

KENYA / JUDGMENT

Marpe & another (Suing as the administrators of the Estate of Ntimioe David Marpe - Deceased) v Kariuru & another [2026] KEMC 853 (KLR)

[2026] KEMC 853 (KLR)

COURT

Magistrate's Court

BEFORE

LA Mumassabba

CASE / FILE NUMBER

Civil Case E315 of 2025

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATES' COURT AT NAKURU

CIVIL CASE NO. E315 OF 2025

NOKAYO MARPE & JACOB LINTI SANINGO

(Suing as the Administrators of the Estate of

NTIMIOE DAVID MARPE (DECEASED)*.....PLAINTIFFS

-VERSUS-

SAMUEL NGUNJIRI KARIURU.....1ST DEFENDANT

JOSEPH MWANGI KIMANI.....2ND DEFENDANT

JUDGMENT

Introduction

1. The Plaintiffs instituted this suit in their capacity as the administrators of the Estate of Ntimioe David Marpe (Deceased) following a road traffic accident which occurred on 9th November 2024 along the Gilgil-Nakuru Road at the Lake Oil area. The claim is brought under the Law Reform Act and the Fatal Accidents Act.

2. It is the Plaintiffs' case that the deceased, who was six years old at the time of his death, sustained fatal injuries following the accident involving motor vehicle registration number KCY 346W. The Plaintiffs brought the claim for the benefit of the deceased's estate and dependants, who include his parents.
3. The issue of liability was settled on 8th July ,2026 by consent at the ratio of 85:15 in favour of the Plaintiffs. The only issue remaining for determination is therefore quantum.
4. The Plaintiffs filed Written Submissions on quantum. The Defendants were directed by the Court to file and serve their submissions by 19th August ,2026. However, the Defendants did not file submissions within the period directed by the Court.
5. The failure by the Defendants to file submissions does not absolve the Court of its duty to independently assess the evidence, the applicable law and the appropriate quantum.

Plaintiffs' Submissions

1. The Plaintiffs proposed the following awards:
 1. Pain and suffering – Kshs.80,000/=;
 2. Loss of expectation of life – Kshs.250,000/=;
 3. Loss of dependency/lost years – Kshs.1,500,000/=; and
 4. Special damages – Kshs.125,550/=.
2. On pain and suffering, the Plaintiffs relied on **Melbrimo Investment Company Ltd v Dinah Kemunto & Francis Sese [2022] eKLR**, **Acceler Global Logistics v Gladys Nasambu Waswa & another [2020] eKLR**, and **Sukari Industries Ltd v Clyde Machimbo Juma [2016] eKLR**.
3. On loss of expectation of life, they relied on **Ahmed & another v NKJ & another** and **Benson Musyoki Munyao & another v Omacha Enterprises Ltd & another [2017] eKLR**.
4. On loss of dependency, the Plaintiffs relied on **Daniel Mwangi Kimemi & 2 others v JGM & another [2016] eKLR**, **Ahmed & another v NKJ & another**, **Kenya Power & Lighting Company v Gacugu & another [2024] KEHC 7712 (KLR)** and **Onsomu v Joshua Nyamenia Ogari & another**.
5. They submitted that the Special Damages of Kshs.125,550/= were specifically pleaded and strictly proved by the documentary evidence produced before the Court.

Analysis and Determination

1. The issue of liability having been settled by consent, the only issue for determination is quantum.

A. Pain and Suffering

1. The award under this head is intended to compensate the estate for the pain and suffering endured by the deceased between the time of injury and death.
2. The evidence before the Court is that the deceased died at the scene of the accident. There is no evidence that he survived for an appreciable period or endured prolonged suffering.
3. In **Sukari Industries Ltd v Clyde Machimbo Juma** [2016] eKLR, the Court observed that where death occurs shortly after an accident, a modest award may be made for pain and suffering. The Plaintiffs also relied on **Melbrimo Investment Company Ltd v Dinah Kemunto & Francis Sese** [2022] eKLR and **Acceler Global Logistics v Gladys Nasambu Waswa & another** [2020] eKLR, where awards of Kshs.50,000/= were upheld where death occurred at or shortly after the accident.
4. Taking into account the fact that the deceased died at the scene the same day of the accident and there is no evidence of prolonged suffering, I find that an award of **Kshs.50,000/=** is reasonable.
5. I accordingly award **Kshs.50,000/=** for pain and suffering.

