



**Kaseku & another (Suing as the legal Administrators of the Estate of Jamuhuri Kaseku - Deceased)
v Onsare (Civil Case E167 of 2023) [2026] KEMC 15 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEMC 15 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE E167 OF 2023
YA SHIKANDA, SPM
JANUARY 27, 2026**

BETWEEN

ALICE MWAIE KASEKU 1ST PLAINTIFF

BEATRICE NGINA MBITHI 2ND PLAINTIFF

**SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF JAMUHURI
KASEKU - DECEASED**

AND

DENIS OSANO ONSARE DEFENDANT

JUDGMENT

The Action

1. Alice Mwaie Kaseku and Beatrice Ngina Mbithi (hereinafter referred to as the 1st and 2nd plaintiffs respectively) bring this action against Denis Osano Onsare (hereinafter referred to as the defendant) as the Legal representatives of the estate of Jamuhuri Kaseku, the deceased person herein. In a plaint dated 29/8/2023 but filed in court on 8/9/2023, the plaintiffs averred that on or about 2/3/2023 the deceased herein was a pedestrian along Nairobi-Mombasa road when at Kwa Matunda Kalimbini area, the defendant or his authorized driver drove motor vehicle registration number KDD 486U so negligently, recklessly and carelessly that he hit the deceased, thereby occasioning him fatal injuries. The plaintiffs further averred that the accident was wholly caused by the negligence of the defendant or his authorized driver.
2. The defendant was sued as the registered and/or beneficial owner of motor vehicle registration number KDD 486U at the material time. The plaintiffs further averred that at the time of his death, the deceased was aged 33 years, married with three children, in good health and was working as a Shamba boy earning Ksh. 12,000/= per month. The plaintiffs relied on the doctrine of Res ipsa loquitur, the [Traffic Act](#) and the Highway Code. They pleaded the particulars of dependants, special damages as well as



the following particulars of negligence against the defendant and driver of motor vehicle registration number KDD 486U:

- a. Driving at a high speed in the circumstances;
 - b. Driving the said motor vehicle negligently and recklessly on the said road;
 - c. Failing to apply brakes sufficiently or in time or at all to avoid the said accident;
 - d. Driving the said motor vehicle without due care and attention to other road users and particularly towards the deceased;
 - e. Failing to stop, swerve or in any other way manage the said motor vehicle;
 - f. Driving dangerously on the said road;
 - g. Overtaking dangerously on the said road;
 - h. Causing the said accident.
3. The plaintiffs thus pray for judgment against the defendant for:
- a. General damages under the *Fatal Accidents Act* and *Law Reform Act*;
 - b. Special damages in the sum of Ksh. 64,020/=;
 - c. Costs of the suit;
 - d. Interest.

INTERLOCUTORY JUDGMENT

4. The record indicates that the defendant was served with summons to enter appearance and plead but failed to enter appearance and file a statement of defence. The plaintiffs requested for interlocutory judgment which was entered on 21/1/2024. The matter was then set down for formal proof or assessment of damages.

The Evidence

The Plaintiff's Case

5. At the hearing of the suit, only the plaintiffs testified in support of their case. They adopted their statements as part of their testimonies and produced documents in support of their case. The plaintiffs stated that the deceased died on the spot following the accident. That he was a Shamba boy earning Ksh. 12,000/= per month and used to assist his family. He had a wife and three children.

Main Issues for Determination

6. In my opinion, the main issues for determination are as follows:
- i. Whether an accident occurred on 2/3/2023 at Kwa Matunda Kalimbini area along Mombasa-Nairobi road involving motor vehicle registration number KDD 486U and the deceased herein;
 - ii. Whether the motor vehicle belonged to the defendant at the material time;
 - iii. Whether the driver of the suit motor vehicle was negligent in the circumstances and therefore liable for the accident;



- iv. Whether the defendant is vicariously liable for the accident;
- v. Whether the deceased died as a result of injuries sustained in the accident;
- vi. Whether the estate of the deceased and his dependants are entitled to damages;
- vii. If so, the nature and quantum thereof;
- viii. Who should bear the costs of this suit?

