Macharia & another v Onkundi & another (Suing as Personal of the Estate of Brian Ouma (Deceased)) (Civil Appeal E004 of 2023) [2025] KEHC 11336 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11336 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDAMA RAVINE

CIVIL APPEAL E004 OF 2023

RB NGETICH, J

JULY 31, 2025

BETWEEN

BENSON KAMAU MACHARIA ..... 1ST APPELLANT

JAMES MAINA NJOROGE ..... 2ND APPELLANT

AND

JACKSON ONKUNDI ..... 1ST RESPONDENT

NANCY ATIENO ..... 2ND RESPONDENT

SUING AS PERSONAL OF THE ESTATE OF BRIAN OUMA (DECEASED)

(Being an Appeal from the judgment on liability and quantum of Honourable Towett, Principal Magistrate in Eldama Ravine CMCC 1 of 2020 delivered on 8th August, 2023)

JUDGMENT

1. The plaintiff/Respondent filed suit in the trial court through plaint dated 2nd January 2020 seeking general and special damages for the death of Brian Ouma (Deceased) who died as a result of being knocked by the 1st defendant/Appellant's Motor vehicle registration number KBA430B driven by the 2nd defendant/Appellant on 14th September 2018.

2. By judgment delivered on 9th August 2023, the Plaintiff was awarded a total award of Kshs.1,201,875/-, general damages for pain & suffering being Kshs.50,000/-, Loss of expectation of life being Kshs.150,000/=, Loss of dependency being Kshs.1,000,000/= while special damages awarded were Kshs.1,875/=. The Defendant, now Appellant was held 100% liable.

3. Being aggrieved by the said judgment delivered on 8th of August 2023 filed appeal dated 8th September 2024 challenging decision on both liability and quantum on the following grounds: -

i. The Learned Magistrate erred in fact and in law when she failed to consider the Appellants evidence and submissions on points of law and facts on finding that the Appellants were 100% liable for the accident which was the subject matter of the suit.

ii. The Learned Magistrate erred in fact and in law when she failed to consider the Appellants evidence and submissions on points of law and facts on finding that the Respondent was entitled to quantum as herein; Pain and Suffering of Kshs. 50,000; Loss of expectation of life- Khs. 150,000/-; Loss of Dependency- Kshs. 1,000,000/- which amount are inordinately high in the circumstances.

iii. The Learned Magistrate erred in fact and in law when she failed to consider the Appellants evidence which was tendered by the defence on liability during the hearing of the suit and the submission filed.

iv. The Learned Magistrate erred in law and in fact when she over relied on the Respondent's submissions.

v. The learned magistrate erred in fact and in law by weighing the Respondent's case in isolation from the appellant' case precluded herself from assessing the magnitude of liability impartially.

vi. The Learned Magistrate erred in fact and in law by weighing the Respondent's case in isolation from the appellant' case precluded herself from assessing the magnitude of damages impartially.

vii. The Learned Magistrate erred in law and in fact by disregarding the evidence of the Appellants witnesses in totality thus precluding herself from assessing the magnitude of liability impartially.

viii. The Learned Magistrate erred in law and in fact in aiding the Respondent's case as against the Appellants case.

ix. The learned magistrate erred in law and in fact when she relied on erroneous principles of law in arriving at an excessive award on quantum.

x. The Learned Magistrate erred in fact and in Law in failing to apply the relevant and pertinent judicial principles, precedents and trends regarding the award of quantum.

xi. The Learned magistrate grossly misdirected herself by treating the evidence and submissions before her on liability superficially and consequently arrived at a wrong decision without any basis in law or fact.

xii. The Learned magistrate grossly misdirected herself by treating the evidence and submissions before her on quantum superficially and consequently arrived at a wrong decision without any basis in law or fact.

4. The Appellant prays that this Appeal be allowed, that the Judgment on liability and quantum of the HON. A. Towett, Principal Magistrate be set aside and substituted with a fresh award, that the costs of this Appeal and that of the trial court be awarded to the Appellant and such further orders may be made by this Honourable Court as it deems fit.

5. The court gave directions that the appeal be canvassed by way of written submissions.

Appellant's Submissions

6. The appellant submits that PW1 an uncle to the deceased informed the court that the deceased was travelling to Nakuru when he was involved in fatal accident, however he stated that he did not witness

the accident and only learnt of it from his son who was living with PW2. He stated that the accident occurred on the road.

