



**Ayungo v Oyak & another (Suing as the Legal Representatives of
the Estate of Christine Akoth Omondi - Deceased) (Civil Appeal
E084 of 2024) [2025] KEHC 10948 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10948 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E084 OF 2024**

JM OMIDO, J

JUNE 26, 2025

BETWEEN

STEPHEN KARENGO AYUNGO APPELLANT

AND

**GEORGE OWINO OYAK & MAURICE OMONDI ONDIEK (SUING AS
THE LEGAL REPRESENTATIVES OF THE ESTATE OF CHRISTINE AKOTH
OMONDI - DECEASED) RESPONDENT**

*(Being an Appeal from the Judgement and Decree of Hon. M.A. Agutu, Principal
Magistrate delivered on 9th May, 2023 in Kisumu CMCC No. 393 of 2019.)*

JUDGMENT

1. The Appellant, Stephen Karengo Ayungo has brought this appeal, being aggrieved by the decision of the trial court (Hon. M.A. Agutu, Principal Magistrate) delivered on 9th May, 2023 in Kisumu CMCC No. 393 of 2019, against the Respondents, George Owino Oyak & Maurice Omondi Ondiek (suing as the legal representatives of the estate of Christine Akoth Omondi (Deceased)).
2. The Appellant has presented the following grounds of appeal vide the Memorandum of Appeal dated 3rd January, 2024:
 1. That the Learned Magistrate erred in law and in fact in awarding Ksh.50,000/- for pain and suffering yet the deceased died on the spot.
 2. That the Learned Magistrate erred in law and in fact in awarding Ksh.200,000/- for loss of expectation of life which award was excessive.
 3. That the Learned Magistrate erred in law and in fact in adopting a multiplicand of Ksh.12,927/- being the minimum wage yet the deceased died on 20th September, 2017 and the



court ought to have used Ksh.6,896.15/- as the minimum wage under the Regulation of Wages (General) (Amendment) Order, 2017.

4. That the Learned Magistrate's exercise of discretion in assessment of quantum was injudicious.
3. The Appellant proposes that the instant appeal be allowed and the awards assessed in damages be set aside and that this court proceeds to reassess the same.
4. The appeal herein is only on the issue of quantum. The finding of the court on liability, which was apportioned at 50%:50% is not challenged.
5. The present appeal was canvassed by way of written submissions. Both sides complied to the court's directions by filing their respective submissions.
6. This being the first appellate court, I am required under Section 78 of the Civil Procedure Act and as was espoused in the case of *Sielle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate's Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.
7. In *Sielle*, Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
8. The matter before trial court, a tortious liability claim, was commenced by the Respondents (the Plaintiffs before the lower court) by way of a plaint dated 21st August, 2017.
9. The Appellant (the Defendant before the lower court) resisted the suit by filing a statement of defence dated 5th October, 2019.
10. The trial court heard the suit and delivered judgement on 9th May, 2023 in the following terms:
 - a. Liability – at 50%:50% between the Appellant and the Respondents.
 - b. Loss of expectation of life – Ksh.200,000/-.
 - c. Pain and suffering – Ksh.50,000/-.
 - d. Loss of dependency – Ksh.2,702,260/-.
 - e. Special damages – Ksh.31,250/-.
 - f. Costs and interest of the suit awarded to the Respondents at court rates.
11. The items in (b) to (e) above were subject to the finding of the court on liability.
12. Now to the record of the trial court, the Respondents evidence was that the deceased met her demise on 20th September, 2022 in a road traffic accident that occurred at Namba Kosea area along the Bondo – Kisumu Highway, that involved the Appellant's motor vehicle registration number KBA 141C, which knocked down the deceased who was a pedestrian. The deceased died instantly. She was 26 years old, as per the certificate of death.



13. The Respondents produced the following documents in support of their case: Copies of the Respondents' identity cards. Demand letter. Letters of Administration Ad Litem. Post mortem report. Certificate of death. Letter from the area chief, East Seme Location. Police abstract. Receipts in support of special damages.
14. The Respondents told the trial court that before meeting her demise, the deceased was of good health and was undertaking a training on early childhood education while at the same time teaching as an ECD teacher, earning Ksh.12,500/- monthly, which she used to maintain herself and her dependents namely: George Owino Oyak Husband 31 years. Rashid Chantry Owino Son 12 years. Bufon Abraham Owino Son 7 years. Emmaculate Aphline Owino Daughter 3 years. Maurice Omondi Ondiek Father 58 years.
15. The Respondents did not produce any documents to show that the deceased was an ECD trainee and that she earned Ksh.12,500/- monthly.
16. I have carefully perused and considered the record of the trial court, the grounds of appeal and the submissions by the two sides. The issues that emerge that I am to determine are as follows:
 - a. Whether the trial court properly assessed and awarded damages to the Respondents under the following heads? Special damages. Pain and suffering. Loss of expectation of life. Loss of dependency.
 - b. Who should bear the costs of this appeal?
17. Compensatory damages are awarded to a wronged party in exercise of the court's discretion. The principles upon which an appellate court can interfere with judicial discretion were laid down in the case of Price & another v Hidler [1996] KLR 95 as follows:

“The court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision.”
18. Further, in the case of Gitobu Imanyara & 2 others v Attorney General [2016] eKLR the Court of Appeal while discussing the principles upon which an appellate court may disturb an award of damages by an inferior court held that:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in Rook v Rairrie [1941] 1 All ER 297.

It was echoed with approval by this Court in Butt v Khan [1981] KLR 349 when it held as per Law, J.A that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge



proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

19. There is also the authority of *Mbogo & Another v Shah* [1969] EA 93, where it was held, inter alia, that:

“An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which it should be taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court should not interfere with the exercise of the discretion of a judge unless satisfied that the judge in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice.”

