

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT

NAKURU

CIVIL SUIT NUMBER E858 OF 2021

**MENCHA OANGA suing as the legal
representative**

**of the estate of JAMES MAINGA MENCHA
(DECEASED)..... PLAINTIFF**

VERSUS

**MASH EAST AFRICA
LIMITED**

..... 1ST DEFENDANT

ANADH KHAMIS

2ND DEFENDANT

JUDGMENT

1. The Deceased, James Mainga Mencha, dead at the age of 19 years, was a *boda-boda* rider. On or

about the 24th January 2021, while lawfully riding as a pillion passenger on a Motorcycle Registration Number KMFJ 758Z Boxer at St. Mary's area along the Gilgil-Nakuru-Nairobi road, the defendants and / or their driver/ employee/ servant and/or agent so carelessly and/or negligently drove, managed and/or controlled Motor Vehicle Registration Number KCQ 170L, a Scania bus, thereby causing it to hit the said Motor Cycle Registration Number KMFJ 758Z Boxer. The impact was fatal, and the deceased succumbed to his injuries on the same day. The Plaintiff attributes the occurrence of the said accident to the negligence of the Defendants, whom he holds jointly and severally liable, thereby precipitating the institution of the present suit.

2. By a Plaint dated 24th August 2021, the Plaintiff, the father of the deceased, suing in his capacity as the legal representative of the estate of the deceased, instituted proceedings against the Defendants alleging negligence resulting in the untimely demise of his son. He seeks damages pursuant to the provisions of the Law Reform Act and the Fatal Accidents Act, together with special damages in the sum of Kshs. 242,104/= costs of the suit, and interest thereon at court rates.

3. The Defendants entered appearance and filed a statement of Defence on 13th October 2021, traversing each and every allegation of fact and/or law made in the Plaint and inviting the Plaintiff to strict proof thereof, while also blaming the rider of KMFJ 758Z Boxer for the accident.

4. Upon close of pleadings and after pre-trial, the matter was set down for hearing on 17th October 2023. The Plaintiff tendered evidence in Court through two witnesses: PW1, Mencha Oanga, and PW2, a police officer. There was no eyewitness account of the circumstances leading to the occurrence of the incident. However, based on the records at Gilgil Police Station, mainly the **Police Abstract** (PEX2), on the material date at around 13:00 hours, the motor vehicle registration number KCQ 170L, a Scania Courier bus being driven by the second defendant along the Gilgil-Nakuru Road near St. Mary's Hospital, caused an accident by hitting the deceased who was riding on a motorcycle registration number KMFJ 758Z. Due to the impact, the Deceased sustained fatal injuries. Police officers attached to

Gilgil Police Station attended the scene and subsequently prepared and issued the requisite Police Abstract in respect of the accident. The Police Abstract together with all Plaintiff's documents were produced as PEx2-10. The witnesses confirmed that the Deceased passed on as a result of the accident. The Defendants did not offer any evidence. Parties were directed to file written submissions at the close of the hearing.

5. On the 4th November 2025, the parties herein, by consent duly recorded before the Court, agreed to apportion liability in the ratio of 85:15 in favour of the Plaintiff as against the Defendants. Liability having thus been agreed upon, the sole issue remaining for determination is that of quantum of damages payable.

6. On quantum of damages, the Plaintiff submitted that for pain and suffering, the Plaintiff and the Police officer agree that the Deceased died on the same day. Similarly, the Defendant did not challenge the evidence of the Plaintiff. As such I can rightly infer that the pain of the deceased was slightly prolonged before he met his untimely death on the same day of the accident. The Plaintiff submitted that an award of Kshs. 120,000/- will suffice under this head. The Plaintiff cited the case of **Caleb Juma Nyabuto vs Evance Otieno Magaka & Anor (2021) eKLR** wherein the Court maintained an award of Kshs. 100,000/- for pain and suffering for a deceased who died on the spot whilst reiterating the dictum set out by Majanja J. in **Sukari Industries**