The Plaintiffs' Submissions

- 7. In their submissions, the plaintiffs submitted that the suit was undefended and that there is interlocutory judgment against the defendant. They urged the court to find the defendant 100% liable for the accident. For pain and suffering, the plaintiffs asked the court to award ksh. 100,000/=. They proposed Ksh. 200,000/= for loss of expectation of life and for loss of dependency, they urged the court to adopt a multiplicand of Ksh. 12,000/=: a multiplier of 27 years and dependency ratio of 2/3. This gives an award of Ksh, 2,592,000/=. They urged the court to award special damages of Ksh. 64,020/= as well as costs of the suit and interest. The plaintiffs attached an authority but it was not clear on what aspect the authority was being relied upon.

Analysis and Determination

- 8. I have considered the evidence on record and given due regard to the submissions made by the plaintiffs. From the evidence on record, I have no doubt that an accident occurred on 2/3/2023 at Kwa Matunda area along Mombasa-Nairobi road involving motor vehicle registration number KDD 486U and the deceased herein. The police abstract produced in evidence indicates that the defendant was the owner of the accident motor vehicle at the material time. The plaintiffs also produced a copy of records which indicates the defendant as the registered owner of the accident motor vehicle. There is no contrary evidence and as such, I find no difficulty in finding that the defendant was the owner of the accident motor vehicle at the material time. The police abstract produced in evidence indicates that the deceased was a pedestrian at the time of accident.

Liability

- 9. Ordinarily, where interlocutory judgment has been entered, the issue of liability becomes settled. This position has been confirmed by various judicial pronouncements. In the case of Abdullahi Ibrahim Ahmed (Suing as the Personal Representative of the Estate of Anisa Sheikh Hassan (Deceased)) v Lem Lem Teklue Muzolo [2013] eKLR, the Court of Appeal stated thus:

“.....save to reiterate what is now settled law that once interlocutory judgment has been entered the question of liability becomes a foregone conclusion.....we can do no better than to repeat what was said by this court in the case of Felix Mathenge v Kenya Power & Lighting Co. Ltd. Civil Appeal No. 215 of 2002 that:-

The role of the Court after entering the interlocutory judgment was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to the quantum of damages.”

- 10. In view of the foregoing, I find the driver of the accident motor vehicle KDD 486U 100% liable for the accident.



11. Vicarious liability is a form of secondary liability that arises under the common law doctrine of agency, respondeat superior, the responsibility of the superior for the acts of their subordinate or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. The owner of a motor vehicle can be held vicariously liable for negligence committed by a person to whom the car has been lent, as if the owner was a principal and the driver his or her agent, if the driver is using the car primarily for the purpose of performing a task for the owner.
12. In the case of *Morgan v Launchbury*[1972] ALL ER 606, it was held, inter alia, that:

“To establish agency relationship it is necessary to show that the driver was using the car at the owner’s request express or implied or in its instruction and was doing so in the performance of the task or duty thereby delegated to him by the owner.”
13. Similarly, In *Kaburu Okelo & Partners v Stella Karimi Kobia & 2 Others* [2012]eKLR the Court of Appeal held that:

“Vicarious liability arises when the tortious act is done in the scope of or during the course of one’s employment or authority.”
14. Where a motor vehicle is driven by a person other than the owner, there is a rebuttable presumption that the driver was acting as an agent of the owner of the motor vehicle. In the case of *Kenya Bus Services Ltd v Humphrey* [2003] KLR 665; [2003] 2 EA 519, the Court of Appeal cited *Kansa v Solanki* [1969] EA 318 wherein it was held that:

“Where it is proved that a car has caused damage by negligence, then in the absence of evidence to the contrary, a presumption arises that it was driven by a person for whose negligence the owner is responsible (See *Bernard V Sully* [1931] 47 TLK 557. This presumption is made stronger or weaker by the surrounding circumstances and it is not necessarily disturbed by the evidence that the car was lent to the driver by the owner as the mere fact of lending does not of itself dispel the possibility that it was still being driven for the joint benefit of the owner and the driver.”
15. Consequently, I find the defendant 100% vicariously liable for the negligence of the driver of the accident motor vehicle.

Quantum

16. Having made a finding on liability, it follows that the estate of the deceased and his dependants, are entitled to damages. It is well established that the assessment of quantum of damages in a claim for general damages is a discretionary exercise and that such discretion must be exercised judicially having regard to the facts of the case within the context of existing legal principles. A case is decided purely on its own peculiar facts. This Court has to bear in mind the principles that guide assessment of damages as espoused in *West (HI) and Sons Ltd v Shepherd* [1964] AC 326 where Lord Morris said:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible,



comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional”.

