



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Rono & another v Cheruiyot & another (Suing as the Legal
Representatives of the Estate of Ronald Kirui (Deceased)) (Civil Appeal
60 of 2023) [2025] KEHC 11329 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL 60 OF 2023
JK NG'ARNG'AR, J
JULY 31, 2025**

BETWEEN

NICHOLAS RONO 1ST APPELLANT

ANGELINE CHEPWOGEN SIGEI 2ND APPELLANT

AND

STANLEY KIPKURUI CHERUIYOT 1ST RESPONDENT

HELLEN CHEPKORIR CHERUIYOT 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF RONALD
KIRUI (DECEASED)**

*(Being an Appeal from the Judgment of Resident Magistrate, Wamae
E. at the Magistrate's Court at Bomet, Civil Suit Number 15 of 2020)*

JUDGMENT

1. The Respondents [then Plaintiffs] as the Legal Representative of the deceased Ronald Kirui, sued the Appellants [then Defendants] for general and special damages that arose from a road traffic accident on 22nd May 2019 along Olbutyo-Sigor Road.
2. The trial court conducted a hearing where the Respondents called two witnesses before closing their case while the Appellants called one witness in aid of their defence.
3. In its Judgement delivered on 31st August 2023, the trial court awarded the Respondents a net award of Kshs 2,335,315/=.



4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 29th November 2023 appealing against the apportionment of liability and the award on damages.
5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Respondents' case.

7. Through their Amended Plaint dated 17th June 2021, the Respondents stated that the deceased Ronald Kirui was involved in a road traffic accident on 22nd May 2019. That the deceased was run over by motor vehicle registration number KBC 181S.
8. It was the Respondents' case that the Appellants were negligent in causing the accident. The particulars of the negligence were stated in paragraph 7 of the Plaint. That as a result of the accident, Ronald Kirui suffered fatal injuries.
9. The Respondents prayed for special and general damages against the Appellant under the Fatal Accidents Act and the Law Reform Act.
10. Through their written submissions dated 3rd June 2025, the Respondents submitted that the trial court did not err when it found the Appellant's driver to be 100% liable for causing the accident. That the evidence of the police officer [PW1] was uncontroverted and they relied on *Dhalay v Republic* [1995-1998] EA 29.
11. On special damages, the Respondents submitted that they proved that they incurred Kshs 128,515/= while the trial court awarded Kshs 108,515/=. The Respondents urged this court to enhance the award under special damages to Kshs 128,515/=.
12. It was the Respondents' submission that the trial court did not err when it used a multiplicand of 15,120/= as it was reasonable. They relied on *Hawo Salad Kutu t/a GarbaQalla Filling Station v Cicilia Kirina* [suing as the legal representative of the estate of Peter Gitonga Muguimo [deceased] [2020] eKLR and *Jacob Ayiga Marija & another v Simeon Obayo* [2005] eKLR. It was the Respondents' further submission that the trial court did not err when it adopted a multiplier of 35 years and a dependency ratio of 1/3.
13. Under pain and suffering, the Respondents submitted that the award of Kshs 10,000/= should be increased to Kshs 30,000/= and the award under loss of expectation of life to be enhanced from Kshs 100,000/= to Kshs 200,000/=. They relied on *Kenya Red Cross v IDS* [suing as the legal representative of the estate of MDR [deceased] [2020] eKLR and *West Kenya Sugar Co. Ltd v Philip Sumba Julaya* [suing as the administrator and personal representative of the estate of James Julaya Sumba] [2019] eKLR.

The Appellant's/Defendant's case.

14. Through its statement of defence dated 28th October 2020 the Appellants denied the occurrence of the accident on 22nd May 2019 and further denied being the beneficial and registered owner of motor vehicle registration number KBC 181S.



15. It was the Appellants' case that if the accident occurred then it was caused by the negligence and carelessness of the deceased. The particulars of negligence were contained in paragraph 4 of their Defence.
16. At the time of writing this Judgement, the Appellants had not filed their written submissions despite this court directing on 9th October 2024, that the present Appeal would be canvassed through written submissions.
17. I have gone through and carefully considered the Record of Appeal, the supplementary Record of Appeal dated 25th January 2024, the Supplementary Record of Appeal dated 2nd May 2025 and the Respondents' written submissions dated 3rd June 2025. The only issue that I have sieved for my determination was whether the trial court erred in its findings on liability and quantum.