**Limited vs. Clyde Machimbo Juma Homa Bay
HCCA NO. 68 of 2015 [2016] eKLR.**

7. On the issue of loss of expectation of life, the Plaintiff submitted that Kshs.200,000/= as was held in **Moses Akumba & Anor vs Hellen Karis Thoya [2017] eKLR** would suffice. On the issue of loss of dependency, the Plaintiff testified herein that the deceased was working as a boda rider earning Kshs. 40,000/= per month. The **Death Certificate** PExh. 4 however indicates that the Deceased's occupation was a businessman.
8. The Plaintiff's counsel submitted that the Plaintiff indicated that he did not have documentation as to the earnings of the Deceased from his engagement in an income generating activity. Evidence of the nature of the business the deceased engaged in would have aided the Court

in assessing the income of the deceased to a higher degree of certainty. But without evidence as to nature of business, the assertion that the deceased worked either as a Boda-boda rider who earned Kshs. 40,000/= remains a mere speculation and at the very least a very rough estimate. The Plaintiff submitted that the Court should adopt the minimum wage of a casual laborer as at the time of the accident as captured in Regulation of Wages (General Amendment) Order 2018 wherein the same was capped at Kenya shillings Twelve Thousand Five Hundred and Twenty-Two and Seventy Cents (Kshs. 12,522.70/-) per month.

9. The Plaintiff further submitted that as at the time of the Accident, the deceased was aged 19 years. Therefore, the Court should use a multiplier of 41

years subjected to a dependency of 1/2. Therefore, totaling Kenya Shillings Three Million Eight Hundred and Six Thousand, Nine Hundred. The Plaintiff further submitted that he be awarded Kenya Shillings Two hundred and Forty-Two Thousand One Hundred and Four (Kshs. 242,104/=) for special damages. He relied heavily on the authority cited.

Analysis and Determination

10. 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] KEHC 6121 (KLR)** 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.

14. It is indeed trite that no pecuniary award can restore the life so untimely lost. An award of damages in matters of this nature is not intended to place a value upon human life, but rather to offer such reasonable compensation as the law permits in the circumstances. I have therefore carefully considered the pleadings on record, the evidence adduced, and the submissions tendered by the Plaintiff. It is manifest that the sole question for determination is the quantum of

damages payable under the various heads claimed, namely: pain and suffering; loss of expectation of life; loss of dependency; and special damages. I shall proceed to consider each of these heads in turn.

General Damages

a. Pain and Suffering

11. There is no clear evidence of how long it took the deceased to pass away on the same date of the accident. The **Certificate of Death, PExh. No. 4**, however confirms that he passed away while at St. Mary's Mission Hospital. It therefore mean that he did not die on the spot. The **postmortem report**, PEXH. No. 5, indicates that the deceased suffered severe chest, soft tissue and skeletal injuries with blood loss which led to his death.

Learned Counsel for the Plaintiff has proposed a sum of Kshs. 120,000/=.

12. Based on the evidence adduced before this Court, the deceased died on the same day after experiencing some pain and suffering for some time, while at St Mary's Hospital. In the case of **Sukari Industries Limited vs. Clyde Machimbo Juma [2016] eKLR** the Court held as follows:

... it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before

death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years...

13. Upon considering the fact that the deceased passed on the same day of the accident, and factoring inflation and the rise in cost of living, I will go with the Learned Counsel for the Plaintiff's proposal and award Kshs. 120,000/= as a reasonable compensation for pain and suffering.

b. Loss of expectation of life

14. In **Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] eKLR**, the Court observed that: -

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.