7. That PW2, the deceased mother, informed the court that her son was 14 years old and a pupil at Mara primary school and that he was visiting his uncle at Eldama Ravine when he was involved in an accident. She said her son was clever and he used to help her with house chores and assisted his siblings with school work. She said she did not witness the accident and that her son depended on her for his needs. She confirmed that her name was not in the OB extract and that the deceased was in the company of his uncle. However, the uncle informed court that he did not witness the occurrence of the accident.

8. The appellant urged this court to find that the Respondent did not discharge the required burden of proof in accordance to Section 107 and-108 of the *Evidence Act*, Cap 80 of the Laws of Kenya which places the burden of proof on the Respondents to prove their case to the required standards failure which the suit will warrant an automatic dismissal. That the plaintiff is required to prove negligence as against the Appellant and also establish a causal link between the Respondents' negligence and his injury if it is first established that the alleged accident did occur. That it is the evidence of PW1 and PW2 that they did not witness the accident and thereof they cannot blame the defendant for the occurrence of the accident they did not witness. They also rely in the case of Nickson Muthoka Mutavi Versus Kenya Agricultural Research Institute (2016) eKLR.

9. Further that it was the evidence of PW1 & PW2 that the minor was 14 years old and school going and it is expected that the minor had been taught safety precaution in school and he had the duty to exercise precaution when crossing the road and cross it when it was safe to do so.

10. Further that the plaintiffs had a duty to ensure that the minor was accompanied on a public road and submit that DW1, testified that on 14th September,2018 he was driving motor vehicle registration number KBA 430B towards Nakuru and it was drizzling and road constructions were ongoing. He saw a pedestrian on phone in front of him and he tried to swerve to a avoid hitting him but unfortunately, the deceased jumped and hit the left side mirror of the vehicle.

11. The appellant further submits that DW1 confirmed that the deceased emerged from an oncoming vehicle while occupied on his phone while crossing the road and that it is common knowledge that one ought to cross the road when it is safe to do so. That the deceased did not only cross the road when the same was busy, he was also occupied on his phone hence his concentration was not on the road and DW1 on seeing him, attempted to avoid hitting him by swerving to the right side which was under construction.

12. They humbly submit that the Plaintiff herein did not prove any of the particulars of negligence levelled against the Appellant as alleged in the Plaint. The Plaintiff called a police officer, PW3 who testified that he was not the investigating officer and from police abstract, the matter was pending under investigations.

13. Further that the Plaintiff failed to lead evidence that would connect the deceased to an act or omission on the part of the 2nd defendant and relied on the case of Evans Mogire Omwansa =VS= Benard Otieno Omolo & another [2016] eKLR where the learned judge so rightly held at paragraph 8 of her judgment that:-

> "The Appellant was under a duty to prove his case on a balance of probability not withstanding that the respondents did not test. The provisions of the *Evidence Act* came to play that he who asserts must prove. It was the appellant's duty to tender satisfactory

evidence to discharge the burden placed upon him. It is not enough to say that since the opposing part has not testified, my testimony must be taken as truthful. It must be proved."

14. On quantum, the appellant submit that a re-evaluation of the quantum herein would be prudent seeing that the Learned trial magistrate arrived at an excessive award on quantum and it is trite law that assessment of quantum of damages in a claim for general damages is a discretionary exercise and the law has set dimensions for an exercise of discretion that it must be exercised judicially, with wise circumspect and upon some legal principles. That the discretion in assessing the amount of general damages payable will be disturbed if the trial court;

    i. Took into account an irrelevant factor or,

    ii. Left out of account a relevant factor or, short of this

    iii. The amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.

15. That it is also trite law that awards must be within consistent limits and court awards for damages must be made taking into account comparable injuries or similar injuries and awards. They rely in the case of Kigaraari Vs Aya (1982-88) 1 Kar 768.