17. I am also guided by Lord Denning’s decision in *Kim Pho Choo v Camden & Islington Area Health Authority*, [1979] 1, ALL ER 332 which was adopted in the case of *Nancy Oseko v Board of Governors Masai Girls High School* [2011] eKLR where Wendoh, J stated that:

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

18. The following principles are germane in assessing damages for personal injury claims:

- i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered;
- ii. The award should be commensurate to the injuries suffered;
- iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit;
- iv. Where awards in decided cases are to be taken into consideration then the issue of or element of inflation has to be taken into consideration;
- v. Awards should not be inordinately too high or too low.

19. I proceed to assess and award the damages payable as follows:

1. Damages for pain and suffering

20. The evidence indicates that the deceased died on the spot or soon after the accident. Damages under this head are awarded on the basis of the time the deceased suffered pain before death. The longer it took the deceased to die, the higher the damages. In most authorities, an award of between 10,000/= and 50,000/= was made for persons who died on the spot. Considering the age of most authorities coupled with the vagaries of inflation, I find that an award of Ksh. 70,000/= would be reasonable. I award the same. In the case of *Alice O. Alukwe v Akamba Public Road Services Ltd & 3 Others* [2013] eKLR, the deceased died on the spot following an accident and Ksh. 50,000/= was awarded.

2. Damages for loss of expectation of life

21. The evidence on record indicates that the deceased died at the age of 33 years. This was indicated in the copy of the certificate of death produced in evidence. The trend in the authorities indicates that the younger the deceased at the time of death, the higher the award. On my part, I have considered the authority of *Cornelia Elaine Wamba v Shreeji Enterprises Ltd & Others* [2012] eKLR wherein the deceased died at the age of 31 years and Ksh. 150,000/= was awarded under this head on 21/9/2012. The plaintiff proposed a sum of Ksh. 200,000/=. I find the proposal reasonable and proceed to award Ksh. 200,000/= under this head.



3. Damages for loss of dependency

22. Section 4(1) of the *Fatal Accidents Act* provides as follows:

“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”.

23. The plaintiffs listed the mother to the deceased, the widow, three children who were minors and four (4) siblings of the deceased who were adults, as the dependants of the deceased. The siblings are not proper dependants under the Act. In the case of *Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another* (Nairobi HCCC No. 1438 of 1998 (unreported), and referred to in *Rev. Fr. Leonard O. Ekisa & Another v Major Birgen* [2005] eKLR, Ringera J (as he then was) said, inter alia -

“...The extent of dependency is a question of fact to be established in each case...”

24. There is no evidence to show that the deceased’s siblings who were even older than him, depended on him. In my view, where an alleged dependant does not fall under the categories listed in section 4(1) of the *Fatal Accidents Act*, there must be acceptable proof of dependency. Damages under this head cannot be awarded as a matter of course. There is no evidence to show that the deceased’s siblings depended on him and in which manner. I find that the only dependants are the mother, widow and children of the deceased.

25. The deceased died at the age of 33 years. The plaintiffs pleaded and testified that the deceased was a Shamba boy earning Ksh. 12,000/= per month. The plaintiffs produced a copy of a handwritten letter allegedly written by the deceased’s employer indicating that the deceased earned Ksh. 12,000/= per month. Other than the letter, no other document was produced to prove the deceased’s earnings. I do not find the handwritten letter to be sufficient proof of the deceased’s earnings. There is no evidence to show that such payment was ever made to the deceased. The location of the farm where the deceased allegedly worked is not indicated in the letter. I am not convinced that the deceased earned Ksh. 12,000/= per month.

27. In the case of *Jacob Ayiga Maruja & another v Simeon Obayo* [2005] eKLR, the Court of Appeal held as follows:

“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things”.

28. I have considered the plaintiff’s submissions on what should be awarded under this head. How then should the court award damages for loss of dependency. There are conflicting decisions particularly in the High court on how damages under this head ought to be awarded in the absence of proof of



exact earnings of the deceased. Some Judges adopt the global award approach whereas others adopt the multiplier approach. I will highlight some of the authorities:

a. Ann Njoki Njenga v Umoja Floor Mills & Another [2006] eKLR.

