



**Tanui v Siele & another (Suing as the Personal and Legal Administrators
of the Estate of Enock Kibet Yegon - Deceased) (Civil Appeal
E011 of 2021) [2024] KEHC 2776 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E011 OF 2021
RL KORIR, J
MARCH 20, 2024**

BETWEEN

RONALD TANUI APPELLANT

AND

LENOARD KIPYEGON SIELE 1ST RESPONDENT

JOICE CHEPKIRUI SIELE 2ND RESPONDENT

**SUING AS THE PERSONAL AND LEGAL ADMINISTRATORS OF THE
ESTATE OF ENOCK KIBET YEGON - DECEASED**

*(Being an Appeal from the Judgment of the Senior Resident Magistrate,
Omwange J. at the Magistrate's Court at Sotik, Civil Suit Number 138 of 2019)*

JUDGMENT

1. The Respondents (then Plaintiffs) as the Personal and Legal Administrators of the estate of the deceased, sued the Appellant (then Defendant) for General and Special Damages that arose when their son, the deceased was allegedly involved in a road accident while aboard Motor Vehicle Registration Number KCR 007X which allegedly belonged to the Appellant.
2. The trial court conducted a hearing where the Respondents produced three witnesses in support of their case and the Appellant produced one witness in defence.
3. In its Judgment delivered on 13th April 2021, the trial court awarded Kshs 1,288,000/= as General and Special Damages to the Respondents (then Plaintiffs).
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 23rd April 2021 and relied on the following grounds:-



- I. That the award of general damages awarded to the Respondent was manifestly and inordinately excessive in the circumstances.
 - II. That the learned trial Magistrate acted in error when he failed to adhere to and/or adopt the principles applicable in respect of computation of damages payable to a minor victim of a fatal accident.
 - III. That the learned trial Magistrate erred in law and principle by disregarding decisions of superior courts in similar issues cited by the Appellant in its written submissions and thus breaching the principle of stare-decis, thereby reaching an erroneous decision.
 - IV. That the learned trial Magistrate erred in awarding damages under the heading of loss of dependency and pain and suffering, after applying a lump sum award.
 - V. That the learned trial Magistrate grossly erred in law and in principle by re-inventing the wheel of justice on a well-trodden path of justice where a plethora of decisions of the superior courts exist thereby whimsically arriving at an unlawful decision.
 - VI. That the learned trial Magistrate erred in law and fact when he relied on extraneous issues as a basis for his determination on liability.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of 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. This principle was espoused in the Court of Appeal case of Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR.

The Plaintiffs/Respondents case.

6. Through their Plaint dated 23rd September 2019, the Respondents stated that their son, Enock Kibet Yegon was involved in a road accident on 10th April 2019 while aboard Motor Vehicle Registration Number KCR 007X. It was their case that the Appellant was the registered owner of the said motor vehicle.
7. It was the Respondents' case that the Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 5 of the Plaint. That as a result of the accident, Enock Kibet Yegon suffered fatal injuries.
8. The Respondents prayed for Special and General Damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.

The Appellant's/Defendant's Case.

9. Through his Statement of Defence dated 8th November 2019, the Appellant denied the occurrence of the accident on 10th April 2019 and further denied that that Enock Kibet Yegon was aboard Motor Vehicle Registration Number KCR 007X. The Appellant also denied being the registered owner of Motor Vehicle Registration Number KCR 007X.
10. It was the Appellant's 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 10 of the Defence.
11. On 15th March 2023, I directed that this Appeal be canvassed by way of written submissions.



The Appellant's Submissions.