15. In the case of **Moses Akumba & Leonard Mwalimu Mweru v Hellen Karisa Thoya [2017] eKLR**, Chitembwe J rendered that an award of Kshs. 200,000/= for loss of expectation of life for a deceased who was a fisherman was not inordinately high. He stated that:

My view on the issues of loss of expectation of life is that each life is important and equal. There should be no distinction between a poor man and a rich one, no distinction between one who is working and an unemployed person. The

awarded damages are for loss of expectation of life. The deceased was aged 25 years and a healthy person. He was a fisherman as per his mother's evidence. The normal expectation is that he was going to live up to the age of 60 years. Whether he was going to get formal employment or not is not an issue. It is the aspect of that life having been cut short that is being considered. Due to the sudden death, the deceased's life was shortened. All his expectations in this world were eroded. Having that in mind, we should then consider whether Kshs. 70,000 is sufficient to compensate for that loss. We should not view the deceased as a simple fisherman whose expectation in life was limited to fishing. No one knows what tomorrow has for him. I do find that the award of Kshs. 200,000 is fair and not inordinately high. The other dispute involves loss of dependency.

16. The Plaintiff has proposed an award of Kshs. 200,000/= as damages for loss of expectation of life. Upon consideration, I will award a sum of Kshs. 200,000/= under this head. I have again relied on the above decisions and those cited by the Learned Counsel for the Plaintiff and factored in the rise in the cost of living.

c. Loss of Dependency

17. The court is obligated to consider the multiplicand, the multiplier and the dependency ratio to arrive at the loss. The extent of dependency is a question of fact to be established in each case. The formula for assessment of the above loss was ably stated by Ringera J, in **Beatrice Wangui Thairu -vs- Hon. Ezekiel Bangetuny & Another Nairobi HCC No. 1638 of 1988 (UR)** - the Court stated that;

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 called the multiplicand. In determining the same, the important figure is the net earnings of the deceased.

The court should then multiply by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life of the dependants and the chances of life of the deceased and dependants.

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 lump sum and would if wisely invested yield returns of an income nature.

18. On the deceased's income, in the Plaintiff's pleading, the Plaintiff pleaded that the deceased was a boda boda rider earning Kshs.40,000/= per month which his dependents reasonably expected on dependency. During hearing of this suit, PW1 testified and stated that the deceased was earning around Kshs. 40,000/= per month which helped him feed the children, pay school fees and buy clothes. PW1 did not produce any document to show that the deceased was earning Kshs. 40,000/= per month.

19. It is however now trite that it is not always that proof of income must be by production of documents. Makau J in **David Kimathi Kaburu - vs- Gerald Mworobia Murungi (Suing as legal representative of the estate of James**

Mwenda Mworobia (deceased) (2004)

eKLR held that;

The court is alive of the fact that in Kenya Society, that most of the individual's earnings need not be proved by production of documents such as banking statements or payment vouchers or pay slips. Further to the above with modern technology in whichever payments are to be offered through use of mobile phones or by cash without requirement of payments by cheques.....is not necessary to produce documentary proof.....

20. It therefore follows that the Plaintiff failed to prove on a balance of probabilities that the deceased earned Kshs. 40,000/= taking into account that the Plaintiff failed to produce the Deceased's driving License. In his submissions, the Plaintiff submitted that this Court be pleased

to apply the minimum wage provided under the 2018 Wage Order for a casual laborer.

21. On the dependency ratio, **Section 4 (1) of the Fatal Accidents Act Cap 32 Laws of Kenya** provides as follows: -

Action to be for benefit of family of deceased

Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the

costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:...

22. This Court observes that only the plaintiff herein and Janet Ndinda Mbithi, the deceased's mother, qualify to be dependants herein. Accordingly, the only proven dependants are the parents of the deceased. They are aged 51 and 56 years respectively. In the premises, and taking into account the circumstances of the case, a dependency ratio of one-third (1/3), and a multiplier of 19 are appropriate and shall be applied.

