



**Mutua v Kirui & another (Suing as Administrators and Personal Representatives of the Estate of Brian Kipsang) (Civil Appeal E039 of 2023) [2025] KEHC 3918 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3918 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E039 OF 2023  
JK SERGON, J  
MARCH 27, 2025**

**BETWEEN**

**SIMON KURIA MUTUA ..... APPELLANT**

**AND**

**JOHN KIPRONO KIRUI ..... 1<sup>ST</sup> RESPONDENT**

**CAROLINE CHEPKORIR KORIR ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS ADMINISTRATORS AND PERSONAL REPRESENTATIVES OF THE ESTATE OF BRIAN KIPSANG**

*(Being an appeal from the judgment/decree of the Honourable C. Obulutsa (Chief Magistrate) delivered on 12/9/2023 in Kericho CMCC No. 98 of 2021)*

**JUDGMENT**

1. The suit in the lower court was filed on 8 October 2021, the subject matter cause of action having risen on the 26th day of July 2019 pursuant to a road accident involving Motor Vehicle Reg no. KBY O88W and the deceased pedestrian along Kericho- Kisumu Road. The appellant herein being the owner and driver of the subject Motor Vehicle Reg No. KBY O88W.
2. The suit in lower court was determined and liability apportioned in a judgment delivered before the trial court on 12th September 2023. The final judgment final terms were as follows;
  - Pain and suffering ..... Kshs. 60,000/=
  - Loss of expectation of life .....Kshs. 1,600,000/=
  - Special Damages.....Kshs. 56, 550/=
  - Total = Kshs. 1,866,550/= less 50% contribution



Net = Kshs. 933, 275/=

3. The Appellant being dissatisfied with the judgment and decree of the trial court preferred an appeal and filed a memorandum of appeal dated 12th October, 2023 based on four main grounds;
  - (i) That the court erred in awarding Kshs. 60,000/= for pain and suffering an amount which was excessive in the circumstances.
  - (ii) That the court erred by double awarding the respondent's estate both under the Law Reforms Act and *Fatal Accidents Act*.
  - (iii) That the court erred in awarding the respondent's estate a sum of Kshs. 1,600,000/= as general damages which was an excessive estimate of loss and damages suffered by the estate of the deceased.
  - (iv) That the court erred in law and facts in awarding special damages without any proof of expenses.
4. The matter came up for hearing and this court directed that the appeal be disposed of by written submissions.
5. The Appellant abandoned the first and second grounds of appeal and proceeded to submit on the third and fourth grounds.
6. The Appellant contended that the amount of Kshs. 1,600,000/- awarded to the respondent's estate was too high in the circumstances and that this Honourable Court ought to interfere with the same. They contended that Courts are now in agreement that employing the global way of assessing damages is proper and that in employing the same courts are guided by precedents and circumstances of each case. They reiterated that present appeal involves a deceased minor, who at the time of the accident was 13 years old and relied on the judgment of this court in *Endege & Another (Suing as the legal representative in the Estate of John Madede Endege (Deceased) v Benard and Another (civil Appeal 4 of 2021 [2024] KEHC 709 ( KLR) (30 January 2024) (Judgment)* where it maintained the sum of Kshs. 500,000/- as damages for loss of dependency where the deceased was aged 19 years in form 2. They argued that this is a current decision and as such, the two awards ought not to be far apart. They therefore urged this court to review the award from Kshs. 1,600,000/- to Kshs. 500,000/-
7. The Appellant contended that it is trite law that special damages must be specifically pleaded and proved to be awarded. In the circumstances of the appeal, the special damages were pleaded but no evidence was tendered in proof and therefore proposed that the award of special damages including funeral expenses ought to be excluded.
8. The Respondent filed submissions and reiterated that the assessment was a fair appraisal of the amount payable to the Respondents considering previous comparative awards and the circumstances of the case taking into account all factors, the inflation rate included. The Respondent cited the case of *Kemfro Africa Limited t/a "Meru Express Services [1976]" & another v Lubia & another (No 2) [1985] KECA 137 (KLR)* where Kneller J.A stated that; "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 that 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." The Respondent contended that the Appellant had not aptly demonstrated that the trial court erred in computation of the damages payable in line with the principles set out in *Kemfro Africa (supra)*.