Liability

18. No. 85540PC Mathias Chacha [PW1] testified that the deceased was a passenger on the subject motor vehicle when he slipped, fell and was overrun by the rear tires of the motor vehicle. PW1 testified that the driver of the motor vehicle was not authorized to carry passengers and was wholly to blame for causing the accident. When PW1 was cross examined, he testified that his testimony was based on the contents of the Occurrence Book and his experience of over 10 years being a traffic officer.
19. Stanley Kipkurui Cheruiyot [PW2] testified that he was the deceased's father and an eye witness. PW2 testified that the deceased was on top of the subject motor vehicle arraigning stones and when the deceased was climbing down, the vehicle moved and the deceased slipped from its load carrier and was overrun. PW2's testimony on the circumstances of the accident was uncontroverted upon cross examination.
20. On the other hand, Amos Kiplangat Sang [DW1] testified that he was the driver of the subject motor vehicle. DW1 testified that he had loaded the subject motor vehicle with ballast and as he left the site, the deceased suddenly jumped onto the vehicle from the left-hand side and as he attempted to jump, one of the trees by the side of the road hit him and he fell underneath the truck and was overrun. When DW1 was cross examined, he testified that he did not see how the deceased met his death and that there was no one atop the vehicle. When he was re-examined, he testified that he could not explain how the deceased was run over and that he heard screams from members of the public telling him that he had overrun the deceased.
21. In analysing the above evidence, the only people who could describe the circumstances of the accident was the investigating officer, eye witness [PW2] or the driver [DW1]. No. 85540 PC Mathias Chacha [PW1] testimony was based on the contents of the Occurrence Book. This meant that the circumstances of the accident as described by PW1 were not a first-hand account of the circumstances of the accident as his evidence was based on contents that he read. In other words, PW1's testimony was hearsay and had no probative value.
22. Stanley Kipkurui Cheruiyot [PW2] testimony was an eye-witness testimony. He described the circumstances of the accident and blamed the Appellants' driver [DW1] for causing the accident. As I have noted earlier, PW2's testimony as to the circumstances of the accident was uncontroverted.
23. I have analysed the driver's [DW1] testimony and it was contradictory. On one hand he testified with clarity that the deceased jumped onto his motor vehicle and while attempting to jump again, the deceased was hit by a tree by the road side which led to his fall underneath the vehicle. On the other hand, upon cross examination and re examination, he testified that he could not tell how the deceased



met his death and that he was only alerted by members of the public that he had run over the deceased. In my view, the driver [DW1] could not describe the circumstances leading to the accident.

24. This leaves this court with the eye witness [PW2] testimony. This testimony was uncontroverted. In accordance to section 107 of the *Evidence Act* on the burden of proof and also in reference to the standard of proof which was on a balance of probabilities, it is my finding that the Appellants were wholly to blame for causing the accident. The Respondents discharged their burden of proof.
25. Flowing from the above, I do not find fault with the trial court's apportionment of liability and I uphold the same.

Quantum

26. With regard to the award on damages, the trial court awarded the Respondent a net award of Kshs 2,335,315/=.
27. In regard to the pain and suffering and loss of expectation of life, I will refer to the oft-cited case of *Mercy Muriuki & another v Samuel Mwangi Nduati & Anor* [Suing as the Legal Administrators of the Estate of the late Robert Mwangi] [2019] KEHC 9014 [KLR], stated: -

“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”.
28. It was an undisputed fact that the deceased died on the spot after being run over by the subject motor vehicle. This meant that the deceased did not suffer any prolonged pain. Upon considering the trial court's awards on the same and being persuaded by the above authority, it is my finding that the trial court's award of Kshs 10,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life were just and fair. I therefore uphold the awards.
29. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

“Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.”
30. The trial court awarded the Respondents Kshs 2,116,800/= by using a monthly wage of Kshs 15,1200/=, a multiplier of 35 years and a ratio of 1/3.
31. I have considered the evidence and it was stated by the deceased's father, Stanley Kipkurui Cheruiyot [PW2] that the deceased was a casual labourer who used to earn Kshs 20,000/= per month.
32. I have gone through the record and I have note that there was no proof of income from the exhibits that the Respondents produced in court. With respect to the trial court, I find that the safest way to make an award under this head where there is no ascertainable proof of income would be to go the global



sum way. In *Moses Mairua Muchiri v Cyrus Maina Macharia* [Suing as the personal representative of the estate of Mercy Nzula Maina [deceased] [2016] KEHC 5958 [KLR], Ngaah J. held as follows: -

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

33. In determining an award under this head, I have considered the parties’ proposals under this head, the fact that the deceased died aged 20 years old and the fact that the deceased was survived by his father and mother. Having considered the above, it is my finding that the award of Kshs 2,116,800/= was excessive. I will therefore be guided by the global award approach and make an award of Kshs 1,500,000/=.
34. With regard to special damages, the Respondents pleaded: -
 - i. Funeral Expenses Kshs 100,000/=
 - ii. Hearse, Coffin, P.A System and tents Kshs 40,000/=
 - iii. Letters of Administration Kshs 15,000/=
35. In the bundle of receipts produced as P. Exh 6, I have seen receipts for funeral expenses totalling to Kshs 107,650/=, a receipt for legal fee of Kshs 20,000/= a motor vehicle search receipt and postage stamp receipts totalling to Kshs 315/=. This totals to Kshs 128,515/=.
36. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court’s award on general damages. This then translated the final award as: -
 - i. Pain and suffering Kshs 10,000/=
 - ii. Loss of expectation of life Kshs 100,000/=
 - iii. Loss of dependency Kshs 1,500,000/=
 - iv. Add special damages Kshs 128,515/=
 - v. Total Kshs 1,738,515/=
37. In the end, the Appeal dated 29th November 2023 is allowed. Each party shall bear their costs in the Appeal while the costs of the main suit shall remain as awarded by the trial court.
38. 30 days stay of execution granted.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 31ST DAY OF JULY, 2025.

J.K.NG’ARNG’AR

JUDGE

Judgement delivered in the presence of Ondimu for the Appellant, Kadet for the Respondent. Siele and Susan [Court Assistants].