29. In this case, the deceased was said to be a businessman at the time of his death. It was said that he earned about Ksh. 120,000/= per month. No documentary evidence was adduced to prove his earnings. Musinga J (as he then was) adopted a figure of Ksh. 10,000/= as the multiplicand.

b. Mwita Nyamohanga & another v Mary Robi Moherai suing on behalf of the estate of Joseph Tagare Mwita (Deceased) & another [2015] eKLR.

30. In this case, Majanja J held that proof of earnings by way of testimony was sufficient evidence. The court relied on the oral testimony of what was said to be the deceased's earnings.

c. Phillip Musyoka Mutua v Veronica Mbula Mutiso [2013] eKLR.

31. In this case, the deceased was said to be a businessman at the time of death earning about Ksh. 40,000/= per month. There was no documentary proof of his earnings. Mutende J held that in the absence of evidence of monthly earnings of the deceased the estimate would be like for any unemployed person where the rate set is usually like for a wage of an unskilled employee.

d. Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR.

32. In this case, the deceased was said to have been a businessman prior to his death. There was no documentary proof of his earnings. Ngaa J held as follows:

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case”.

33. The court proceeded to make a global award under this head.

e. General Motors East Africa Limited v Eunice Alila Ndeswa & another [2015] eKLR.

34. In this case, the deceased was said to be a mechanic at the time of death but there was no documentary proof of his actual earnings. Aburili J held as follows:

“There is an established formula for calculating loss of dependency and giving global figures is not one of them. On that basis, I fault the trial magistrate for applying wrong principles of law in assessing general damages for loss of dependency..... where there is no documentary evidence of employment, the court would consider reasonable income for a casual labourers as a base for income because it would have been unreasonable not to allocate any sum of income to the deceased who used to go out and eke out a living daily. The case of Wambua Vs Patel and Another, [1980] KLR 336 cited with approval in Kimatu Mbuvi Vs Augustine Kioko CA203/2001 is clear that it is not just documentary evidence that can prove earnings



and that to maintain that stand would do a lot of injustice to many illiterate Kenyans who do not keep records and yet earn livelihoods in various ways".

35. The court adopted the minimum wage of an ungraded mechanic artisan.

f. Mwanzia v Ngalali Mutua and Kenya Bus Services (Msa) Ltd & Another.

36. In this case, which was quoted with approval in *Albert Odawa v Gichimu Gichenji* NKU HCCA No. 15 of 2003[2007] eKLR, Ringera J (as he then was) held as follows:

“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.”

g. Mary Khayesi Awalo & Another v Mwilu Malungu & Another [1999] eKLR.

37. In this case, Nambuye J (as she then was) observed as follows:

“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.”

h. Daniel Mwangi Kimemi & 2 others v J G M & another (the personal representatives of the estate of N K (DCD) [2016] eKLR.

38. In this case involving a deceased minor, the trial court had estimated the expected earnings of the minor and applied the multiplier approach. On appeal, Gikonyo J held that in such circumstances, the court’s obligation would have been to achieve the assessment of a fair award in the circumstances of the case for loss of dependency rather than courting an obsession to applying a multiplier to facts which are not apt. That the least income adopted by the trial magistrate lacked a foot on which to stand. The multiplier was also inappropriate in this case.

i. Violet Jeptum Rahedi v Albert Kubai Mbogori [2013] eKLR.

39. The deceased herein was said to be a business man but there was no clear evidence of his earnings. Hatari Waweru J made an estimate of the monthly earnings and adopted the multiplier method.

40. The existence of divergent views on the issue as highlighted herein above poses a dilemma especially on the lower courts who are bound to follow decisions of higher courts by virtue of the doctrine of stare decisis. While grappling with the issue, I came across the English decision of the House of Lords in the case of *Gammel v Wilson* [1981] 1 ALL ER 578 wherein Lord Scarman observed as follows:

“The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in *Gammel’s* case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a



modest conventional sum. There is no room for a ‘conventional’ award in a case of alleged loss of earnings for the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach a mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a ‘conventional’ award should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell’s case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessable claim. In the case of a young man, already in employment (as was young Mr Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man well established in life, like Mr Picket, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it”.

41. I find that the multiplier approach would not be appropriate as the same would be speculative. In the circumstances, I will adopt the global sum approach. Considering the age of the deceased, the fact that he had five dependants, three of whom were minors at the time of his death and the fact that the deceased was also expected to pay taxes and be subject to other statutory deductions, I find that a sum of Ksh. 1,500,000/= would be reasonable. I award the same. It is also a fact that human life is not permanent and the court has to take into account the vicissitudes of life. I am mindful of the principles applicable in assessing damages as espoused herein above. I have further taken consideration of the fact that the plaintiffs have already been awarded damages under the [Law reform Act](#).