9. The Respondent contended that the law calculation on loss of dependency or life to the estate of the minor has evolved with jurisprudence on a two pronged approach, there are some who advocate for a global sum award and those who are in favour of a multiplier and multiplicand mode of assessment. The Respondent contended that there is wide and considerable jurisprudence on the application in terms of the provision of section 4 and 5 of the Fatal Accident Act and in particular loss of dependency when it comes to a deceased minor. The Respondent cited the case of Daniel Mwangi Kimemi & Ors v J.G.M & Anor (the Personal Representative of the Estate of the N.K Deceased) [2016] where the deceased was aged 9 years and the court made an award of Kshs. 1,000,000/= as fair compensation for loss of dependency on the global approach and the case of Suluenta Kennedy Sita & Anor v Jeremiah Ruto (suing as legal representative of the estate of Joyce Jepkemoi) [2017] eKLR where the High Court upheld an award of Kshs. 980,000/= for loss of dependency for a deceased minor aged 14 years. The Respondent therefore argued that an award of Kshs. 1,600,000/= is fair and reasonable in the circumstances considering that the life of the deceased was cut short by the acts of the defendant.
10. The Respondent conceded that it is trite law that special damages must be pleaded and proved. The Respondent submitted that in the trial court they produced documentary evidence to wit receipt for obtaining grant ad litem for Kshs. 10, 980/= (PEXh. 4), receipt for the post mortem for Kshs. 6, 000/= (PEXh. 7a) and a receipt to carry out a search to obtain a copy of records 550/= (PEXh. 9). The Respondent contended that the Plaintiff had incurred funeral expenses of Kshs. 100, 000/= however the court saw it fair to grant Kshs. 56, 550/= and in any event the Defendants in their own submissions before the trial court having conceded to Kshs. 50,000/= being awarded under this head cannot therefore appeal against what they conceded to. The trial court, having considered the submissions by both parties, arrived at a figure of the Kshs. 56, 550/= as special damages.
11. The Respondent contended that in the judgment and decree of the trial court, the minor was awarded liability of 50% and therefore the sum Kshs. 933, 275/= awarded to the estate of the deceased minor is fair in the circumstances.
12. Having considered the grounds in the memorandum of appeal, record of appeal and the submissions by the parties the issue (s) for determination is whether the trial court awarded in awarding Kshs. 1,600,000/= as general damages and Kshs. 56,550/= as special damages. I have considered the submissions by parties to arrive at a fair and just determination.
13. On the issue as to whether the general damages awarded were excessively high thereby warranting interference of this court, this court has considered comparative awards involving minors. In Twokay Chemicals Limited v Patrick Makau Mutisya & another [2019] eKLR, the appellate court upheld a global sum of Kshs. 1,500,000/= for loss of dependency for a minor aged sixteen (16) years. In Zachary Abusa Magoma v Julius Asiago Ogentoto & Jane Kerubo Asiago [2020] eKLR, the court awarded a global sum of Kshs. 1,500,000.00/= for loss of dependency. It is, therefore, my considered view and decision, that a global award of Kshs. 1,600,000/= made by the trial court in the case before me, is reasonable in the circumstances of the case.
14. On the issue as to whether the trial court erred in awarding special damages that were pleaded but not proven, this court has considered the documentary exhibits furnished in the trial court and that with respect to funeral expenses which were not proven, the Defendants in their own submissions before the trial court having conceded to Kshs. 50,000/= being awarded under this head cannot therefore appeal against what they conceded to and that the trial court having considered the submissions by both parties arrived at a figure of the Kshs. 56, 550/= as special damages which I find reasonable in the circumstances.



15. This court has also considered that in judgment and decree of the trial court, the minor was awarded liability of 50% and therefore the sum of Kshs. 933, 275/= awarded to the estate of the deceased minor is fair in the circumstances.

16. The upshot, is that the appeal lacks merit and is hereby dismissed with costs to the respondents.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Abande for the applicant

Cherotich holding brief for Miss Ngeno for Respondent

