



REPUBLIC OF KENYA



**Chebocho & 2 others v Cheptoo & another (Civil Appeal E402 of 2022)  
[2025] KEHC 4948 (KLR) (Civ) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4948 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E402 OF 2022**

**JN NJAGI, J**

**APRIL 25, 2025**

**BETWEEN**

**JOSEPH ARAP CHEBOCHO ..... 1<sup>ST</sup> APPELLANT**

**OUTREACH SACCO ..... 2<sup>ND</sup> APPELLANT**

**FRANCIS WAWEERU MACAHRIA ..... 3<sup>RD</sup> APPELLANT**

**AND**

**WILLIAM CHELAGAT CHEPTOO ..... 1<sup>ST</sup> RESPONDENT**

**ZIPPORAH CHEPTOO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. D. O. Mbeja, Principal Magistrate,  
in Milimani Commercial Courts Civil Suit No.7454 of 2019 delivered on 16/4/2021)*

**JUDGMENT**

1. The Respondents brought suit against the Appellants wherein they were seeking compensation in general and special damages after their kin was killed in a road traffic accident involving a motor vehicle owned by the appellants. The trial court awarded the respondents, inter alia, a global sum of Ksh.1,500,000= in general damages for loss of dependency. The appellants were aggrieved by the award and preferred this appeal on the grounds that:
  1. The Learned magistrate erred in fact and in law in awarding general damages that are too high in the circumstances
  2. The Learned Magistrate erred in fact in finding that the Respondents were entitled to general damages of Ksh. 1,500,000= which is too high in the circumstances.



2. The appeal was canvassed by way of written submissions of the respective counsels appearing for the parties.

### **Appellants` submissions.**

3. The Appellants submitted that the award under loss of dependency was inordinately high and that an amount of Ksh.1,000,000= would be reasonable and sufficient compensation. They relied on the case of Stanwel Holdings Limited & another v Racheal Haluku Emanuel & another [2020] eKLR where the court awarded Ksh.1,000,000= for loss of dependency for a young man who died at the age of 23 years.
4. Reliance was also placed in the case of Geoffrey Obiero & another v Kenya Power & Lighting Corporation Limited & another (2019) eKLR where the court awarded Ksh.1,200,000= in the instance of a 25-year old young man.
5. Further reliance was made in the case of Florence Mumbua Ndoo & Francis Kioko (suing as the Administrator and personal representative of the estate of Alfred Safari v Ezra Korir Kipngeno & another (2017) eKLR where Ksh.700,000= was made to the estate of a 20- year old in the absence of proof of earnings.
6. The appellant cited the case of Power Lighting company Limited & another v Zakayo Saitoti & another (2008) eKLR as cited in the case of Jennifer Mathenge v Patrick Muriuki Maina [2020] eKLR where the court set out the principles that the court has to bear in mind in an appeal against an award of general damages as follows:

“On quantum, the determining whether to interfere with the same or not, the court has to bear in mind the following principles on assessment of damages;

1. Damages should not be inordinately too high or too low.
  2. They are meant to compensate a party for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered.
  3. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
  4. Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of the Kenyan Shilling, then at the time of the judgement.”
7. The appellants prayed that the appeal be allowed and they be awarded costs of the appeal.

### **Respondents` submissions.**

8. Counsel for the Respondents submitted that the deceased died at the age of 25 years. That the trial magistrate considered all the evidence adduced before the court and made a determination based on the available facts and principles of law. Therefore, that the award of Ksh.1,500,000= was fair and reasonable. Counsel, apparently in passing, referred to the case of Mary Njeri Murigi v Peter Macharia & another (2016) eKLR where a global sum of Ksh.4,000,000= was awarded to the estate of a businessman who died at the age of 60 years.



### **Analysis and determination.**

9. This being the first appeal, this Court's duty is to re-assess and re-evaluate the evidence and draw its own conclusion while bearing in mind that it has neither seen nor heard the witnesses testify - See *Selle and another -vs- Associated Motor Boat Company Ltd.& Others* (1968) EA 123.
10. The Appellants contest the trial court's finding on quantum. The issue for determination is therefore whether the amount of Ksh.1,500,00= awarded by the trial court is inordinately high.
11. The principles applicable. in determining whether an appellate court should disturb an award of damages made by a lower court are as was set by the Court of Appeal in the case of *Kemfro Africa Ltd ta New Express Services Ltd & Another -vs- Lubia & Another* (1985) eKLR, where it was 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 damages”.
12. The appellants basically relied on 2 authorities as cited above where awards of Kshs. 1,000,000= and 1,200,000= were made for deceased persons who died at the ages of 23 and 25 years respectively. The respondents on the other hand cited an authority where the deceased died at the age of 60 years which was way above the age of the deceased herein who died at the age of 25 years. The authority, in my view, was not relevant.
13. I have on my part considered the awards in the following cases:*Daima Connections Limited v Kamanda & another* (Suing as the Personal Representatives of the Estate of Fred Mokua - Deceased) (Civil Appeal E018 of 2023) [2024] KEHC 6524 (KLR) (23 May 2024) (Judgment) where the deceased died at the age of 25 years and Okwany J. awarded a global sum of Kshs. 1,500,000= for loss o of dependency.*Mwangi & another v Muya & another* (Suing as legal representatives of the Estate of Samuel Mutunga Mutua (Deceased)) (Civil Appeal 73 of 2018) [2023] KEHC 24032 (KLR) (24 October 2023) (Judgment) where Muchemi J. upheld a global sum of Ksh. 1,500,000= for loss of dependency for a 21 year-old.
14. In view of these authorities, it is my finding that the award of the trial court was within the range of quantum awarded by superior courts in similar circumstances. Consequently, the award cannot be termed as erroneous or inordinately high. There is no reason to disturb the award.
15. The upshot is that this court finds no merit in the appeal. The same is dismissed with costs to the Respondents.

**DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF APRIL 2025**

**J. N. NJAGI**

**JUDGE**

