



**Third Engineering Bureau of China City Construction Group Limited v Momanyi  
(Suing as the legal representative of the Estate of Elick Ombasa Momanyi (Deceased)  
(Civil Appeal E039 of 2023) [2025] KEHC 655 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 655 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E039 OF 2023  
WA OKWANY, J  
JANUARY 30, 2025**

**BETWEEN**

**THE THIRD ENGINEERING BUREAU OF CHINA CITY CONSTRUCTION  
GROUP LIMITED ..... APPELLANT**

**AND**

**SAPINA BWARI MOMANYI (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF ELICK OMBASA MOMANYI (DECEASED) ..... RESPONDENT**

*(Being an Appeal from the Judgment at the Chief Magistrate's Court in Nyamira, CMCC  
No. E095 of 2022 delivered by Hon. B.O. Okong'o, Resident Magistrate on 13th July 2023)*

**JUDGMENT**

1. The Respondent herein, was the plaintiff before the trial court where she sued the Appellant, in her capacity as the Administrator of the Estate of the deceased, for damages under the *Law Reform Act* and *Fatal Accidents Act*. The Respondent's claim arose out of a fatal road accident that occurred on 28<sup>th</sup> February 2022 when her son, the deceased herein, was lawfully riding a motor cycle registration No. KMFV 367 TVS STAR when he was hit by the Appellant's motor vehicle Reg. No. KCP 928J Sino Truck Lorry. The Respondent attributed the accident to the negligence of the defendant's driver/agent.
2. At the conclusion of the trial before the lower court judgment, on liability, was entered in favour of the Respondent at the ratio of 80%:20% and damages were assessed as follows: -
  - i. Damages for Loss of expectation of life – Kshs. 100,000
  - ii. Damages for Pain and Suffering – Kshs. 100,000
  - iii. Global Award – Kshs. 2,700,000/=



- iv. Special Damages – Kshs. 80,550  
 Total – Kshs. 2,980,550  
 Less 20% contribution (Kshs. 596,110) – Kshs. 2,384,440
3. Aggrieved by the said decision, the Appellant filed the present Appeal challenging the finding on quantum of damages on the following grounds: -
1. The Learned Magistrate erred in law and fact in failing to consider the Defendants’ submissions on quantum in regards to general damages hence the award was very high in the circumstances.
  2. The Learned Magistrate erred in law and fact by failing to apply the relevant and pertinent judicial principles, precedents and trends regarding the award of quantum.
  3. The Learned Magistrate erred in fact and law in failing to accord the Defendants’ evidence and submission on loss of dependency due consideration.
  4. The Learned Magistrate’s findings on quantum of damages are not supported by facts or law hence irregular.
4. The Appeal was canvassed by way of written submissions which I have considered. I note that the Appellant did not contest the apportionment of liability by the trial court. I therefore find that the only issue for my determination is
- whether the trial court erred in its assessment of the quantum of damages payable to the Respondent.
5. The duty of the first appellate court was stated in the case of *Abok James Odera & Associates v. John Patrick Machira t/a Machira & Co. Advocates* Civil Appeal No. 161 of 1999 thus: -
- “This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way....”
6. This court is aware of the principles governing the award of damages and the circumstances under which an appellate court may interfere with the trial court’s decision on award of damages. In *Arrow Car Ltd v. Elijah Shamalla Bimomo & 2 Others* (2004) eKLR it was held thus:-
- “The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former court of Appeal of Eastern Africa to be that it must be satisfied that either the judge, in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that, short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. ...”
7. I have considered the award made by the trial court under the *Law Reform Act* for pain and suffering and loss of expectation of life. I note that the trial court awarded Kshs. 100,000/- under each heading. It is trite that courts will make higher awards for pain and suffering depending on the circumstances



of each case. In *Hyder Nthenya Musili & Another v. China Wu Yi Limited & Another* [2017] eKLR, it was held thus: -

“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.”

