magistrate applied the global sum approach.
 14. Dissatisfied by the decision, the Appellants have lodged an appeal to this Court contending that:
 1. The learned trial magistrate erred in law and fact in finding the Appellants wholly liable for the accident despite contrary evidence on the same.
 2. The learned trial magistrate erred in law and fact in awarding loss of dependency of Kshs. 3,000,000.00 noting that the deceased did not have any dependents.
 3. The learned trial magistrate erred in law and fact in awarding special damages of Kshs. 388,400 which amount was not proved.
 4. The learned trial magistrate erred in law and fact in failing to pay regard to authorities in the Defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar cases as the case he was deciding.
 5. The learned trial magistrate exercise of discretion in assessment of quantum was injudicious.
 6. 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 decision on quantum.
 15. The Appellants pray that the decree be set aside and this Court do re-assess the evidence on record on liability and quantum and the costs of this appeal be awarded to the Appellants.
 16. The appeal was canvassed by way of written submissions. None of the parties complied.
 17. This being the first appellate court, its duty is to reevaluate the evidence tendered before the trial court and subject it to an independent analysis to arrive at its own conclusion as to whether or not to uphold the decision of the trial court. See *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123; *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] e KLR



18. Odunga J. (as he then was) *China Wi Yu Company Limited v Ronald Manthi David* [2021] KEHC 1626 (KLR) stated that this Court is under a duty to delve at some length into factual details and revisit the facts as presented in the trial Court, analyze the same, evaluate it and arrive at its independent conclusions, but always remembering, and giving allowance for it, that the trial Court had the advantage of hearing the parties.
19. I have considered the appeal in light of the evidence on record and written submissions filed on behalf of the parties herein. It is not in dispute that the Appellants have no problem with the awards regarding pain and suffering and loss of expectation of life. The two issues for determination are on liability and quantum of damages in particular on loss of dependency and special damages. The question to be determined is whether the Respondents proved their case on a balance of probabilities, and if proved, whether the Respondents are entitled to the reliefs sought in the Plaintiff.
20. It will be noted that the Appellants case was closed without any witness testifying. Odunga J. (as he then was) in *Republic v County Government of Machakos* [2019] KEHC 8492(KLR) delved into the consequences of a party failing to adduce evidence. Guided by court decision, the learned Judge held that the failure to adduce any evidence means that the evidence adduced by the Plaintiff against them is uncontroverted and therefore unchallenged. However, the learned Judge held that a party must satisfy the particular burden and standard of proof even when his/her claim is not opposed. The learned Judge held that:
- “ 38. I must however state that where the allegations made even in an affidavit fall short of the legal threshold expected in a matter the Court may still decline to grant the orders sought and this must be so even in cases where the application is not opposed. This was the Court of Appeal’s position in *Central Bank of Kenya v. Uhuru Highway Development Ltd. & 3 Others* Civil Appeal No. 75 of 1998 where it was held that it is an error for the Court to hold that a failure to file grounds of opposition automatically entitles the applicant to orders ex parte as the applicant is not relieved of the onus on him of justifying his application.
39. This is my understanding of the holding of Rajah, JA in *Britestone Pte Ltd v. Smith & Associates Far East Ltd* [2007] 4 SLR (R.) 855 at 59 that:
- “The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him.”
21. In the same vein, Section 107 of the Evidence dictates that whoever desires court to give judgment regarding a legal right or liability dependent on facts they assert, must prove that those facts exist. The burden lay on the Respondent to prove his claim on quantum of damages which the learned trial Magistrate found was satisfactorily discharged
22. The legal burden of proof was on the Respondents to prove their claim on a balance of probabilities. It was therefore incumbent upon the Respondents to prove their assertions pleaded in the Plaintiff.
23. However, the burden may shift to the Defendant to disprove the alleged claim. This is the evidential burden of proof, which is well captured under Sections 109 and 112 of the *Evidence Act*. See *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334.



24. The two concepts are well illustrated by the Court of Appeal in the case of *Mbuthia Macharia v Annah Mutua & Another* [2017] eKLR, that:

“The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes an evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced.” See Supreme Court in *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others* [2017] eKLR,”

25. The standard of proof is well captured in the case of *Palace Investment Ltd v. Geoffrey Kariuki Mwenda & Another* (2015) eKLR, where the Court held that:

“Denning J. in *Miller v Minister of Pensions* (1947) 2 ALL ER 372, discussing the burden of proof, had this to say:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden is discharged, but if the probabilities are equal, it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

26. Kimaru J. (as he then was) in *William Kabogo Gitau v George Thuo & 2 others* (2010) 1 KLR 526 stated that:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposite party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegation that he made has occurred.”

27. As noted above, none of the parties filed any submissions. It is believed that the Appellants would be relying on their grounds in the Memorandum of Appeal dated 2/9/2024 where they sought for a re-assessment on both liability, quantum of damages and special damages.