B. Loss of Expectation of Life

1. An award under this head is made in recognition of the loss occasioned to the estate by the premature termination of the deceased's life.
2. The Plaintiffs proposed an award of Kshs.250,000/=.
3. It is natural that any person who suffers injury as a result of an accident will suffer some form of pain. This 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 before the death.
4. According to various decisions of the High Court, the sums have ranged from Kshs.10,000.00 to Kshs.100,000.00. The principle of consistency in awards was emphasized in **Hellen Waruguru Waweru (Suing as the Legal Representative of Peter Waweru Menja (Deceased) v Kiarie Shoe Stores Limited** [2015] eKLR, where the Court discussed the assessment of damages under the Law Reform Act and the Fatal Accidents Act.
5. In common law jurisprudence of which Kenya is part, the Courts have evolved two principles, loss of expectation of life and pain and suffering by the deceased, for award of damages under the Fatal Accidents Act for pain and suffering determined what is commonly referred to as a conventional sum which has increased over the years from **Kshs.10,000.00** to **Kshs.100,000.00** currently.

6. The generally accepted principle is that very nominal damages will be awarded on this head claim if death followed immediately after the accident. Higher damages will be awarded if the pain and suffering was prolonged before death. His death prematurely deprived him of the normal expectation and enjoyment of life
7. In this case, the conventional figure for loss of expectation of life is **Kshs.100,000.00** and I award the same.

C. Loss of Dependency

1. The deceased was six years old at the time of his death. The Plaintiffs brought this claim as his parents and legal representatives.
2. The assessment of damages for the death of a child presents considerable difficulty because the child's future occupation, income, earning capacity and actual future contribution to the dependants cannot be known with certainty.
3. The multiplier approach is not mandatory. In **Mwanzia v Ngalali Mutua & Kenya Bus Services (Msa) Ltd & Another**, as quoted with approval in **Albert Odawa v Gichimu Gichenji** [2007] eKLR, Ringera J. held that the multiplier approach is merely a method of assessing damages and must be abandoned where the facts do not facilitate its application without undue speculation. The Court stated that justice should not be sacrificed on the altar of methodology.
4. In **Kenya Breweries Ltd v Saro** [1991] KLR 408, the Court recognized that damages may be awarded to parents following the death of their child notwithstanding that the child had not reached an age at which actual financial contribution could be demonstrated.
5. Accordingly, in cases involving young children, courts have often adopted the global approach because the future income and dependency of the deceased cannot be determined with precision.
6. In **Emmanuel Wasike Wabukesa suing for BWW (a Minor Deceased) v Munena Ndiwa Durman** [2019] eKLR, the Court adopted a global approach in assessing damages arising from the death of a young child, noting the uncertainty of predicting the child's future earnings and career.
7. In **Daniel Mwangi Kimemi & 2 others v JGM & Another** [2016] eKLR, the Court awarded **Kshs.1,000,000/=** in respect of loss of dependency arising from the death of a nine-year-old child. The Court recognized that a child is a valuable member of the family and that the loss suffered by parents following the death of a child is compensable.
8. In **Ahmed & another v NKJ & another**, an award of **Kshs.700,000/=** was upheld in respect of the death of a six-year-old child.

