



REPUBLIC OF KENYA

IN THE PRINCIPAL MAGISTRATES COURT AT LAMU

MC CC NO. E007 OF 2025.

**STEPHEN RAMADHAN MKAMBA AND MAHENZO VUKO KALAMA (Legal representative of the estate of DANIEL KHONDE STEPHEN-Deceased)
.....PLAINTIFF**

-VERSUS-

**MOTORONOMY EAST AFRICA LIMITED.....
DEFENDANT**

JUDGEMENT.

A. BRIEF FACTS.

- 1) By a plaint dated 14th October 2025 the plaintiffs seek the following prayers from the court.**
 - a) General damages under the Law Reform and Fatal Accident Act.**
 - b) Burial expenses.**
 - c) Special damages for Kshs.158,320/=**
 - d) Costs of the suit**
 - e) Interests on (a),(b),(c) and (d)**
 - f) Any other relief as this honourable court may deem fit and just to grant.**

- 2) The suit is not opposed by the defendant and there is in place an interlocutory judgment against it.**

- 3) It is said that on the 6th day of June 2025 at Kilimani area of Mokowe-Safirisi road while the deceased was a lawful rider aboard motor cycle registration number KMEY 147K, motor vehicle registration number KCZ 947Z/ZC 3568 which was so negligently driven that it lost control and hit the deceased and he sustained fatal injuries.
- 4) From the eye witness account from the evidence of Stanley Washe Kalama who is also a driver and who was on the material date and time on the said road confirmed that indeed the motor vehicle was being driven at a high speed and as a result the driver lost control and caused the accident that led to the death of the deceased.
- 5) I have considered the testimonies of all the three witnesses, the documents filed in support as well as submissions filed by the plaintiff.

B. ISSUES FOR DETERMINATION

- 6) The following issues commend themselves to me for determination.
 - a) **Who is liable for the accident?**
 - b) **What is the quantum awardable to the claimant if any.**
 - c) **Who bears the costs of the claim.**

C. ANALYSIS AND DETERMINATION.

- a) **Who is liable for the accident?**
- 7) In **Stapley vs Gypsum Mines Limited (2) (1953) A.C 663** at P. 681 Lord Reid had this to say;

“to determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid, logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it... the question must be determined by applying common sense to the fact of each particular case. One may find that a matter of history, several people have been at fault and that if anyone of them had acted properly the accident would not have happened, but that does not

mean that the accident must be regarded as having been caused by the faults of all them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one sole cause but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can apply generally”

- 8)** The facts speak for themselves that an accident indeed occurred on 6th June 2025 and reported and the same is proved by the Police abstract dated 7/6/2025. That as a result of the said accident, the plaintiff sustained fatal injuries. The cause of death has been proved by the post mortem report dated and/or conducted on the 10/6/2025 at 1200hours and further by the certificate of death issued on 9/7/2025. All these documents among others have been produced as exhibits.
- 9)** The plaintiff has pleaded particulars of negligence on the part of the driver of the suit motor vehicle which according to the plaintiff and the eye witness caused the accident.
- 10)** As already stated interlocutory judgment was entered as against the respondent. In the case of **William Wagura Maigua vs Elbur Flora Limited (2012) eKLR** Justice William Ouko (as he then was) held thus;

“the defendant though served with summons to enter appearance or file defence within the stipulated time on 21/10/2011 interlocutory judgment was entered in favour of the plaintiff and the matter was fixed for formal proof. In this case as no appearance or response was filed. The issue of liability was settled in favour of the plaintiff through entry of interlocutory judgement on 21/10/2011 and the plaintiff was under no obligation to call evidence to prove it”

- 11)** In addition, I agree with the plaintiff in his submissions that his evidence is unchallenged and uncontroverted as a result of the failure by the defendant to enter appearance despite service. In support of this position reliance was placed in the case of **MWAURA & 15 OTHERS V NZAU (CIVIL CASE E003 OF 2021) [2025] KEHC 16526**

(KLR) (CIV) (16 OCTOBER 2025) (JUDGMENT) where Justice Ado Moses held that, **“the Defendant did not file any defense, nor did they call any evidence. The Plaintiff’s evidence, therefore, remains uncontroverted.”**

- 12)** In this matter, similar situation obtains. The defendant was served but did not enter appearance within the stipulated time and interlocutory judgement having been entered settles the issue of liability. The court therefore makes a finding that the defendant is 100% liable for the accident.

b) What is the quantum awardable to the claimant if any.

- 13)** The plaintiff has prayed for general damages under the law reform and fatal accident Act.

Damages under the Law Reform Act

i. Pain and Suffering.