28. As regards the issue of liability, it is noted that the trial magistrate attributed 100% liability against the Appellants and was of the view that the 1st Appellant, being the driver was expected to observe the Highway Code of traffic and to ensure that he kept towards his lane. The investigating officer who visited the scene admitted on cross-examination that the cause of the accident was the potholes. It is instructive that all drivers driving along the roads are expected to have a proper lookout. Indeed, the 1st Appellant is reported to have swerved the vehicle upon stumbling upon a pothole and encroached onto the lane of the deceased. The fact that the 1st Appellant was unable to control his vehicle and avoid the collision is clear proof that he must have been driving at an abnormally high speed and was thus negligent and must, together with the 2nd Appellant held solely liable in damages to the Respondents. I find that even though the deceased had no driver's licence as well as insurance cover and the pillion passenger had no helmet, these were not factors that contributed to the accident. The traffic police could as well have preferred charges against the deceased, which could have been dealt with separately,



and the eventual outcome would not have had any bearing at all to the accident. It is instructive that the Appellants opted not to tender evidence to rebut the evidence of the Respondents' six witnesses, and hence the evidence of the Respondents remained uncontroverted. The finding by the learned trial magistrate on liability was thus proper and must be upheld.

29. Regarding the quantum, the Appellants challenge the award of damages as excessive, in particular the award of Kshs. 3,000,000.00 for loss of dependency and Kshs. 388,400 as special damages. It is a generally accepted principle that assessment of damages is a matter of discretion. In *Agnes Kamene Mulyali v. Harvest Limited* (2017) KECA 764 (KLR), the Court of Appeal stated:

“...Awards of damages of course lie in the discretion of the court but it is exercisable on settled principles. Appellate courts are slow to interfere with the same and will do so only in well-known circumstances. In *Kenya Bus Services & Another v. Mayende* [1992] 2 EA 232 at 235, this court put it thus: ‘The principles on which an appellate court will interfere with a trial court’s assessment of damages are now settled in Kenya. Kneller, JA. as he then was, put it thus in *Kitavi v. Coastal Bottles Limited* [1984] LLR 213 (CAK); ‘the court of appeal in Kenya then should as its forerunners did only disturb an award of damages, when the trial judge has taken into account a factor he ought not to have taken into account or the award is so high or so low that it amounts to an erroneous estimate. See *Singh v. Singh and another* [1955] 22 EACR at 129; *Butt v. Khan* [1977] LLR 2 (CAK).”

30. It is trite that 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 v. 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 v. Elijah Shamalla Bimomo & 2 others* (2004) KECA 136 (KLR)

31. 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.”

32. The Court of Appeal in *Butt v. 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.

33. The learned trial Magistrate was guided by previous Court decisions in assessing damages for loss of dependency. It was demonstrated that the deceased was then aged 20 years and was married to the 2nd Respondent and was blessed with one child from a previous marriage and that his mother (1st



Respondent) also depended upon him for support. Hence, the dependency was lost upon the death of the deceased. As the deceased was married and also supported his wife and child as well as his mother, I find that the dependency ratio of 2/3 would be appropriate 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. It is apparent that no records of income were availed by the Respondents. The certificate of death indicated the deceased's occupation as a mechanic. The Respondents did not avail evidence of the deceased's job as a mechanic and the income he earned. That being the position, I am in agreement with the trial court's decision to resort to the global approach way of assessing the damages and that it was guided by decided cases namely Board of Governors Kangubii Girls High School & Another v Jane Wanjala Muriithi & Another [2014] eKLR and Cornelius Elaine Wamba v Shreeji Enterprises Ltd & Another [2012] e KLR where a global sum of Kshs 3,000,000/ was awarded. I find that the large number of dependants in this matter made a case for the award of Kshs 3,000,000/ as loss on dependency. I find the said award was reasonable and not excessive in the circumstances and that the trial court did not take into account irrelevant factors in the matter.

34. Regarding the claim of special damages, it is trite that special damages must be pleaded and strictly proved. The Respondents had pleaded the sum of Kshs 392, 750/ but presented receipts in the sum of Kshs 388,400/. I find the awarded sum of Kshs. 197,550.00 was properly awarded by the learned trial Magistrate. 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.”

I am persuaded by the trial court's assessment of the special damages and hence I will not disturb the same.

35. 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.
36. In view of the foregoing observations, it is my finding that the Appellants' appeal lacks merit. The same is dismissed with costs to the Respondents.

DATED AND DELIVERED AT SIAYA THIS 27TH DAY OF FEBRUARY 2026

D. K. KEMEI

JUDGE

In the presence of:

M/s Ongonga.....for Appellants

Omondi..... for Respondents

Maureen.....Court Assistant