9. In **Wandera George t/a Odindiko Investments v Harrison Shida Thoya & another** [2019] eKLR, the Court considered the assessment of damages in respect of a deceased child and supported the use of a global award where the future earnings of the child could not be established without speculation. The decision considered an award of **Kshs.1,200,000/=** in determining reasonable compensation.
10. The Plaintiffs further relied on **Kenya Power & Lighting Company v Gacugu & another** [2024] KEHC 7712 (KLR), where a global award of **Kshs.2,000,000/=** was made in respect of the death of an eight-year-old child.
11. More recently, in **Kenya Power & Lighting Company v DBO (Suing as the next friend and father to DM – Deceased)** [2024] KEHC 15436 (KLR), the High Court considered a global award of **Kshs.1,500,000/=** in respect of a deceased minor and emphasized the need to take account of comparable awards and inflationary trends.
12. In **Endege & another v Benard & Another** [2024] KEHC 709 (KLR), the Court similarly held that the global approach was appropriate in assessing loss of dependency in respect of a deceased child because the child's future earning capacity and likely contribution could not be ascertained with certainty.
13. The foregoing authorities demonstrate that the award of damages in respect of a deceased child does not follow a rigid mathematical formula. The Court must consider the age of the child, the circumstances of the dependants, comparable awards, the vagaries and uncertainties of life, the passage of time and prevailing economic conditions.
14. In the present case, the deceased was only six years old. His future education, career and earnings remain unknown. It would therefore be speculative to assign him a multiplicand and multiplier.
15. I am therefore satisfied that the global approach is the most appropriate method of assessing damages under this head.
16. I have considered the award of **Kshs.700,000/=** in **Ahmed & another v NKJ & Another**, the award of **Kshs.1,000,000/=** in **Daniel Mwangi Kimemi & 2 others v JGM & Another** [2016] eKLR, and the comparable awards considered in **Wandera George t/a Odindiko Investments v Harrison Shida Thoya & Another** [2019] eKLR. I have also considered the more recent awards in **Kenya Power & Lighting Company v Gacugu & another** [2024] KEHC 7712 (KLR) and **Kenya Power & Lighting Company v DBO** [2024] KEHC 15436 (KLR).
17. While the Plaintiffs proposed **Kshs.1,500,000/=**, the Court must independently determine an award that is fair, reasonable and commensurate with the circumstances of this case.
18. Having regard to the tender age of the deceased, the loss suffered by the dependants, the uncertainty surrounding the deceased's future earning capacity, the vagaries of life, the comparable awards cited and the passage of time, I find that a global award of **Kshs.1,300,000/=** is fair, reasonable and proportionate.

19. I accordingly award **Kshs.1,300,000/= for loss of dependency.**

D. Special Damages

1. The Plaintiffs pleaded special damages of **Kshs.125,550/=**.
2. The law is settled that special damages must not only be specifically pleaded but must also be strictly proved. In **Hahn v Singh [1985] KLR 716**, the Court of Appeal stated that special damages must be specifically pleaded and strictly proved.
3. The Plaintiffs submitted that the amount claimed was supported by receipts and a paid invoice which were produced in evidence.
4. I am satisfied that the special damages were specifically pleaded and proved.
5. I therefore award **Kshs.125,550/=** as special damages.

E. Awards Under the Law Reform Act and the Fatal Accidents Act

1. The Plaintiffs submitted that the awards under the Law Reform Act should not be mathematically deducted from the awards under the Fatal Accidents Act. They relied on **Kemfro Africa Ltd t/a Meru Express Services (1976) & Another v Lubia & another (No. 2) [1985] eKLR**, among other authorities.
2. In **Kemfro Africa Ltd t/a Meru Express Services (1976) & another v Lubia & Another (No. 2) [1985] eKLR**, the Court explained that the words “to take into account” do not necessarily mean that an award under the Law Reform Act must be deducted from an award made under the Fatal Accidents Act.
3. I have taken into account the awards made under the Law Reform Act in assessing damages under the Fatal Accidents Act. However, I find no basis for making a mathematical deduction.

F. Costs and Interest

1. Costs ordinarily follow the event pursuant to Section 27 of the Civil Procedure Act.
2. The Plaintiffs have succeeded and are entitled to the costs of the suit.
3. Interest on Special Damages shall run from the date of filing suit, while interest on general damages shall run from the date of Judgment, both at court rates.

Disposition

In conclusion therefore, there shall be Judgment for the Plaintiff against the Defendants jointly and severally in the sum of **Kshs. 1,339,217.50 (*Kenya shillings one million ,three hundred and thirty nine thousand ,two hundred and seventeen and fifty cents))****

made up as follows:

7 / 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kemc/2026/853/eng@2026-09-02>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/https-new-kenyalaw-org-akn-ke-judgment-kemc-2026-853-2026>

Prepared on 29 October 2026 · Esheria