23. In **Comply Industries Limited & another v Martha Ngima Muthini (Suing as The Legal Representative of The Estate of The Late**

Stephen Mirau Muthini) [2014] eKLR, the Court held as follows:

According to the death certificate, the deceased was 21 years old. It is my view that he would have engaged in gainful employment for 20 years, taking into account the uncertainties of life and I adopt this figure as the multiplier. On the dependency ratio, PW1 testified that the deceased was not married and lived at home. He was survived by his parents, PW1 and David Muthini. It is my view that he spent a third of his earnings on his dependants. Consequently, I award the Plaintiff Kshs. 319, 920/= for loss of dependency, tabulated as follows: Kshs. 3,999/= (*multiplicand*) x 12 x 20 (*multiplier*) x $\frac{1}{3}$ (*dependency ratio*). In computing this amount I have taken into account the award made under the Law Reform Act, and find it to be fair and reasonable.

24. On multiplier, it is clear that the deceased was 19 years of age at the time of the accident. The Plaintiff submitted that the deceased would have lived up to the age of 60 years. In ***Cornelia Elaine Wamba vs Shreeji Enterprises Ltd. & Others [2012] eKLR***, the court stated,

The choice of a multiplier or multiplicand is a matter of the Court's discretion which discretion has to be exercised judiciously and with a reason. Some of the factors to be taken into consideration by a court in the exercise of its mandate on the choice of the two are the age of the deceased, nature of the profession he was aged in, possibility of retirement from employment where the profession engaged in provides for a retirement age and, lastly, possibility of death through natural causes and departure for greener pastures elsewhere.

25. In the case of ***Francis Righa vs Mary Njeri (Suing as the Legal Representative of the estate of James Kariuki Nganga [2021] eKLR***, the Court of Appeal had this to say on the choice of multiplier and multiplicand to be adopted in assessing damages under Fatal Accident Act;

...on the choice of a multiplier and multiplicand, we take it from the decision of the court in the case of Roger Dainty versus Mwinyi Omar Haji & Another 2004 that to ascertain a reasonable multiplier in each case, the court should consider relevant factors like the income of the deceased, the kind of work he was engaged in before his death, the prospects of promotion and his expectations of working life.

26. I am guided by the above case laws and the award for loss of dependency is therefore calculated as follows:

$$12,522.70 \times 12 \times 19 \times \frac{1}{3} = \text{Kshs. } 951,725/20$$

d. Special Damages

27. It is trite law that special damages must be specifically pleaded and proved. I find that the Plaintiff has been able to prove that they spent on the cost of Petitioning for Letters of Administration ad litem vide a receipt from the Plaintiff's Advocates on record amounting to Kshs. 30,000/=; Post Mortem doctor's fees amounting to Kshs. 15,500/= Motor vehicle Search Certificate costs amounting to Kshs. 550/=; Coffin and transport amounting to Kshs. 155,000/=; Mortuary fees amounting to Kshs. 15,500/= . Kshs. 10,500/- was spent for lunch. The costs labelled

Police abstract and Death Certificate are disallowed as no payment receipts were attached. Therefore, I find that the total special damages amount to Kshs. 227,050/=.

28. In the end, the Plaintiffs' suit is allowed in the following terms:

- | | |
|--------------------------------|----------------------------------|
| a) Pain and suffering | Kshs. 120,000/= |
| b) Loss of expectation of life | Kshs. 200,000/= |
| c) Loss of dependency | Kshs. 951,725/20 |
| d) Special Damages | Kshs. 227,050/= |
| e) Less liability 15% | <u>Kshs.224,816/28</u> |
| Total | <u>Kshs. 1,273,958/92</u> |

29. Judgment is therefore entered in favour of the Plaintiffs as against the Defendants in the sum of **Kshs. 1,273,958/92** as tabulated herein plus costs and interests.

Dated, signed and delivered in open court this ...26th day of ...February..... 2026

HON. ALOYCE PETER NDEGE
SENIOR PRINCIPAL MAGISTRATE

In the presence of:

...Cheruiyot..... for the
Plaintiff

...Sitienei h/b Ombeo.....
for the Defendants

Sitienei: Praying for 30 days stay of execution.

Cheruiyot: No objection.

CT: 30 days stay granted.