16. That had the Respondent succeeded in proving any liability attributable to the Appellants herein, they propose an award of Kshs. 50, 000/= under pain and suffering, Kshs. 50, 000/= under loss of life expectancy as PW1 & PW2 both testified that the deceased was a student at the time of his death. Thus, it is difficult to speculate what the deceased would have turned out to be in future or ascertain the deceased's future income. They rely in the case of Abdi Kadir Mohammed Vs John Wakaba Mwangi (2009), the honourable court in making its decision where the deceased was aged 21 years, the honourable court made an award of Kshs.70,000/ =. They are further guided by the decision of the Honourable Judge F. Gikonyo, in the case of M'rarama M'nthieri V Luke Kiumbe Murith (2015) EKLR where an award of Kshs. 25,000/= was made for loss of expectancy of life for a deceased person aged 30 years.

17. On damages for loss of dependency, the appellant proposes a global award of Kshs 300,000 instead of multiplicand as the deceased person was not earning and was below the age of majority, there is no justification to make the award and relied on the case of Daniel Kiamba Kimithi &62 Others Versus David Mutiso Kiilu & 4 Others (2016) eKLR where the deceased minors aged between 14-19 years were awarded a global sum of Kshs.300,000/=. And the case of P.I (Suing As A Next Of Kin Of C.m (deceased) =vs= Zena Roses Ltd & Another 2015 E.K.L.R.

18. In conclusion the appellant urged this Court to disturb the award of Kshs.1,201,875/- in general damages as the same is so high as to be an erroneous estimate and inconsistent with recent precedents and costs of this Appeal pray awarded as provided by Section 27(1) of the *Civil Procedure Act*.

Respondent's Submissions

19. The Respondents in their submissions framed the following issues: -

    a. Whether the trial court erred in apportioning liability on the Appellants

    b. Whether the awards made by the trial court were inordinately high.

20. On whether the trial court erred in apportioning liability on the Appellants, they submit that PW 3 (PC Benard Endovo) confirmed the occurrence of the accident on 14th September,2018 involving motor vehicle registration number KBA 430B Toyota Matatu and a pedestrian the deceased herein

along Ravine - Nakuru Road at Kibasiso when it lost control, left its lane and violently knocked down the deceased who was lawfully walking off the road and the deceased sustained fatal injuries. It was his evidence that as per the circumstances of the accident, the driver of the suit motor vehicle was to blame for the accident. He produced police abstract dated 8th October 2019 which blamed the driver, the 2nd Appellants for the accident as P. Exh.3 and was charged in court for causing death by dangerous driving.

21. Further that the 2nd Appellant who testified as DW 1 confirmed that he was charged for offence of causing death by dangerous driving and at the time of testifying, the court had established that he had a case to answer and he had been placed on his defence.

22. The Respondent posed a question as to why an investigator prefer criminal charges against the 2nd Appellant if the deceased was the one to blame for the accident and why would the criminal court place the 2nd Appellant on his defence if at all the deceased was the one who caused the accident.

23. They submit that the 2nd Appellant also testified that on the material day, it was raining and that the road was under construction. That the circumstances of the road required the 2nd Appellant to be extra cautious and drive at low speed at that section of the road as it was raining while the road was under construction speed not just for the safety of other road users but for the safety of his own passengers.

24. And further submit that if the motor vehicle was being driven at a low speed, the impact would not be high a recorded in the post mortem report; that the impact show that the vehicle was being driven at a high speed.

25. The Respondent further submit that DW-1's testimony was that he only hit the deceased with a side mirror and that a side mirror of a vehicle being driven at a low speed cannot cause a head injury consistent with high impact which led to the death of the deceased.

26. And submit that there is no error in the learned magistrate's finding that the deceased died as the 2nd Appellant was driving the vehicle at a high speed when it was not safe to do so and that the Respondents testified that the deceased was walking way off the road on a walkway path when the vehicle lost control and swerved off the road violently knocking the deceased.

27. That DW-1 in his testimony during cross examination confirmed that the deceased was not crossing the road but he was walking along the road thus corroborating the Respondents evidence. That the 2nd Appellant (DW-1) further testified that it was raining and that the road was under construction meaning and the road was slippery making it possible and easier for a vehicle at a high speed to lose control and swerve off the road.

28. The Respondent further submit that at that time of the accident he had encountered a vehicle coming from the opposite direction which was on full lights and his vehicle was also on full lights which required him to slow down in order to avoid a collision with the oncoming vehicle.