12. The Appellant submitted that the trial court erred when it apportioned him 80% liability. That the trial court ought to have found the deceased 100% liable as he demonstrated in his evidence that the deceased hang on the rear part of the moving lorry which then caused him to fall down on the tarmac and sustain the fatal injuries. The Appellant further submitted that the deceased was not a passenger aboard Motor Vehicle Registration Number KCR 007X.
13. It was the Appellant's submission that the damages awarded must be within the limits set out by previous comparable cases. That there ought to be uniformity in awards that involve similar injuries.
14. Under the heading of pain and suffering, the Appellant submitted that the deceased died on the same day and that there was no evidence to show that the deceased had suffered any pain before his death. The Appellant proposed an award of Kshs 10,000/= under this head and relied on *Easy Coach Bus Services & another v Henry Charles Tsuma & another* (suing as the Administrators and Personal Representatives of Josephine Weyanga Tsuma (Deceased) [2019] eKLR and *Awadh Ahmed Awadh v Shakil Ahmed Khan* [2001] eKLR.
15. With respect to loss of expectation of life, the Appellant submitted that there was no evidence on how the trial court arrived at the award of Kshs 150,000/= which was inordinately high. The Appellant proposed an award of Kshs 80,000/= under this head and relied on *Easy Coach Bus Services & another v Henry Charles Tsuma & another* (supra).
16. Under the heading of loss of dependency, the Appellant submitted that although the court was correct in applying the global award, the award of Kshs 1,400,000/= was inordinately high. The Appellant further submitted that the deceased was a minor aged 16 years of age and it was unknown whether he would have lived to the retirement age. That it was also impossible to know what the deceased would have become in his adult life.
17. It was the Appellant's proposal that this court awards between Kshs 600,000/= to Kshs 700,000/= under this head and he relied on *Chen Wembo & 2 others v I K K & another* (suing as the legal representatives and administrators of the estate of C R K) (2017) eKLR and *Chabhadiya Enterprise Ltd v Gladys Mutenyo Bitali* (suing as the Administrator and Personal Representative of the estate of Linet Simiyu) [2018] eKLR.
18. The Appellant prayed that his Appeal be allowed and he be awarded the costs of the Appeal

The Respondents Submissions.

19. The Respondents submitted that the trial court applied the correct principles and properly assessed the damages. That an appellate court would only interfere with an award of damages when it is convinced that such an award was inordinately high or low or that the trial court considered and irrelevant factor in awarding the damages. The Respondents further submitted that comparable injuries should be compensated by comparable awards.
20. Under loss of dependency, it was the Respondents' submission that the trial court correctly awarded Kshs 1,400,000/=. That cognizant to the harsh economic times and the current inflationary trends, the award of Kshs 1,400,000/= was not inordinately high.
21. On pain and suffering, the Respondents submitted that the trial court correctly awarded Kshs 50,000/= which was the conventional lower amount awarded by courts under this limb. The Respondents further submitted that the deceased suffered excruciating pain before he succumbed to his injuries.



22. Under loss of expectation of life, the Respondents urged this court not to interfere with this award. That the trial court had noted that the deceased had died aged 16 years and had great potential in life going by the stellar performances both in his academic and extra-curricular activities. The Respondents further submitted that the trial court deducted the double entitlement and that this court should not interfere with the award.
23. The Respondents submitted that the trial court correctly found that the accident had been wholly caused by the Appellant and that the Appellant was to blame for causing the accident. The Respondents further submitted that in their submissions in the trial court, they had conceded liability of 20% (without prejudice) and that was the basis upon which the trial court apportioned the liability of 80:20 in favour of the Respondents.
24. It was the Respondents' submission that the award by the trial court was reasonable and that the Appellant had failed to demonstrate that the trial court applied the wrong principles in arriving at the quantum payable. The Respondents urged this court to dismiss the Appeal with costs as it lacked merit.
25. I have gone through and carefully considered the Record of Appeal dated 3rd August 2022, the Supplementary Record of Appeal dated 20th January 2023, the Appellant's Written Submissions dated 3rd March 2023 and the Respondents' Written Submissions dated 9th March 2023 and I sieve two issues for my determination as follows:-
 - i. Whether the trial court correctly apportioned liability
 - ii. Whether the damages awarded were inordinately high.
 - i. Liability
26. In its Judgment dated 13th April 2021, the trial court apportioned liability at 80:20 in favour of the Respondents.
27. The fact of the occurrence of the road accident was undisputed. The dispute that was for determination was who between the deceased and the Appellant was to blame for the said accident.
28. The Respondents led evidence through Leonard Kipyegon Siele (PW1) who testified that his son was aboard Motor Vehicle Registration Number KCR 007X when it was involved in an accident that led to the death of his son, Enock Kibet Yegon. PW1 testified that the driver of the said Motor Vehicle which was an Isuzu Canter was negligent in causing the accident. When PW1 was cross examined, he testified that he did not visit the scene of the accident on the material day but only visited it after a week had lapsed.
29. Reuben Chirchir (PW2) testified that he was an eye witness to the accident. That on the material day, as he walked along Litein- Sotik area at around Kapkatet, he witnessed Motor Vehicle Registration Number KCR 007X being driven at a high speed where it suddenly lost control, veered off the road and caused an accident. PW2 further testified that the deceased was a passenger in the said motor vehicle.
30. It was PW2's testimony that the driver of Motor Vehicle Registration Number KCR 007X was negligent as he drove the vehicle at a high speed and was not mindful of other road users.
31. When PW2 was cross examined, he testified that he did not see passengers inside the said motor vehicle and further that he did not know where the deceased sat. He further testified under cross examination that the driver of the motor vehicle was over speeding and that the deceased fell on the road.