8. A perusal of the Post-Mortem Report (P.Exh 8) reveals that the accident occurred on 28<sup>th</sup> February 2022 and that the deceased died on 1<sup>st</sup> March 2022 at 1.00 a.m. It is not in doubt that the deceased suffered pain while undergoing treatment before he succumbed to the injuries. I therefore find that the award of Kshs. 100,000/= under this heading was appropriate. I find no justification for interfering with the said award.
9. Turning to the award for loss of expectation of life, I note that the deceased was 24 years old at the time of his death and was the sole bread winner for his family. I note that the trial court awarded Kshs. 100,000/= under this heading. I find that the award was appropriate and I will therefore not interfere with it. I am guided by the decision in *Citi Hoppa Bus Limited & Another v. Maria Clara Rota* [2021] eKLR where an award of Kshs 200,000/= was made for loss of expectation of life where the deceased was aged 33 years old; and *Crown Bus Services Ltd & 2 others v. Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased))* [2020] eKLR where an award of Kshs. 100,000/= was upheld for the estate of a 21 year-old deceased who had left behind his mother and his 2-year old son.
10. Turning to the award under the *Fatal Accidents Act*, the trial court employed the Global sum approach in assessing damages. I note that the Respondent did not tender any evidence to show how much the deceased earned from his boda-boda business. I therefore I agree with the trial court’s finding that a global sum approach was the most appropriate method of assessing damages in the circumstances of the case.
11. I have considered similar past cases in determining whether or not to disturb the award under *Fatal Accidents Act* such as the case of *Joseph Muthuri v. Nicholas Kinoti Kibera* [2022] eKLR, where the court awarded Kshs. 1,000,000/= in respect to the estate of a deceased who was 19 years old at the time of his death and the case of *Stanwel Holdings Limited & another v. Racheal Haluku Emanuel & another* [2020] eKLR where a global sum of 2,000,000/= for Loss of Dependency made in respect to the deceased aged 23 years was reduced to Kshs 1,000,000/= on appeal
12. Guided by the above precedents, I find that the award of Kshs. 2,700,000/= was on the higher side. However, considering that the deceased was survived by his mother and a son, I revise the said award to Kshs. 2,000,000/=.
13. On Special Damages, it is trite that the same must be specifically pleaded and strictly proved. In this case, the Respondent only produced copies of the receipt issued in obtaining a Limited Grant and the Motor Vehicle Search. The Respondent listed funeral and mortuary expenses as Kshs. 40,000/- and



25,000/= respectively but did not tender any receipts in support thereof. In *Premier Diary Limited v. Amarjit Singh Sagoo & Another* [2013] eKLR, it was held that: -

“We do not think that it is a breach of the general rule that special damages must be pleaded and proved, to hold that families who expend money to bury or otherwise inter their dead relatives should be compensated. In fact, we do take judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with issues of record keeping when the primary concern to a bereaved family is that a close relative has died and the body needs to be interred according to the custom of the particular community involved. The learned judge took what was a practical and pragmatic approach. Although a sum of Kshs. 400,000/= was pleaded in the plaint and witnesses who were the relatives of the deceased – testified that they spent much more than this in preparing for and conducting a cremation the learned Judge awarded a sum of Kshs. 150,000= which sum he saw as a reasonable and prudent amount to compensate the family for funeral expenses. We are of the respectful opinion that the judge was entitled to award that sum without in any way breaching the general rule we have referred to on the issue of special damages.”

14. Guided by the above cited case, I award the Respondent funeral and mortuary expenses as pleaded in the plaint.
15. In the final analysis, I find that the Appeal is merited and it therefore succeeds, albeit in part, only in respect to the award made under *Fatal Accidents Act*. I therefore set aside the judgment of the trial court on damages and enter judgment for the Respondent as follows: -
  - i. Damages for Pain and Suffering – Kshs. 100,000
  - ii. Damages for Loss of Expectation of Life – Kshs. 100,000
  - iii. Damages for Loss of Dependency – Kshs. 2,000,000
  - iv. Special Damages – Kshs. 105,550
  - v. Total – 2,305,550
  - vi. Less 20% Liability – Kshs. 1,844,440/=
  - vii. I make no orders as to costs.
16. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NYAMIRA THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**W. A. OKWANY**

**JUDGE**

