



Wawira v Karanja & another (Suing as the personal representative of the Estate of Jackson Mbugua Kanja - Deceased) (Civil Appeal E242 of 2022) [2024] KEHC 8377 (KLR) (26 June 2024) (Judgment)

Neutral citation: [2024] KEHC 8377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E242 OF 2022
JK NG'ARNG'AR, J
JUNE 26, 2024**

BETWEEN

MOSES MUNGAI WAWIRA APPELLANT

AND

ESTHER WANGARI KARANJA 1ST RESPONDENT

JOYCE WANJIRU KIMANI 2ND RESPONDENT

SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JACKSON MBUGUA KANJA - DECEASED

(An appeal from the judgment and decree of the Chief Magistrate's Court at Kikuyu (L. Nyabando, RM.) delivered on 16th September 2022 in CMCC No. 251 of 2019)

JUDGMENT

1. The appellant was the defendant in CMCC No. 251 of 2019. By way of a plaint dated 18th September 2019, the respondents sued the appellant as the insured and registered owner of motor vehicle registration number KBZ 105U. On 29th January 2017, the deceased was a pillion passenger aboard motor cycle registration number KMDU 585A along the PCEA Kikuyu Dagoretti road. On reaching Campusarea area, the appellant's driver drove the suit motor vehicle so negligently that it lost control and hit the motor cycle. As a result of the accident, the deceased suffered fatal injuries. The respondents prayed for general damages under the Law Reform Act, special damages of Kshs. 73,900.00, costs and interest.
2. In its judgment dated 8th May 2023, the trial magistrate apportioned liability between the parties at 75:25 in favor of the respondents as against the appellant. They were then awarded general damages for pain and suffering in the sum of Kshs. 50,000.00, loss of expectation of life at Kshs. 100,000.00, loss of dependency at Kshs. 3,000,000.00 and special damages at Kshs. 66,500.00. The same was capped at



- 75% to award the respondents Kshs. 2,412,375.00 the respondents were further awarded costs of the suit with interest thereon.
3. The appellant is dissatisfied with those findings. He filed a memorandum of appeal dated 14th October 2022 challenging the judgment on seven grounds. In summary, the appellant lamented that the award on loss of dependency was exorbitantly high, inconsiderate of the documentary evidence adduced and failed to appreciate the prevailing range of comparable awards. In the circumstances, the appellant prayed that the appeal be allowed by setting aside the judgment of the trial court. He urged this court to reassess the award on quantum.
 4. The appeal was canvassed by way of written submissions. According to the appellant in his written submissions dated 22nd August 2023, the trial court erred in concluding that the deceased earned Kshs. 30,000.00 monthly when no evidence was adduced to demonstrate that he was a lorry driver. He submitted that the trial court ought to have been awarded damages under the *Regulation of Wages (General) (Amendment) Order 2011* which minimum casual wage as a general manager is Kshs. 5,000.00. He further argued that since no evidence of school going children was adduced, then the dependency ratio fell below standard. Finally, the multiplier was unjustified. He stated that instead, the trial court ought to have adopted the global sum award since the multiplier approach was not pragmatic in the circumstances. He lamented that his submissions were not considered and if so considered, the trial court would have arrived at a different conclusion. He prayed that an award under this head be capped at Kshs. 600,000.00.
 5. The respondents on their part relied on their written submissions dated 5th September 2023 to submit that the deceased person was a driver earning Kshs. 1,500.00 per day. According to the death certificate, the deceased person was a businessman. In the circumstances and contrary to the appellant's allegations, the respondents asserted that the deceased person was not a casual labourer. On the use of the multiplier approach, the respondents submitted that in actual fact, the trial court awarded a global sum. He submitted that the multiplicand, the dependency ratio and the multiplier were all properly assessed and left no room for error. On whether the appellant's submissions were considered, the respondents submitted that the appellant was the author of his own misfortune as he failed to file his submissions within the stipulated time frame. The respondents urged this court to dismiss the appeal with costs.
 6. I have considered the record of appeal and the written submissions of the parties, examined the evidence and analyzed the law. This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way. [See *Abok James Odera t/a A.J Odera & Associates vs. John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR].
 7. By consent of the parties entered on 1st March 2022, judgment on liability was entered in favor of the respondents as against the appellant in the ratio of 75:25. As such, we shall not interfere with those findings noting that the appellant is not challenging the same. The parties disposed of the question of quantum by way of written submissions.
 8. On damages under the *Law Reform Act*, the trial court awarded Kshs. 50,000.00 for pain and suffering and Kshs. 100,000.00 for loss of expectation of life. On general damages, PW1 and PW2 had testified before the parties entered into a consent on liability. According to PW2 PC Joseph Muthui, the deceased person died on the spot. Though PW1 testified that he died while undergoing treatment, there are no hospital records to support her assertions. For those reasons, I find that the deceased died on the spot. The award of Kshs. 50,000.00 for pain and suffering is thus proper.



