



**Kinuru & another (Suing as the Legal Representatives of the
Estate of Erick Mugendi Kinyuru - Deceased) v Juma (Civil Appeal
E060 of 2023) [2026] KEHC 5849 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E060 OF 2023
HM NYAGA, J
APRIL 30, 2026**

BETWEEN

BERNARD KIMATHI KINURU 1ST APPELLANT

MURIUKI KINYURU 2ND APPELLANT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF ERICK
MUGENDI KINYURU - DECEASED**

AND

HAWA ADI JUMA RESPONDENT

*(Being an Appeal from the Judgement of Hon. E.Ndegwa (SRM)
delivered on 23rd March, 2023 in Githongo CMCC No. 54 of 2016)*

JUDGMENT

1. The Appellants herein instituted a suit in the Chief Magistrate's Court by way of the plaint dated 19th December, 2016 and amended on 9th June, 2017 seeking for judgment against the Respondent as follows:
 - a. General damages under both Law Reform Act and Fatal Accident Act.
 - b. Special damages
 - c. Costs of the suit
 - d. Interests on (a), (b) and (c) above at court rates.
2. The Appellants' case was that on or about the 20th December, 2013 at around 7.30 p.m, the deceased was lawfully walking along Meru-Nanyuki Highway when the Respondent negligently and recklessly



drove Motor vehicle Registration No. KBV 176 A Toyota Pick-up while attempting to overtake a lorry at a high speed, and as a result it veered off the road and knocked down the deceased occasioning him fatal injuries.

3. The Respondent through its statement of defence dated 3rd September, 2021 denied the Appellants' claim in toto and in the alternative averred that if an accident occurred which was denied then the same was wholly caused and/or substantially contributed to by the deceased.
4. Upon hearing the parties, the trial court delivered its judgement on 23rd March, 2023. It held that the Appellants failed to prove their case on a balance of probabilities as they had not obtained a grant ad litem to institute the suit and therefore lacked the requisite locus standi to act on behalf of the deceased's estate.
5. The trial court further held that, had the Appellant' proved their case, it would have entered judgment in their favour as follows:-
Liability 100% against the Respondent
 - a. General damages for pain and suffering- Ksh.50,000/=
 - b. Loss of Expectation of life- Ksh. 100,000/=
 - c. Loss of Dependency- Ksh.902,415/=
 - d. Special damages- Nil
6. Being aggrieved by the aforementioned judgment, the appellants lodged the instant appeal through the memorandum of appeal dated 27th April,2023 raising 6 grounds of appeal, reproduced verbatim as follows: -
 - a. That the Learned trial Magistrate erred in law and in fact in dismissing the Appellants' suit.
 - b. That the Learned trial Magistrate erred in law and in fact in failing to find that the letters of administration relating to the estate of ERickMugendi Kinyuru(deceased) had been issued by Meru High Courtin Misc. Succession Cause No. 56 OF 2015 prior to filing of the suit.
 - c. That the Learned trial Magistrate erred in law and in fact in finding the Appellants had not proved special damages and no receipts were tendered to support the special damages when indeed the Appellants had provided all the original receipts to court vide the letter dated 15th February,2022 and filed on 25th February,2022.
 - d. That the Learned trial Magistrate erred in law in her application and interpretation of the law regarding the Appellants suit.
 - e. That the Learned trial Magistrate erred in law and in fact in failing to consider and/or disregarding the Appellants' evidence, submissions and case law cited.
 - f. That the Learned trial Magistrate judgment as entered in favor of the Respondent against the Appellants is full of errors, against the weight of the evidence and a travesty of justice.
7. The Appellants thus prayed that the Appeal be allowed, the impugned judgment be set aside entirely, this court do find that they proved their case on a balance of probabilities and proceed to assess damages payable to them. They also prayed for costs of this Appeal and those of the lower court to be awarded to them.



8. Parties took directions to dispose of the Appeal via written submissions. Only the Appellants' submissions are on record.

The Appellant's Submissions

9. On special damages, the Appellants submitted that a receipt dated 27th May, 2019 for a sum of Ksh.3,200,635/= is on record in support of their claim.
10. On the issue of locus standi, the Appellants submitted that they sought leave via an application to reopen their case and produce a grant ad litem, but the said application was disallowed by the lower court occasioning them great injustice.

Analysis and Determination

11. The court has carefully considered the appeal, the entire record of the trial court, and the submissions on record.
12. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see Peters -vs- Sunday Post Limited [1958] E.A 424]
13. In Selle and Another -vs- Associated Motor Boat Company Ltd & Others [1968] 1. E.A 123 it was stated as follows:-

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

14. Likewise in Gitobu Imyanyara & 2 Others -vs- Attorney General [2016] eKLR, the court of Appeal stated thus:-

“An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

15. With the above principles in mind, I will now determine this Appeal.
16. The appellants' suit was dismissed solely on account of lack of locus standi to institute the suit as they failed to produce grant ad litem. The trial court nonetheless assessed liability and quantum in their favour, findings which have not been challenged in this appeal. The appeal therefore turns solely on the issues of locus standi and the court's failure to award special damages.



