



**Cheruiyot (Suing as the legal representative of the Estate of Julius Kemeli Laboso - Deceased)  
v Mbote (Civil Appeal E114 of 2022) [2025] KEHC 3978 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3978 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E114 OF 2022  
EN MAINA, J  
MARCH 27, 2025**

**BETWEEN**

**DENIS CHERUIYOT (SUING AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF JULIUS KEMELI LABOSO - DECEASED) ..... APPELLANT**

**AND**

**MUTISYA MBOTE ..... RESPONDENT**

*(Being an appeal from the judgment of the Hon M.A .Otindo (PM)  
delivered on 21.04.2022 in MACHAKOS CMCC NO 76 OF 2020)*

**JUDGMENT**

1. The Appellant's claim against the Respondent was for special and general damages for fatal injuries occasioned to Julius Kemeli Laboso (deceased) in a motor accident which occurred along the Nairobi Mombasa Highway on 7<sup>th</sup> December 2018 when the defendant and /or his authorized driver carelessly and or negligently managed, drove the motor vehicle KCQ 611 E and collided with Motor vehicle KCS 135 T that it lost control, veered off the road thereby fatally injuring the deceased.
2. In his written statement of defence dated 12.03.2020 the Respondent denied the particulars of negligence in paragraph 6 (a – d) of the plaint and attributed the accident to the negligence and /or the contributory negligence of the driver of motor vehicle KCS 135T and prayed that the suit be dismissed with costs.
3. However, by consent of the advocates for the parties the court entered a consent judgment on liability in favour of the Respondent against the Appellant in the ratio of 80: 20% so that what remained was the assessment of the quantum of damages.
4. After hearing the parties and considering their submissions the court below awarded damages as follows:



- a. Liability 80:20% In favour of the Plaintiff
  - b. Pain and suffering Kshs 30,000
  - c. Loss of expectation of life Kshs 150,000
  - d. Special damages Kshs 105,650
  - e. Costs and interest
5. Being aggrieved by the award the Appellant preferred this appeal. The same is premised on grounds that;
- a. The learned trial magistrate erred in law and in fact by making an award of Kshs 30,000 for pain and suffering which was inordinately on the lower side in view of the fact that the deceased succumbed due to the pain and suffering he was going through and the fact that he passed on the same day, the same did not happen at the scene of the accident but rather while undergoing treatment thereby presenting a miscarriage of justice.
  - b. The learned trial magistrate erred in law and in fact by awarding kshs 150,000 for loss of expectation of life which was inordinately on the lower side in view of the fact that the deceased was snatched of a chance to live a long healthy life
  - c. The learned trial magistrate erred in law and in fact by failing to make an award for loss of dependency despite the plaintiff having provided evidence in support of the same.
  - d. The learned trial magistrate erred in law and in fact in failing to consider the appellant's submissions and authorities on damages under the Fatal Accident Act and the Law Reform Act thereby arriving at an erroneous figure on damages under the Fatal accident act and the Law Reforms Act.
  - e. The learned trial magistrate erred in law and in fact by failing to consider the conventional awards for damages in cases of similar facts and awarded damages for pain and suffering and loss of expectation of life which were very low.
  - f. The learned Trial magistrate erred in law and in fact in awarding Kshs 10,000 as legal fees paid by the plaintiff to obtain the limited grant despite the plaintiff having produced a receipt for kshs 60,000 to that effect.
  - g. The learned trial magistrate erred in law and in fact by disregarding all the documents presented by the appellant in court to prove his case
  - h. The learned trial magistrate erred in law and in fact when making an award by failing to consider the passage of time and incidence of inflation.
6. The Appeal was canvassed by way of written submissions.

### **Appellants Submissions**

7. Learned Counsel for the Appellant that the general damages awarded under the impugned heads were inordinately low and proposed a sum of Kshs.155,650/ as special damages arguing that the Appellant produced receipts to prove the same; Kshs. 300,000/= for pain and suffering being comparable to what was awarded in the case of Jemimah Wambui Njoroge v Philip Mwangi[2001]eKLR; Kshs 4,800,000 for loss of dependency arguing that the deceased died at 44 years old, was in good health and would



have lived a full life had the accident not occurred and that her family had been deprived of love and companionship as a result of the accident.

8. Counsel placed reliance on the case of *Midland Media Limited & another v Pauline Naukot Aule (Suing as the legal Representative of the Estate of the late Esinyon Esokon Ekai)* [2020] where relying on the reasoning of the Court of Appeal in *Joyce Mumbi-Mugi v. The Co-operative Bank of Kenya Ltd & 2 Others*..... the court found a multiplier of 11 years as reasonable for a deceased who was 51 years.
9. For the Respondent, it was submitted that the damages were within the acceptable range of awards in similar cases; that an award of Kshs. 300,000.00 for pain and suffering proposed by the Appellant would be inordinately excessive and out of touch with the precedents guiding the trial court.
10. Learned Counsel for the Respondent relied on the case of *Ainu Shamsi Hauliers Limited v Moses Sakwa & another (suing as the Administrators of the Estate of the Ben Siguda Okach (Deceased))* [2021] eKLR, where while upholding an award of Kshs.30,000.00/- for pain and suffering the court stated:

“I am therefore guided by the death certificate which indicates that the deceased died at Coast General Hospital. From the foregoing, it is evident that the deceased did not die immediately after the accident happened but endured pain and suffering before he lost his life.”
11. In regard to loss of dependency counsel relied on the cases of *Chania Shuttle v Mary Mumbi* [2017] eKLR, *Karanja Ndirangu v Wilson P Kariuki (Administrators of the Estate of Lilies Gathumbi* [2019] eKLR, Martha Muthoni Ndege (Appealing as the legal representative of *Stanley Ndege Gichuki - (Deceased) v Anthony Kamau Kambiriri* [2019] eKLR, *National Council for Persons With Disabilities v Philister Achieng Awuor & another* [2021] eKLR to support his argument that being an adult the Appellant was required to direct dependency on the deceased in order to be awarded damages under that head.
12. Counsel urged this court not to disturb the award of the trial court but instead uphold the same and dismiss this appeal with costs to the Respondent. on the claim for loss of dependency under the *Fatal Accidents Act*.

### **Analysis and Determination**

13. The principles which should guide a court in considering whether or not to disturb an award of damages by a lower court were settled in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (N0.2)*[1985]KECA137(KLR) to be that

“either the court took into account an irrelevant factor, or left out a relevant one, or that, the amount of damages is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

It is also a tenet of the law that similar injuries should attract comparable awards albeit taking the issue of inflation into account.

14. Applying the above principles to this appeal and having considered the evidence and submissions of the parties I find as follows; in respect to damages for pain and suffering I find that the sum awarded was not inordinately low given that the deceased died the same day. My holding finds support in the



case of *West Kenya Sugar Co. Limited v Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba)* [2019] eKLR where the court stated-

“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.”

15. The above was also the holding in the case of *Hyder Nthenya Musili & Another v China Wu Yi Limited & Another* [2017] eKLR, where the court stated-

“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.”

16. As stated earlier, whereas the deceased did not die immediately, her death was not so prolonged as to warrant an award in the region proposed by the Appellant. The circumstances of this case are clearly distinguishable from those in the case of *Jemimah Wambui Njoroge v Phillip Mwangi* (*supra*).

17. For loss of dependency, the Appellant told the court that she was that the deceased used to earn Kshs 50,000.00 per month. He did not however adduce evidence of such earnings. In the premises it was reasonable to award a global sum as use of a multiplier and multiplicand would not have been appropriate. A similar holding was made in the case of *Albert Odawa v. Gichimu Gichenji* Nakuru HCCA No. 15 of 2003, Koome, J (as she then was) expressed herself as hereunder:

“On the issue of loss of dependency, no evidence whatsoever was adduced before the trial court on the deceased’s earnings and thus the multiplicand of Kshs. 8,100.00 was without basis. In the absence of evidence of actual earnings of the deceased, the correct approach would have been to assess the deceased’s income by applying the basic salary, which is paid to unskilled workers, and this would also have been difficult, as the age of the deceased was not stated. So the best option would have been to apply the global award. So an award of Kshs. 400,000.00 awarded.”

18. In the case of *Risbi Hauliers Limited v Josiah Boundi Onyancha* [2015] eKLR the court awarded a global sum of Kshs. 500,000/- for a deceased who was 50 years old while in the case of *Dora Mwawandu Samuel (Suing on her behalf and on the behalf of the Estate of Samuel Muweliani Jumamosi (Deceased) v Shabir M. Hassan* [2021] eKLR where the court awarded a global sum of Kshs. 400,000/- for a deceased who was 59 years old. In *Moses Maina Waweru v Esther Wanjiru Githae (Suing as the personal representative of the Estate of the late David Githae Kiririo Taiti* [2022] eKLR the court awarded a global sum of Kshs. 800,000 for a 68 years old farmer and businessman and there was evidence of the deceased being a business man.

19. Being guided by all the above cases and while considering the ages of those cases hence inflation I find a global award of Kshs 1,000,000/ under the head of loss of dependency reasonable and award the same.



20. As for special damages, the same must be specifically pleaded and proved. The Appellant pleaded and proved special damages in the sum of Kshs 155,650/. It is my finding that the Learned Magistrate erred by not awarding the whole amount and I therefore award the same.

### **Disposition**

21. In the upshot, the appeal succeeds partially and Judgment is entered for the Appellant against the Respondent as follows;
- a. Liability 80:20%
  - b. Damages
    - i. Pain and suffering Kshs 30,000
    - ii. Loss of expectation of life Kshs 150,000
    - iii. Loss of dependency Kshs 1,000,000
  - c. Special damages Kshs 155,650
  - d. Less 20% Contribution Kshs 267,130
  - e. Total Kshs 1,068,520
  - f. Costs of the appeal and interest

It is so ordered.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Kiiru for the Respondent

Mr. Kaburu for Appellant

C/A: Wambua