32. In his defence, the Appellant called on the evidence of Haron Kiprono (DW1) who was the driver of Motor Vehicle Registration Number KCR 007X. DW1 testified that on the material day, he dropped goods at his employer's shop in Kapkatet town and thereafter took the said motor vehicle to be washed.
33. It was DW1's testimony that he was alone in the motor vehicle. That he later came to learn that the deceased hang on the rear part of the moving motor vehicle without his knowledge. It was DW1's testimony that the deceased lost grip and landed on the tarmac thereby occasioning him fatal injuries.
34. DW1 testified that he came to know of the accident when he was stopped by boda boda riders who informed him that he had caused an accident as someone who was hanging on the lorry had fallen down on the tarmac.
35. When he was cross examined, DW1 testified that he was driving the motor vehicle at 60km/h and that he did not know the deceased before the accident. DW1 further testified that he blamed the deceased for the accident.
36. In my analysis of the evidence above, it is clear to me that there are two distinct narrations that attempt to explain the circumstances of the accident. In this particular case, there exists an eye witness, Reuben Chirchir who testified as PW2.
37. I have critically gone through the testimony of PW2 with keen interest as it would help this court understand the circumstances of the accident. In my analysis of PW2's evidence, I have noted material contradictions. Firstly, PW2 testified that he saw the driver of Motor Vehicle Registration Number KCR 007X over speeding and that he lost control of the vehicle thereby causing an accident.
38. The circumstances of the accident are not vividly explained by the eye witness. Was the deceased knocked down, thrown out of the vehicle or did he slip from the back of the lorry as alleged by the Appellant. To my mind, if the accident occurred as alleged by PW2, the driver who was to be in the same cabin as the deceased would also have suffered some injuries.
39. Secondly, PW2 testified that the deceased was a passenger in Motor Vehicle Registration Number KCR 007X. PW2 contradicted his testimony upon cross examination when he testified that he did not see any passengers in Motor Vehicle Registration Number KCR 007X. This testimony does not fill this court with confidence that PW2 was actually an eye witness to the said accident.
40. In totality, the testimony of PW2 has failed to paint a true picture in regards to the circumstances that led to the accident. When I weigh Reuben Chirchir's (PW2) evidence against the driver, Haron Kiprono's (DW1) evidence, the possibility that the deceased illegally hang on the motor vehicle cannot not ruled out.
41. In light of the above, it is difficult for this court to ascertain who caused the accident. In such cases, court have apportioned liability equally. In Hussein Omar Farah v Lento Agencies [2006] eKLR, the Court of Appeal observed that:-

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.....”



42. Similarly in *Postal Corporation of Kenya & another v Dickens Munayi* [2014] eKLR, Ngenye Macharia J. held that:-

“For the foregoing reasons, I am clear in my mind, that it is difficult to tell the extent to which each party (Respondent and Appellants’ driver) contributed to the accident. And as rightly submitted by counsel for the Appellants, when the court is in doubt on the extent of contribution by either party, the most prudent thing to do is to apportion the contribution at a ratio of 50%:50%. I therefore entirely concur with the findings in the cited cases of *Hajiv Marair Freight Agencies Ltd* [1984] KLR, 139 in which the Court of Appeal held;

“Where it is proved by evidence that both parties are to blame and there is no means of making a reasonable contribution the blame can be apportioned equally on each

43. It is therefore my finding that the deceased and the Appellant were equally to blame for the accident and I proceed to apportion liability at 50:50.

ii. Whether the damages awarded were inordinately high.

44. The trial court awarded the Respondents Kshs 1,288,000/= as general and special damages.

45. The principles upon which an appellate court may alter an award by the trial court have been long settled. In the case of *Johnson Evan Gicheru vs Andrew Morton & another* (2005) eKLR, the Court of Appeal stated that:-

“In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the court of appeal should be convinced that either the judge acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the appellant was entitled”.

46. It is also a principle of law that awards must be reasonable and comparable to awards in similar cases. In the case of *Tayab v Kinanu* [1983] eKLR, the Court of Appeal gave guidance as follows:-

“I would commend to trial judges the following passage from the speech of Lord Morris of Borth-y-Gest in the case of *West (H) & Son Ltd v Shephard* [1964] AC 326 at 345:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.”