20. With the principles above in mind, I will with regard to the first issue for determination, address the respective heads of damages seriatim.

Special damages

21. The rule as to special damages is that the same must be specifically pleaded and proved (see *Equity Bank Limited v Gerald Wang’ombe Thuni* [2015] eKLR). Under this head, the Respondents pleaded for the amount of Ksh.31,250/- expended in obtaining Letters of Administration. The Respondents produced a receipt issued by their Advocates for Ksh.30,000/- being for services rendered in obtaining the Letters of Administration. The amount that was therefore pleaded and proved was Ksh.30,000/-. The learned trial Magistrate therefore erred by awarding Ksh.31,250/- under this head. I thus set aside the trial’s court’s award under this head and substitute the same with the amount of Ksh.30,000/-.

Pain and suffering.

22. The evidence available is that the deceased died immediately following the occurrence of the accident. The learned trial Magistrate went on to make an award of Ksh.50,000/- under this head.

23. Taking cue from the authorities of *Sukari Industries Limited vs Clyde Machimbo Juma* [2016] eKLR and *West Kenya Sugar Company Ltd v Philip Sumba Julaya* (Suing as the administrator and personal representative of the Estate of James Julaya Sumba) [2019] eKLR where the courts awarded Ksh.50,000/- under the head of pain and suffering where the victims died instantly, I reach the finding that the learned trial Magistrate properly assessed the damages under this head. I therefore have no basis for interfering with the same.

Loss of expectation of life.

24. Under this head, the practice in our jurisdiction is to award a global and/or conventional sum of Ksh.100,000/- (see *Francis Odhiambo Nyunja & 2 others vs Josephine Malala Owinyi* (Suing as the legal administrator of the Estate of Kevin Osore Rapando (Deceased) [2020] eKLR and *Ainu Shamsi Hauliers Limited vs Moses Sakwa & another* (Suing as the administrators of the Estate of Ben Siguda Okach(Deceased) [2021] eKLR).

25. There has however lately been a drift and courts have in the recent past awarded higher amounts, perhaps considering the factor of inflation and market trends of the Kenya Shilling. For instance, in the case of *Mzee v Muli (Suing as the Legal Representative of Daniel Muli - Deceased) (Civil Appeal E160 of 2023)* [2024] KEHC 8581 (KLR) (11 July 2024) (Judgment) and that of *Kanyi & another v GWS* (Suing as a legal representative of the Estate of MNW – Deceased) (Civil Appeal 200 of 20190



[2023] KEHC 18837 (KLR) (Judgment) the courts on appeal upheld awards of Ksh.200,000/- under the head of loss of expectation of life.

26. I therefore will not interfere with the trial's court award of Ksh.200,000/- under the head.

Loss of dependency.

27. As stated above, the Respondents did not tender any evidence to prove that the deceased was an ECD teacher or that she earned Ksh.12,500/- as was alleged.

28. The learned trial Magistrate however proceeded to apply a minimum wage of Ksh.12,927/- as the multiplicand, a multiplier of 26 years and a dependency ratio of 2/3, which then yielded the amount of Ksh.2,702,260/- as the award under the head of loss of dependency.

29. Courts have held that where no evidence is provided as to the profession and/or occupation of a deceased and where there is no evidence on the earnings of a deceased, the multiplier/multiplicand method is not apt.

30. In the case of *Mwanzia Ngalali Mutua v Kenya Bus Service & another* (citation not available) Ringera J. (as he then was) expressed himself as follows;

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

31. In the decision of this court (C. Kariuki, J.) of *David Mbuba & another v Victoria Mwangeli Kimwalu & another* [2018] eKLR, the court held as follows:

“The multiplier approach was not suitable in the current case for the simple reason that the deceased's earnings were not proved. It is clear that the Learned Trial Magistrate applied the correct principles and relied on relevant authorities in deciding to use the global approach.”

32. Embracing the enlightenment from the decisions above, it is instructive that the jurisprudence that emerges is that where the earnings of a deceased cannot be ascertained like was in the case before the trial court, the multiplier/multiplicand formula is not suitable in assessing damages under the head of loss of dependency. The trial court ought to have applied the global sum approach.

33. Considering the young age at which the deceased met her demise, and further considering that she had a spouse and three minor children and a parent (who are all listed above), and further taking into account that there was no challenge to the Respondents' evidence that all the persons above were the deceased's dependents, and who undoubtedly qualified to be dependents under Section 4(1) of the *Fatal Accidents Act*, Cap 32 Laws of Kenya, I think that a global amount of Ksh.2,200,000/= will aptly recompense the deceased's estate under the head of loss of dependency. I therefore proceed to set aside the trial court's award of Ksh.2,702,260/- and substitute the same with an award of Ksh.2,200,000/-.

34. In the result, I allow the appeal only to the extent that I set aside the trial court's awards made under the heads of special damages and loss of dependency and substitute the same with awards of Ksh.30,000/- and Ksh.2,200,000/- respectively. The two figures will be subjected to the trial court's finding on liability.



35. Lastly, when the court makes an award under the *Fatal Accidents Act*, it is required under Section 4(1) thereof to apportion the amount awarded to each dependant of the deceased. I therefore direct that the Respondents file before the trial court the necessary application for consideration, in due course.
36. As for the second issue for determination, which is in respect of the costs of the appeal, considering that the appeal is only partly successful, each party shall bear their own costs of the same.
37. This file is hereby closed.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 26TH DAY OF JUNE, 2025.

JOE M. OMIDO

JUDGE

For The Appellant: No Appearance.

For The Respondents: Mr. Nyangweso For Mr. Okoth.

Court Assistants: Mr. Ngoge & Mr. Juma.