Locus Standi

17. In the case of Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, the Court held that ;-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of Alfred Njau and Others ..v. City Council of Nairobi (1982) KAR 229, the Court also held that;-

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

18. It is therefore evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means ‘a place of standing’. Therefore if a party is found to have no locus standi, then it means he/she cannot be heard even on whether or not he has a case worth listening to.

19. The appellant filed the suit under the Law Reform Act and The Fatal Accidents Act.

20. Under the Law Reform Act, the claim was brought under section 2 (1) thereof, which provides as follows;

- (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

21. Under the Fatal Accidents Act the claim was brought under section 4 as read with section 7 which provide as follows;

SUBPARA 4.

SUBPARA (1)

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:

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint and every such action shall be commenced within three years after the death of the deceased person.

SUBPARA 7.

If at any time, in any case intended and provided for by this Act, there is no executor or administrator of the person deceased, or if no action is brought by the executor or administrator within six months after the death of the deceased person, then and in every such case an action may be brought by and in the name or names of all or any of the persons for whose benefit the action would have been brought if



it had been brought by and in the name of the executor or administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of the executor or administrator.

22. Although the claims arise from the same cause of action, they are distinct claims.
23. Under the *Law Reform Act*, the claim is brought on behalf of the estate of the deceased. As such the appellant ought to have obtained letters of administration.
24. In *Troustik Union International and another vs Jane Mbeyu and another* [1993] KECA 89 (KLR) the Court of Appeal dealt with the said issue, of whether a party required a grant of letters of administration in order to bring a claim under the *Law Reform Act*. The court held that the plaintiff could not sustain a claim unless she had obtained a grant of letters of administration.
25. As for the claim under the *Fatal Accidents Act*, the dependants bring the suit themselves, for the loss they have incurred. There is no requirement that the claimant obtains letters of administration. This was so confirmed in the *Troustik Union* case (*supra*).
26. The High Court in *Waceke Wahinya vs KTDA* (2016) eKLR also affirmed this position. It held as follows;

“It therefore follows that an action can be maintained under the *Fatal Accidents Act* without letters of administration as long as, the action is brought by a person for whose benefit the action could have been brought by an administrator or executor if letters of administration were issued.”

27. Although the Appellant did not produce a grant before the lower court to demonstrate their locus standi to institute the suit on behalf of the deceased’s estate, and their application to produce it was disallowed, the trial court should only have dismissed the claim under the *Law Reform Act*, and proceeded to assess damages under the *Fatal Accidents Act*.
28. In light of the foregoing, I am inclined to allow the appeal partly.
29. The order dismissing the entire claim is set aside and is substituted with an order that only the claim under the *Law Reform Act* is dismissed.
30. The trial court correctly assessed the damages despite having dismissed the suit.
31. The parties did not address me on the issue of general damages. The only issue canvassed was the claim for special damages. The trial court declined to award special damages on ground that no receipts were produced in support thereof.
32. The record shows that after PW3 testified, the Appellants made an application to file a bundle of receipts, which application was allowed by the court. The Appellants subsequently filed the bundle of receipts. However, the same were not formally produced and admitted as exhibits.
33. The Court of Appeal in *Douglas Odhiambo Apel & another v Telkom Kenya Limited* [2014] KECA 868 (KLR) in respect to special damage stated as follows:-

“The need for proof is not lessened by the fact that the claim is for special damage. Unless a consent is entered into for a specific sum, then it behooves the claiming party to produce evidence to prove the special damages claimed. It is not enough to merely point to the plaint or to repeat the claim in submissions. The law on special damages is that they must be



specifically pleaded and strictly proved. See *Ratcliffe v Evans* [1892] 2QB S24; *Kampala City Council v Nakaye* [1972] E.A 446 and *HAHN v Singh* [1985] KLR 716.”

34. Having failed to produce the receipts as exhibits, the Appellants failed to strictly prove their claim for special damages, and the filed receipts had no probative value. The trial court was therefore right in rejecting the claim for special damages.
35. So what orders should issue?
36. This court has the power to assess the general damages under the *Fatal Accidents Act*, but in view of the fact that the parties did not submit thereon, it would not be proper to do so. That would deny the parties the right to present their respective arguments of the award of damages under the said Act. I will give a date for that shortly.
37. Consequently, I direct that the parties to address me on the assessment of the said head of award of damages.
38. In the upshot, the Appeal partly succeeds as set out above.
39. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2026.

HESTON M. NYAGA

JUDGE