4. Funeral and related Expenses

42. The plaintiffs pleaded for funeral expenses of Ksh. 28,220/= under the head of special damages. A receipt of Ksh. 24,500/= was produced in evidence. In the case of Damaris Mwelu Kerewoi v Mbarak Kijan Ali, MOMBASA HCCC NO. 776 OF 1995 Hayanga J (as he then was) observed that the court can take judicial notice of the fact that funeral expenses are usually incurred and that where they are not proved, the court can award a nominal amount. In the case of Marion Njeri Kago v Kenya Railways Corporation [2014] eKLR, the court held as follows:

“Funeral expenses, though usually claimed as special damages, are a proper claim under the [Law Reform Act](#). That way the court is able to award a reasonable sum, depending on the Deceased’s station in life and other factors, without the confines of strict proof.”

Section 2(2)(c) of the [Law Reform Act](#) provides as follows:

“Where a cause of action so survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included”.

43. Similarly, section 6 of the [Fatal Accidents Act](#) provides that:

“In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection (1) of section 4, damages in



respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought”.

44. The above implies that funeral expenses can be awarded under the two Acts. This way, the court will assess the same depending on the circumstances of the case without insisting on strict proof as in special damages. I am aware of the nature of African funerals and I am sure that more than Ksh. 28,220/= must have been spent during the funeral. The expenses mentioned in the plaint are related to the funeral. I would have awarded a higher figure had the plaintiff properly pleaded the same. However, since the plaintiffs have asked for a specific nominal figure, I will award Ksh. 28,220/= as prayed.

5. Special Damages

45. In their plaint, the plaintiffs pleaded special damages (apart from the funeral expenses) as follows:

- a. Copy of records.....Ksh. 1,100/=
- b. Letters of Administration.....Ksh. 2,500/=
- c. Coffin
- d. Mortuary fee.....Ksh. 4,300/=
- e. Transport fee.....Ksh. 12,900/=
- f. Post mortem.....Ksh. 15,000/=.

46. It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* the court said:-

“It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded”

47. In *Ouma- v - Nairobi City Council* [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L.J’s Judgment on page 532 and 533 in *Ratcliffe-v- Evans* [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

48. Similarly, in the case of *Hahn v Singh* [1985] KLR 716, it was held that:

“... special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences 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 the nature of the act themselves.”

49. There is no payment receipt for the copy of records. No figure was pleaded for the coffin. The receipts for the transport expenses amount to more than what was pleaded. The same applies to post mortem



fee. As for the mortuary fee, receipts produced amount to Ksh. 2,700/=. I will thus award a total of Ksh. 33,100/= as special damages.

Disposition

50. In summary, I find that the plaintiffs have proven their case on a balance of probabilities against the defendant. Consequently, I hereby make the following awards in favour of the plaintiffs and against the defendant:

- a. Damages for pain and suffering.....Ksh. 70,000/=
 - b. Damages for loss of expectation of life.....Ksh. 200,000/=
 - c. Damages for loss of dependency Ksh. 1,500,000/=
 - d. Funeral and related expenses.....Ksh. 28,220/=
 - e. Special damages.....Ksh. 33,100/=
- Total.....Ksh.1,831,320/=

51. The plaintiffs are also awarded interest on the damages as well as costs of the suit. The guiding principles in respect of interest are set out in section 26 of the Civil Procedure Act which provides that:

- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
- (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

52. In the case of Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR, the court stated that:

First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.

Second, Under Section 26(1) of the Civil Procedure Act, the Court has discretion to award and fix the rate of interests to cover two stages namely:

- a. The period from the date the suit is filed to the date when the Court gives its judgment; and
- b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”



53. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of Omonyokol Akol Johnson v Attorney General (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

"It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment." (Emphasis supplied)

54. From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is only ascertained in the judgement-see Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR).
55. Consequently, interest on the damages for pain and suffering, loss of expectation of life and loss of dependency shall accrue at court rates from the date of judgment/decreed until payment in full and on funeral expenses and special damages, from the date of filing suit to the date of judgment/decreed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 27TH DAY OF JANUARY, 2026.

Y.A. SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