- 14)** From the record it is clear that the accused did not die instantly after the accident. He was first rushed to Mpeketoni sub county hospital at 9.30pm and it is reported that he succumbed to his injuries 30 minutes later. He surely must have undergone excruciating pain before his death. The plaintiff has proposed Kshs.150,000/= as damages for pain and suffering and has placed reliance on a number of cases including **Evanson Ndungu Mukunya vs JNM & MWN[2022] eKLR.**
- 15)** It is clear from the authorities cited by the plaintiff the running theme by courts is that the longer the period before death the higher the award. The plaintiff in this case died after 30 minutes. In the circumstances I do not agree with the proposal by the plaintiff given the holding in those cases he has cited himself. In the case of Faraj Mohamed for instance, the plaintiff died after eight and a half hours and an award of Kshs.100,000/= was awarded. That is not the position herein. The proposal by the plaintiff would have made a lot more of sense had the plaintiff died say after 10 or 12 hours.
- 16)** In West **Kenya Sugar Co. Limited v Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR** the court observed that-

“The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.”

- 17) In the case of **Hyder Nthenya Musili & Another v China Wu Yi Limited & Another [2017] eKLR**, the Court stated as follows-

“As regards damages awarded under the Law Reform Act, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death.... The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/= while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.” (emphasis added).

- 18) No amount of money can be commensurate with the pain the deceased underwent but under this head and guided by the 2 aforementioned authorities I award **Kshs.20,000/=** under this head.

ii. Loss of expectation of life.

- 19) Most courts when awarding damages under this head have opted to adopt the conventional award and once such case was the case of **Hyder Nthenya Musili case(supra)**.

- 20) Damages under the head of loss of expectation of life are, more or else, an estimate of the quality of the deceased’s future but for the accident that terminated his or her life. The award has been described in some circles as ‘unreal’ or ‘arbitrary’ but all the same, it is usually made in deserving cases.

21) In **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini versus A.M. Lubia & Olive Lubia (1982-88) 1KLR 727** Kneller said of this award in the following terms:

“What has to be valued is the loss of the victims’ prospective happiness which Viscount Simmonds in Benham versus Gambling (1941) AC 157 said ‘might seem more suitable for discussion in an essay on Aristotelian ethics than in a judgment in a court of law’ and because it is an unreal arbitrary award it usually is the current conventional sum...It was £200 in 1941 and £500 in 1968.” (See page 730).”

22) The award under this head is always conventional in the sense that it is pegged on similar awards that have been made in the past. As noted it is an award that is ordinarily made on the assumption that the deceased had the prospects of a happy life. For many years, this award has always been in the region of Kshs 100,000 to Kshs 200,000/=

23) Similarly, I adopt the conventional award for loss of expectation of life and I award **Kshs.100,000/=** under this head.

Damages under the fatal accidents Act

i. Loss of Dependency.

24) Damages under this head have over time posed a challenge to courts especially in instances where the deceased earnings cannot be ascertained with 2 schools of thought emerging from superior courts.

25) One is the multiplier and multiplicand approach whereas the other is the lump sum award approach. Superior courts seem to suggest that the multiplier approach should be resorted to in instances where the earning of the deceased can be ascertained and when that is not possible then the lump sum approach to be used. Some of them had this to say;

26) In **Albert Odawa vs. Gichimu Gichenji [2007] eKLR**, cited with approval the case of **Mwanzia vs. Ngalali Mutua & Kenya Bus Service (Msa) Ltd & Another**, where **Hon. Ringera, J** took the view 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."

- 27) This reasoning was adopted in **Mary Khayesi Awalo & Another - Vs- Mwilu Malungu & Another ELD HCCC NO. 19 of 1997 [1999] eKLR** where Nambuye J., stated that: -

"As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books."

- 28) Similarly, in **John Wamae & 2 others v Jane Kituku Nziva & another [2017] eKLR**, the court held as follows:

"It is therefore not clear as to what the deceased did for a living. In my view, allocating the deceased an occupation on which to base the minimum wage would amount to speculation.... I am of the considered view that the award of the trial Court should be set aside. A lump sum of Kshs. 400,000/= as general damages will be sufficient in the circumstances of this case."

- 29) The plaintiff in his submissions has urged the court to adopt the multiplicand approach. He suggests that the deceased worked for gain as a farmer earning approximately Kshs.30,000/= per month and to prove this occupation he produced the death certificate.

- 30) With tremendous respect to counsel, a death certificate only proves death and nothing else. I am guided by the decision of [Mbae \(Suing as the Legal Representative of the Estate of Koome Mbae - Deceased\) v Mugambi \(Sued as the Legal Representative of the Estate of Duncan Mwega Micheni - Deceased\) \[2024\] KEHC 3376 \(KLR\)](#) where the court held as follows;

“This notwithstanding, a death certificate may only be relied on to proof what is legally supposed to prove. It is trite that a death certificate is an official statement signed by a doctor on the cause, date and place of a person’s death. It is also a document issued by a Government Civil Registration Office that declares the date, location and cause of a person’s death as entered in an official register of death. It follows that entries on a death certificate which shall be received as evidence must relate to such entries as cause of death, date of death and place of death.”

