



**REPUBLIC OF KENYA**

**IN THE CHIEF MAGISTRATE'S**

**COURT AT NAKURU**

**CIVIL SUIT NO. E755 OF 2023**

**[ A. P. NDEGE; SPM ]**

PETER WANYAMA MAKOKHA & EZRA WANYAMA  
WASWA [Suing as the Administrators and Personal  
Representatives of the Estate of ANNAH CHEMTAI  
MAKOKHA..... PLAINTIFFS

-VERSUS-

RUIRU FEEDS LIMITED....  
.....1<sup>ST</sup> DEFENDANT

DOMINIC NJENGA.....  
.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

1. On or about the 6<sup>th</sup> April 2021, the deceased was a lawful passenger in the 2<sup>nd</sup> defendant's motor vehicle

registration number KCD 138 N Toyota Hiace Matatu along Nairobi – Nakuru road at Shiners Boys High School when the 1<sup>st</sup> defendant's motor vehicle registration number KCT 314 A Tata Lorry was so negligently and without due care and attention driven by the 1<sup>st</sup> defendant's agent and/or servant that it lost control and knocked the 2<sup>nd</sup> defendant's motor vehicle and as a result the deceased sustained fatal injuries. As a result of the said accident and the resultant death, the plaintiffs now hold the Defendants liable, hence the instant suit.

2. By a Plaint dated the 15th of December, 2023, the plaintiffs (suing as the legal representatives of the estate of the deceased) sued the defendants for negligence which resulted in the death of the deceased who was their wife and mother, respectively. They are seeking damages under the Law Reform Act and the Fatal Accidents Act, special damages, costs of the suit, and interest at court rates.

3. The defendants entered appearance and filed their Statement of Defence on 01/08/2024, traversing each and every allegation of fact and/or law made in the plaint and invited the plaintiffs to strict proof to the contrary while also blaming the deceased herein for the accident. Upon close of pleadings and after the pretrial, the matter was thus set for the hearing on 01/07/2025.

4. When the matter came up before me for the hearing on 01/07/2025, the plaintiffs were represented by **Mr. Mwebi**, while the Defence was represented by **Ms. Mwaura**. On that day, the parties herein entered an oral consent that was adopted to apply in this matter. The consent closed the hearing without calling any witness. Liability was agreed at a ratio of 90:10 in favour of the Plaintiff. The issue remaining for determination is the quantum of damages awardable herein.

### **PLAINTIFFS' SUBMISSIONS**

5. On quantum, the plaintiff submitted that they be awarded general damages amounting to Kshs. 150,000 for pain and

suffering; Kshs 300,000 for loss of expectation of life, and a global sum of Kshs 2,500,000 for loss of dependency. They relied on numerous authorities to back their proposals. They further submitted for special damages of Kshs 339,700/=.

### **DEFENDANT'S SUBMISSIONS**

6. Learned counsel for the defendant similarly relied on numerous authorities and proposed a global award of Kshs. 700,000/- for loss of dependency, arguing that there was no proof of dependency herein. On special damages, counsel submitted that the plaintiffs have been able to prove special damages to the tune of Kshs. 184,300/- only.

### **ANALYSIS AND DETERMINATION**

7. The plaintiffs sought Kshs 398,600/- as special damages. It is trite law that special damages must be specifically pleaded and proved. From the receipts admitted herein, I find that the plaintiff has been able to prove that they spent Kshs. 334,800/- as special damages. I thus do hereby award the

same subject to the plaintiffs' 10% contribution as consented to herein.

8. On general damages, in **H WEST AND SON LTD VRS SHEPHERD (1964) AC 326** the House of Lords in England stated that: -

***... 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 endeavor to secure some uniformity in the general method of approach. By common consent 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 ...***

9. In regard to the issue of damages awarded under the Law Reform Act, the High Court at Kakamega in **WEST KENYA SUGAR CO. LIMITED VRS PHILIP SUMBA JULAYA (Suing as**

**the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR** 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.***

10. As pointed out, money cannot renew the life of the deceased. However, the damages ought to be reasonable in the circumstances. Having found so, I will now address the extent of damages to award under the following heads.