47. In regard to the pain and suffering, the trial court awarded Kshs 50,000/=. The trial court stated that the basis of the award was that the deceased died 10 minutes after he had arrived at the hospital and that it was clear that he had suffered some pain before he died. The Appellant submitted that the award of Kshs 50,000/= was excessive and proposed an award of Kshs 10,000/=. On the other hand, the Respondents submitted that the award of Kshs 50,000/= was sufficient and that this court should not interfere with it.



48. In the case of *West Kenya Sugar Co. Limited v Philip Sumba Julaya* (Suing as the Administrator and personal representative of the estate of James Julaya Sumba) [2019] eKLR, Njagi J observed that-

“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. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.”

49. Similarly in *Sukari Industries Limited v Clyde Machimbo Jumba* [2016] eKLR Majanja J. stated:-

“On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased’s estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged after death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years.....”

50. I have gone through the trial court proceedings and while Leonard Kipyegon Siele (PW1) testified that the deceased died on the following day while receiving treatment, it is clear from the documentary evidence he produced in the trial court that the deceased died on the material day i.e. 10th April 2019. The Post Mortem Form produced as P.Exh 6 and the Death Certificate produced as P.Exh 11 all indicated that the deceased died on 10th April 2019.

51. It was also clear from the Respondents’ testimonies that the deceased died in hospital, a fact that was not challenged. This meant that the deceased did not die on the spot and must have suffered some pain before he succumbed to his injuries. It is my finding therefore that the award of Kshs 50,000/= for pain and suffering was reasonable. I am persuaded by *Acceler Global Logistics vs Gladys Nasambu Waswa & another* (2020) eKLR, where Nyakundi J. held that:-

“It is not in dispute that the deceased sustained serious injuries and that the deceased died on the spot. This raises a fundamental question of what each unit of pain and suffering is worth. This question has in my view been authoritatively discussed in an article in the *International Review of Law and Economics* entitled “Pain and Suffering in Product Liability Cases: Systematic Compensation or Capricious Awards” by W. Kip Viscussi who argues that:-

“Pain and suffering is generally recognized as being legitimate component of compensation but one for which we have no accepted procedure of measurement....Pain and suffering is by no means a negligible component of awards....The general implication is that pain and suffering awards are not entirely random or capricious.”

The position laid down in *Rose vs Ford* is that where the period of suffering is short, only nominal damages are awarded. That was in 1935 and 500 pounds was awarded for a two days suffering. I am persuaded that the amount of Ksh. 50,000/= awarded under the said head is not in my view excessive nor has it been shown to be erroneous or unreasonable. I find no reason to fault the award under this head.”

52. On the issue of the loss of expectation of life, the trial court awarded the Respondents Kshs 150,000/=. The Appellant submitted that the award of Kshs 150,000/= was inordinately high and he proposed an



award of Kshs 80,000/= .The Respondents on the other hand submitted that the Appellant’s proposal was inordinately low compared to other conventional awards.

53. Under this head, I am persuaded by the case of *Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another* (suing as the Legal Administrator of the estate of the late Robert Mwangi) (2019) eKLR where Muchemi J. 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”.

54. The courts have overtime adopted the figure of Kshs 100,000/= for loss of expectation of life. The Appellant propos. Guided by the aforementioned case law, I substitute the award under loss of expectation of life from Kshs 150,000/= to Kshs 100,000/=.

55. On the issue 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.

56. The trial court adopted the global sum approach and awarded the Respondents Kshs 1,400,000/= under this head. Ordinarily, calculations under this head are done using the multiplicand, the dependency ratio and the multiplier. In the instant case however, the deceased died aged 16 years of age as evidenced by the Death Certificate (P.Exh 11). The deceased died while in school and he was not engaged in any gainful employment or business. In such cases, courts are minded to use the global sum approach in determining the loss of dependency. In *Frankline Kimathi Maariu & Another vs Philip Akungu Mitu Mborothi* (suing as Administrator and Personal Representative of Antony Mwititi Gakungu deceased [2020] eKLR the court stated:-

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.

The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

57. Similarly in *Moses Mairua Muchiri vs Cyrus Maina Macharia* (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, 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.”