I find that to relay on the death certificate to proof the occupation of the deceased is in my view not sufficient...” (emphasis mine)

- 31)** It is said the plaintiff was a farmer, I would expect evidence towards this and how much he used to earn that led to the approximation of Kshs.30,000/= without such kind of evidence, it is not clear how the figure of Kshs.30,000/= was arrived at. Interestingly, counsel then abandons the monthly income from farming and adopts the minimum wage as gazetted in **Regulation of Wages (General) (Amendment) Order, 2024**.
- 32)** In the regulation of wages order, he proposes Kshs.16,113.75 as the minimum wage. A look at the order that is an amount applicable first in Nairobi, Mombasa, Kisumu, Nakuru and Eldoret cities and secondly that it is applicable to general labourer including cleaner, sweeper, gardener, children’s ayah, house servant, day watchman and messenger. The plaintiff was neither a resident of any of those cities nor of any of the occupations listed under column one of the schedule.
- 33)** I therefore do not found any basis upon which counsel in his submissions adopted those figures. In my view that was an erroneous application of the Regulation of Wages (General) (Amendment) Order, 2024 and in a bid to force it to fit in the circumstances of this case.
- 34)** In the case of **Oyugi Judith & another v Fredrick Odhiambo Ongong & 3 others [2014] eKLR** where the deceased were 18 & 30 years old respectively. The court awarded Kshs. 700,000/= to each plaintiff for loss of dependency.
- 35)** In [Mercy Muriuki & another v Samuel Mwangi Nduati & Anor \(Suing as the Legal Administrators of the Estate of the late Robert](#)

[Mwangi](#) [2019] KEHC 9014 (KLR) the court on appeal made a global award of Kshs.1,000,000/= under the head of loss of dependency.

- 36) There being no basis upon which I can adopt the multiplicand approach and guided by the authorities cited above and the fact that the plaintiff admitted to have not produced evidence of deceased earning, taking the multiplicand approach in the circumstances would amount to mere conjecture as observed by the court in **Mary Khayesi Awalo case**, therefore in the circumstances I will adopt the lumpsum approach and I proceed to award a lumpsum figure of **Kshs.1,000,000/=**

Special damages.

- 37) It is trite law that special damages have to be specifically pleaded and proved.

- 38) Special damages are those damages which are ascertainable and quantifiable at the date of the action. The distinction between general and special damages was explained by the Court of Appeal in **Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177** where it was stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

- 39) Similarly, in **Hahn vs. Singh, Civil Appeal No. 42 of 1983 [185] KLR 716**, the Court of Appeal held as follows;

“Special damages must not only be specifically claimed (pleaded) but also strictly proved...for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The

degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

Burial expenses

40) The plaintiff has also prayed for Kshs.100,000/= being the total expenses incurred during the final send off of the deceased. I take the view that these take the form and shape of special damages which should be strictly pleaded and proved. Counsel in his submissions asserts that exhibits No. 4,5,6,16,17 and 18 have proved the said expenses but a perusal of the same does not support his position.

41) They have been pleaded but not strictly proved and as such I have no option but to disallow the expense in its entirety.

Mortuary charges at Mpeketoni and Kilifi county hospitals

42) These expenses have been strictly pleaded and proved by way of receipts and as such they are allowed as prayed.

Advocates costs for grant.

43) I have perused the list of documents and the attendant documents and there is no such receipt to prove this expense in as much as the same is listed as document no. 17 and I have no basis upon which I can grant the expense. The same is disallowed for that reason.

Court fees for grant and motor vehicle search

44) These have been strictly proved by way of receipts and they are allowed as prayed.

c) Who bears the costs of the claim.

45) Having found that the Plaintiff is the successful party in this matter and the fact that costs follow events, he is awarded costs of the suit.

D. CONCLUSION AND DISPOSITION.

46) The upshot is that the suit is allowed in favour of the plaintiff as against the defendants jointly and severally in the following terms;

Liability

100%

Pain and Suffering	Kshs.20,000/=
Loss of expectation of life	Kshs.100,000/=
Loss of Dependency	Kshs. 1,000,000/=
Special damages	<u>Kshs.23,320/=</u>

Total _____ Ksh.1,143,320/=

47) The plaintiff is also awarded costs of the suit and interest on general damages from the date of this judgment and that of special damages from the date of filing of the suit until payment in full.

48) Orders accordingly.

**DATED, DELIVERED AND SIGNED AT LAMU LAW COURTS
THIS....11TH.....DAY OF ...February...2026**

**F.M. MULAMA
RESIDENT MAGISTRATE**

In the presence of

Court Assistant:- Daniel Damise.

Mr. Iddi HB Mr.Tolo for the Plaintiff