### **Pain and suffering**

11. From the evidence herein, it is not clear how long it took for the deceased to die. I will thus presume that she died on the spot. Learned counsel for the plaintiff has proposed a sum of

Kshs. 150,000 while there was no proposal from the counsel for the defendant.

12. In the case of **SUKARI INDUSTRIES LIMITED VRS CLYDE MACHIMBO JUMA [2016] eKLR** the deceased had died immediately after the accident and the trial court had awarded Kshs 50,000/= for pain and suffering. Majanja J held on appeal that:

***(5) On the first issue, I hold that 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 hence I cannot say that the sum of Kshs 50,000 awarded under this head is unreasonable.***

13. Factoring in inflation and related costs, I will award Kshs. 100,000/- on this head, less 10% contribution.

### **Loss of expectation of life**

14. In **MERCY MURIUKI & ANOTHER VRS SAMUEL MWANGI NDUATI & ANOTHER (Suing as the legal Administrator 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 & ANOTHER VRS 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. In the case of **PATRICK KARIUKI MUIRURI & 3 OTHERS**  
**VRS ATTORNEY GENERAL [2018]** eKLR Serгон J made an

award of Kshs 200,000/= under this heading. In **VINCENT KIPKORIR TANUI (Suing as the Administrator and/or Personal Representative of the Estate of Samwel Kiprotich Tanui (Deceased) VRS MOGOGOSIEK TEA FACTORY CO LTD & ANOTHER [2018] eKLR** an award of Kshs 200,000/= was made.

17. The plaintiffs have proposed an award of Kshs 300,000 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.

### **Loss of dependency**

18. The deceased was 49 years old at the time of her untimely death and was supporting his family, being a spouse and 7 children. The defendant argued that, due to the lack of evidence such as birth certificates or a marriage certificate, the relationship between the deceased and her alleged dependants could not be confirmed. However, I hold a different view, stating

that it is not always the case that a married couple will have a marriage certificate, nor that all children will possess a birth certificate. This fact alone is insufficient to dismiss the Plaintiffs' claim that the deceased left a large family. There is also the Chief's letter, which details that one of the plaintiff herein as the widower, and I find that this was sufficient proof on the balance of probabilities that the deceased left behind a family.

19. I have also considered the argument by Counsel for the Defendant that there was no proof of dependence. Though most of the children herein are adults, I still find the uncontroverted evidence herein that most of them were still in college. Both counsel are however in agreement that we adopt the global award method, rather than the multiplier approach. I shall rely on the authorities cited by the plaintiff, and consider an award of Kshs. 1,000,000/-, given that the deceased herein was 49 years old and most of the dependants are already adults.

20. Accordingly, I hereby enter judgment in favour of the plaintiffs and against the defendant as follows:

a. Special damages:	Kshs
334,800/=	
b. General damages	
i. Pain and suffering:	Kshs
100,000/=	
ii. Loss of expectation of life:	Kshs
200,000/=	
iii. Loss of dependency:	Kshs
1,000,000/=	
<b>Gross Total</b>	<b>Kshs</b>
<b>1,634,800/=</b>	
<i>Less 10% contribution</i>	<i>Kshs</i>
<i>163,480/=</i>	
<b>NET TOTAL</b>	<b>KSHS 1,471,320/=</b>

21. Costs follow the event. The plaintiffs shall have costs of the suit and interest on special damages at court rates from the date of filing the suit and interest on general damages at court rates from the date of judgment until payment in full.

**DATED AND DELIVERED AT NAKURU THIS ...11<sup>th</sup> ..... DAY OF ...**

December... 2025

ALOYCE-PETER-NDEGE

**SENIOR PRINCIPAL MAGISTRATE**

**IN THE PRESENCE OF:**

**Plaintiffs' Counsel: Mwebi**

**Defendant's Counsel: Mwaura**

**Plaintiffs: n/a**

**2<sup>nd</sup> Defendant: n/a**

**Mwaura: Praying for 30 days stay of execution.**

**Mwebi: NIL**

**CT: 30 days stay of execution granted.**