58. The Appellant submitted that the award of Kshs 1,400,000/= was excessive and proposed an award that ranged between Kshs 600,000/= to Kshs 700,000/=. The Respondents on the other hand submitted that the award was reasonable.
59. I have considered the Appellant’s submissions in which he attached *Chen Wembo & 2 others v I K K & another* (suing as the legal representatives and administrators of the estate of C RK (Deceased) [2017] eKLR where the trial court awarded a lump sum of Kshs 600,000/= for a child aged 11 years.
60. In *County Government of Meru v James Mwaki & another* [2018] eKLR, Majanja J. reduced the award under loss of dependency of a 13 year old deceased child from Kshs 1,200,000/= to Kshs 800,000/=.
61. In *D M M (Suing as the Administrator and Legal Representative of the Estate of L K M v Stephen Johana Njue & Another* [2016] eKLR, Gikonyo J. enhanced the award under loss of dependency from Kshs. 700,000/= to Kshs. 1,200,000/= for a 16 year old who was in school.
62. Guided by the aforementioned case law and the fact that in the instant case, the deceased died aged 16 years while still in school, I find that the award of Kshs 1,200,000/= would be reasonable. In the circumstances therefore, I substitute the award of Kshs 1,400,000/= with the award of Kshs 1,200,000/=.
63. I have noted that the trial Magistrate subtracted loss of expectation from the final computation citing double entitlement. There exists no issue of double entitlement as the Respondents being the legal representatives of the estate of the deceased, have the right to claim under the *Law Reform Act* and the *Fatal Accidents Act*. The same was succinctly explained by the Court of Appeal in *Hellen Waruguru Waweru (suing as the legal representative of peter Waweru Mwenja (deceased))vs Kiarie shoe stores limited* (2015) eKLR, where it stated:-

“This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased’s estate under the *Law Reform Act* and dependants under the *Fatal Accidents Act* are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the *Fatal Accidents Act* should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the *Law Reform Act*, hence the issue of duplication does not arise.

The confusion appears to have arisen because of different reporting of the *Kenfro* case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio decidendi. The same case, however, is more fully reported in [1987] KLR 30 as *Kenfro Africa Ltd t/a Meru Express Services 1976 & Another -VS- Lubia & Another (No. 2)* and the ratio decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia, that:-

“6. An award under the *Law Reform Act* is not one of the benefits excluded from being taken into account when assessing damages under the *Fatal Accidents Act*; it appears the legislation intended that it should be considered.



7. The Law Reform Act (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act. This therefore means that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death
64. It is my finding that the issue of double compensation does not arise as a party entitled to sue under the Fatal Accidents Act is also entitled to sue under the Law Reform Act. I proceed to award Kshs 50,000/= for pain and suffering and Kshs 100,000/= for loss of expectation of life.
65. With regard to Special Damages, the Respondents stated that they had incurred Kshs 20,000/= as legal fees to procure the Letters of Administration ad litem. They produced the receipt and the same was marked as P. Exh 4. I find that the Respondents have proved this expenditure.
66. The Respondents stated that they had incurred Kshs 130,000/= as funeral expenses. They Produced a bundle of receipts which indicated that they had spent Kshs 130,000/= for the general expenses of the funeral. I find that they have proved this expenditure.
67. The Respondents stated that they had incurred Kshs 9,500/= for the mortuary fee but they attached a receipt which showed that they had incurred Kshs 7,500/=. It is my finding that the expenditure incurred for the mortuary fee was Kshs 7,500/.
68. The Respondents did not attach any receipt to indicate that they incurred Kshs 550/= for a search. Accordingly, that claim fails.
69. In total, it is my finding that the Special Damages awardable are Kshs 157,500/=
70. In light of the foregoing, the amount awarded to the Respondents is as follows:-
- i. Pain and Suffering Kshs 50,000
 - ii. Loss of expectation of life Kshs 100,000
 - iii. Loss of dependency Kshs 1,200,000
- Kshs 1,350,000
- Less 50% Contribution Kshs 675,000
- Kshs 675,000
- Add Special Damages Kshs 157,500
- TOTAL Kshs 832,500
71. In the end, the Appeal dated 23rd April 2021 succeeds as the amount awarded to the Respondents is reduced from Kshs 1,288,000/= to Kshs 832,500/=
72. Each party to bear their own costs in this Appeal while the costs and interest in the suit remain as awarded by the trial court.
73. Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 20TH DAY OF MARCH, 2024

.....

R. LAGAT-KORIR



JUDGE

Judgement delivered virtually in the presence of Mr. Opondo for the Appellant, and in the absence of the Respondents Siele (Court Assistant)