29. The Respondents further submit that the police abstract dated 8th October 2019 blamed the 2nd Appellant for the accident and indicated that there was an ongoing criminal case against him arising from the deceased death and the 2nd Appellant confirmed that the criminal court had found that he had a case to answer and he had been put to his defence.

30. That from the evidence before her and the testimonies of both the Respondents and the Appellants, they submit that the learned magistrate correctly held the Appellants 100% liable for the said accident and relied on the case of Butt v K han [1978] K E CA 24 (K L R) where the Court of Appeal held that depending on the circumstances of the road even driving at half the permitted speed will amount to negligence.

31. They further submit that the 2nd Appellant was driving at a high speed when the circumstances of the road required otherwise causing the vehicle to knock the deceased with a high impact and even if the 2nd Appellant was driving the vehicle at 50 KMPH as alleged which they deny, the speed was high and unsafe considering that the it was raining making the road slippery and placed reliance in Patrick Mwiti Mimanene Another V Kevin Mugambi Nkunja 201 3K EH C4044(K L R).

32. Further that the deceased was a minor and could not be held contributory liable for an accident as submitted by the Appellants. Accordingly, they submit and pray that this court finds and holds that the trial court did not err in finding the Appellants 100% liable for the accident and pray that the same is not disturbed.

33. On whether the awards made by the trial court were inordinately high, the Respondents submit that Appellants are aggrieved with the awards made by the trial court. That general damages are awarded at the discretion of the court and the Appellate Court will not be quick to interfere with the discretion of a trial court unless the Appellants demonstrate that the trial court did not exercise its discretion judiciously and relied on the case of Mursal & another v M anese (suing as the legal administrator of Dalphine Kanini M anesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022) (Judgment).

34. In conclusion, the respondents submit that the appellants failed to demonstrate that the trial court disregarded principles of law or took into account irrelevant matters or how it failed to take into account relevant matters nor misapprehended facts while exercising her discretion and that she gave valid reasons for each award and exercised her discretion judiciously.

35. On Pain and suffering, the appellants proposed Kshs. 50,000/- awarded by the trial court and the award is not therefore challenged.

36. On Loss of expectation of life, the award of Kshs. 150,000/- for loss of expectation of life is comparable to award in the case Anthony Konde Fondo & Another –vs- RM C (The Representative of FC (Deceased) [2020] eKLR where the court upheld Kshs. 150,000/- under this head for a minor who died at age 7.

37. The Appellants argue that the court is estopped from speculating what the minor could have turned out to be as it is a wrong approach. That the award under this head is made on the premise that the deceased had the prospects of a good future but for the accident that terminated his life and does not matter whether the deceased was a minor or not. That PW-2 and PW-1 the deceased's uncle and guardian respectively confirmed that the deceased led a happy life of good health.

38. That the Respondents relied on the case of Daniel Kuria Nganga v Nairobi City Council {201 3] eKLR where the court awarded the deceased minor's estate Kshs. 300,000/- for loss of expectation of life. The minor just like the minor herein was 14 years of age at the time of his death.

39. Further that in the trial court, the Appellants recommended an award for Kshs. 70,000/- but surprisingly, the Appellants are now recommending a paltry amount of Kshs. 50,000/- which demonstrates the ill intentions with which this appeal was filed. That the appeal was only filed to delay the payment of the decretal sum as it raises no arguable grounds of appeal.

40. Further that the award of Kshs. 300,000/- in Daniel Kuria Nganga (supra) was made in 2013 and despite the inflation and high cost of living, the trial magistrate awarded a lower amount of Kshs 150,000/- for loss of expectation of life. That although they may want to disagree with the award as being inordinately low, they believe that the same is sufficient to cover the loss of the deceased's life which life was full of promises as testified by the Respondents and as confirmed by the school report

form. They therefore urge this court to uphold the learned magistrate's award of Kshs. 150,000/- for loss of expectation of the deceased's life.

41. On Loss of Dependency, the respondents submit that under this head, the learned magistrate made an award of Kshs. 1,000,000/=. That the learned magistrate found that the deceased was a partial orphan alongside his younger siblings having lost his father at a young age. That the trial court observed that the deceased was the first-born child to PW 2 and his deceased husband and being a first born, he took a leading role in taking care of his younger siblings.