9. On general damages for loss of expectation of life, the court in *Hyder Nthenya Musili & Another vs. China Wu Yi Limited & another* [2017] eKLR, stated as follows:

“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.”

10. Having established that the deceased died on the spot, I find that the award on general damages for loss of expectation of life in the sum of Kshs. 100,000.00 is proper and this court will not interfere with the findings of the trial court.
11. Taking into account the damages awarded under the *Law Reform Act*, I shall now move to damages under the *Fatal Accidents Act*. Under this head, the trial court found that since the respondents had failed to adduce evidence of dependency as well as the deceased’s earnings, the proper mode of assessment was a global sum approach. The court in *Frankline Kimathi Maariu & another vs. Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased)* [2020] eKLR held as follows:

“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.”

12. I have looked at the record filed before me. I note indeed that not only was the deceased’s income unknown but also was his line of duty. It is also unclear how many children the deceased sired with his wife during his lifetime. I however take note of the fact that the deceased was 31 years of age at the time of his death. As per his post mortem report, the deceased was enjoying a healthy lifestyle and would have lived for a considerable period of time but the same was cut short by the fatal wounds that he had sustained. Although the trial court applied the correct principles, it failed to establish how it arrived at the figure of Kshs. 3,000,000.00.
13. In *Moses Maina Waweru vs. Esther Wanjiru Githae (Suing as the personal representative of the Estate of the late David Githae Kiririo Taiti)* [2022] eKLR, the High Court substituted the award of loss of dependency from Kshs. 2,000,000.00 to Kshs. 800,000.00. The deceased was 68 years old. In *Mwangi (Suing as the administrators of the estate of Peter Maina Mwangi (Deceased)) vs. Arim* [2022] KEHC 3295 (KLR), the High Court upheld loss of dependency in the sum of Kshs. 720,000.00. He was 39 years of age. Finally, in *Nzuki vs. Maithya & another (Suing as the Legal Representatives of the Estate of Joseph Wambua - Deceased)* [2024] KEHC 2752 (KLR), this court upheld the trial court’s award of Kshs. 1,000,000.00 for loss of dependency. The deceased was a student aged 17 years old.
14. Taking into account the following, I find that it is necessary to interfere with the findings of the trial court under this head. Consequently, I find that the award of Kshs. 3,000,000.00 was inordinately high



and substitute the same with an award of Kshs. 950,000.00. The same shall be capped at 75% to bring the sum awarded to the respondents to Kshs. 712,500.00. On special damages, I find that the trial court properly awarded the said sum of Kshs. 66,500.00 and I shall thus not disturb that findings.

15. The upshot of the foregoing is that the appellant's claim succeeds. The award on loss of dependency is thus set aside and is substituted with an award of Kshs. 950,000.00. The same shall be capped at 75% so that the respondents are entitled to the sum of Kshs. 712,500.00. Since the appeal succeeds, the appellant shall have costs of this appeal.

It is so ordered.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF JUNE, 2024.

J. K. NG'ARNG'AR, HSC

JUDGE

In the presence of:-

Wanjeri for the Appellant

Omondi (holding brief) for the Respondent

Court Assistant- Peter Ong'idi