42. They submit that it was the Respondents' case that the deceased at age 14 was a responsible boy who in a way took the role of a father to his younger siblings by helping them do their school homework and assisted the mother with various house chores.

43. That the Respondents proposed Kshs. 3,000,000/- as sufficient under this head while the Appellants proposed Kshs. 300,000/- and the learned magistrate having given the above reasons, relied on this court's decisions in Anthony Konde Fondo & Another –vs- RM C (The Representative of FC (Deceased) [2020] eKLR to award Kshs. 1,000,000/.

44. That in their submissions on this appeal, the Appellants strangely argue that this award ought not to have been granted at all as the deceased was a minor and since he was not earning any salary. They submit that being of the age of majority and earning a salary are not the qualification on which this award is pegged. They place reliance in Court of Appeal's decision in KENYA BREWERIES L I M I T ED -VS- SAR O, [1991] K L R 408 which explained the rationale under which the award for loss of dependency is made in cases of death of a minor.

45. That just like the reasoning of the Court of Appeal captioned herein above, the deceased minor herein was the first-born child in a family which had lost its father and it became incumbent upon him to take care of his younger siblings by helping them with their school assignments, cooking for them, disciplining them and in any case taking the role of a role model of the younger ones.

46. That from the foregoing it is apparent that the deceased family heavily depended on him until his untimely death.

47. They submit that is also important to note that the Appellants in their submissions have intentionally attempted to mislead this court that the learned magistrate adopted the multiplier method to assess the damages awardable for loss of dependency. This is not the case as the learned magistrate correctly used the global lump sum method while relying on decided cases. They rely on the case of Twokay Chemicals Limited v Patrick Makau Mutisya & another [2019] KEHC 5339 (KLR) where the High Court upheld an award of Kshs. 1,500,000/- made in respect of a 16-year-old minor and Similarly, in Francis Odhiambo Nyunja & 2 others v Josephine Malala Owinyi (Suing as the legal administrator of the estate of Kevin Osore Rapando (Deceased) [2020] K E H C 964 (K L R), where the High Court reassessed an award of loss of dependency in respect to a 17-year-old to Kshs. 1,500,000/- and the decisions were rendered in 2019 and 2020, four (4) years before this impugned decision. Further in the case of Daniel Mwangi Kimemi & Others V Representative Of The E State Of N. K (deceased) (2016) eKLR, the High court in 2016 made a global sum award of Kshs 1,000,000/= for loss of dependency of a deceased who was aged 9 years.

48. The respondents submit that the global award of Kshs. 1,000,000/- made by the learned magistrate as damages for loss of dependency considering the merits of the instant case is reasonable and not excessive

49. On Special damages, they argue that this head was not submitted to by the Appellants hence they submit that the same which awarded at Kshs. 1,875/- is not disputed.

50. On Costs, they submit that its settled law that costs ordinarily follow events and the appellants having failed to demonstrate that the awards granted herein were inordinately high or excessive and having failed to successfully argue their appeal, they pray that the appeal be dismissed with costs of the appeal to the respondents.

ANALYSIS AND DETERMINATION

51. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In the case of Mbogo and Another vs. Shah [1968] EA 93 where the Court stated:-

> "...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

52. The duty of the first appellate Court was settled long ago by Clement De Lestang, VP, Duffus and Law JJA, in the locus Classicus case of Selle and another Vs Associated Motor Board Company and Others [1968] EA 123, where the law looks in their usual gusto, held by as follows;-

> ".. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally."

53. In view of the above, I have perused and considered evidence adduced before the trial court together with rival submissions by the parties herein and wish to consider the following:-

    i. whether the trial court erred in holding the appellants 100% liable for the accident

    ii. Whether the trial court erred in assessment of quantum of damages payable to the estate of the deceased.

Whether the trial court erred in holding the appellants 100% liable for the accident

54. Section 107(1) of the *Evidence Act*, Chapter 80 of the Laws of Kenya provides that

> Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

55. From the evidence on record, the deceased was walking off the road when the suit motor vehicle lost control and veered off the road hitting the deceased causing fatal injuries who was a minor aged 14 years which is not disputed by the Appellants. It is not also disputed that it had rained and the road was slippery and the road was under construction.

56. The plaintiff's evidence is that the 2nd Appellant was speeding; the appellant's evidence is that the driver was driving at a speed of 50kph at the time of the accident. In the case of Butt Vs Khan, Civil Appeal No. 40 OF 1977 Madan J.A (as he then was) said;

> " Also in my opinion high speed can be prima facie evidence of negligence in some cases. A person travelling within or at the permitted speed limit may be immune from prosecution for a traffic offence. It is another matter as far as the question of negligence is concerned. Even 15 mph may not be a safe speed in the early hours of the morning when children go to school along and across a road which, known to the driver, as in the instant case, serves as an area with several schools in it. In a manner of speaking, there would be children here, children there and children everywhere. The safe speed on an occasion like this is that which will bring the driver out of the area unscathed and free from accident."

57. Further in the case of Bashir Ahmed Butt Vs Uwais Ahmed Khan, Civil Appeal No. 40 OF 1977, Madan J.A. said:-

> " Indeed, I am of the opinion that the practice of civil courts ought to be that normally a person under the age of ten years cannot be guilty of contributory negligence, and thereafter, insofar as a young person is concerned, only upon clear proof that at the time of doing the act or making the omission, he had capacity to know that he ought not to do to the act or make the omission."

58. I take note of the fact that the minor was 14 years old. In the above court of appeal decision, a minor below the age of 10 years cannot be contributory liable. The minor herein being above 10 years, liability would be apportioned to him if there is proof of negligence on his part. From evidence adduced before the trial court, the appellant's vehicle hit the minor while he was walking off the road. By walking off the road, the minor kept himself safe but was knocked off the road.

59. In my view, the trial court did not err in finding the appellants 100% liable for the accident.

(ii)Whether this court should interfere with award by trial court

60. The principles guiding this court in relooking into the quantum of general damages awarded were set out in Kemfro Africa Limited T/A Meru Express Services & Gathongo Kanini v A.M. Lubia & Olive Lubia (1982-88) I KAR 727 at page 730 as follows: -

> " 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. See Ilango v Manyoka (1967) E.A. 705, 709, 713; Lukenya Ranching and Farming Cooperative Society Limited v Kalovoto (1970) E.A. 414, 418, 419. This court follows the same principles."

61. Further, the principles that guide courts in assessing damages were outlined in Boniface Waiti & another v Michael Kariuki Kamau (2007) eKLR as follows:

    i. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered.

ii. The award should be commensurate to the injuries suffered.

iii. Awards in decided cases are mere guides and each case should be treated on its own facts and merit.

iv. Where awards in decided cases are to be taken into consideration then the issue of own element of inflation has to be taken into consideration.

v. Awards should not be inordinately too high or too low."

62. In Hyder Nthenya Musili & Another v China Wu Yi Limited & Another (2017) eKLR where the court held: -

> "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."

63. In Chhabhadiya Enterprise Ltd & another v Gladys Mutenyo Bitali (Suing as the Administrator and Personal Representative of the Estate of Linet Simiyu – Now (Deceased) (2018) eKLR the court considered the award of Kshs. 100,000/= for loss of expectation of life made under the *Law Reform Act* for a deceased who met her death when she was 12 years old and in class 4.

64. In Daniel Mwangi Kimemi & 2 others v J G M & another (the personal representatives of the estate of N K (DCD) (2016) eKLR the court held: -

> "As a matter of common sense and good judgment, for the deceased who died at the age of nine years; was a student at [particulars withheld] primary school with excellent performance; and the fact that her parents had reasonable expectations that she would finish school, enter the job market and assist them in old age, a sum of Kshs 1,000,000 would be fair compensation under the head of damages for loss of dependency."

65. I find that Kshs. 50,000, Kshs. 150,000 and Kshs. 1,000,000 awarded for pain and suffering, loss of expectation of life and loss of dependency respectively was not excessive as to amount to an arbitrary and erroneous award. The reasoning of the trial court was correct and there is nothing suggesting that discretion was improperly exercised. The trial court examined the circumstances of each case that was considered in arriving at the award. This appeal therefore fails and is dismissed with costs to the Respondent.

66. Final Orders:-

1. Appeal on both liability and quantum is hereby dismissed.

2. Costs of appeal to the Respondents.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 31ST DAY OF JULY 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis.

Ms. Kagira for Appellant.

Ms. Ondigi for Respondent.