



**Munyasi & 2 others v Wanjiku (Suing as the Personal Representative
of the Estate of the Late Joseph Maina Njau) (Civil Appeal
E009 of 2022) [2024] KEHC 9689 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E009 OF 2022
AM MUTETI, J
JULY 31, 2024**

BETWEEN

**EDMAN MUNYASI 1ST APPELLANT
KENYA MATIK LIMITED 2ND APPELLANT
OTIENO OMIENO 3RD APPELLANT**

AND

**RAPHAEL MACHARIA WANJIKU RESPONDENT
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
LATE JOSEPH MAINA NJAU**

*(Being an appeal against the Judgment of the learned Hon. Z. W. GICHANA
(MRS) SPM in Kikuyu SPMCC No. 365 of 2018 delivered on 19th January 2022)*

JUDGMENT

1. The appellants filed their record of Appeal on 4th July 2022 challenging the Judgment of the Learned Honourable Magistrate on both liability and quantum. In their memorandum of appeal dated the 24th January 2022 the appellants raised 7 grounds of Appeal.
2. In the appeal they took issue with the learned Hon. Magistrate finding them 100% liable for the accident against the weight of evidence.
3. The plaint filed by the Respondent alleged that on 25th August 2018 the deceased was lawfully walking along Nairobi to Naivasha road on the pedestrian walk when the first Appellant who was the driver of motor vehicle KCQ 903 N caused the said motor vehicle to veer off and hit the deceased. The plaintiff



- further alleged that the 1st Appellant was negligent in the manner he drove and at the material time he was employed by the 2nd and 3rd Appellants.
4. As a result of the accident the deceased allegedly suffered serious injuries to which he succumbed to and died.
 5. The appellants in their defence denied the claim and particularized in their statement of defence particulars of negligence on the part of the deceased.
 6. The Appellants did not however call any evidence to prove the alleged negligence against the deceased person. The particulars of negligence therefore remained mere allegations.
 7. At the hearing of this appeal on the 5th June 2024, the Respondent was represented by Mr. Mwangi advocate and there was no appearance for the Appellants.
 8. Mr. Mwangi advocate for the Respondent indicated to the court that they had filed submissions and they did not wish to highlight the same so he urged this court to give a date for judgment. According to Mr. Mwangi the Appellant had not filed their submissions. The court retired to write judgment but before the judgment could be done the appellants put in their submissions as promised on the 4th June 2024.
 9. The appellants were represented by one Mr. Njuguna advocate whom I must commend for delivering on his undertaking to file the submissions.

Duty of the First Appellate Court

10. The duty of this court as first appellate court is to reappraise the evidence tendered before the lower court by analyzing the same and drawing its own conclusions well aware that unlike the trial magistrate this court has not had the opportunity to see nor hear the witnesses testify.
11. In doing so, this court is guided by the court of Appeal decision in *Selle Vs. Associated Motor Boat and Company Ltd* (1986) E. A. 123. The court is thus expected in drawing its own conclusions to bear that in mind and make allowance in that respect.
12. At the hearing in the lower court the respondent Raphael Macharia Wanjiru who was the deceased's brother gave evidence. He explained that his deceased brother at the time of death was 29 years old and he earned a salary a Ksh. 19,000 from repair of computers. It is that salary that the deceased used to support the witness. The deceased died the same night of the accident.
13. The respondent called Pw 2 was in the company of the deceased when the accident happened who stated that motor vehicle KCQ 903 N veered off the road and hit the deceased as they walked home. He further stated that they were from work and they were walking off the road. According to him, they were on the pedestrian walk. The witness blamed the driver for the accident. He denied the suggestion from the defence that the deceased was crossing the road when he was hit.
14. Pw 3 P.c Godfrey Kirui produced the police abstract capturing the details of the motor vehicle and the names of the victim of the accident as well.
15. The defence did not tender any evidence at the trial. The court is called upon to find that the trial court was unfair in assigning the Appellants 100% liability for the accident.
16. Upon analyzing the evidence on record, I find that the findings by the learned Honourable magistrate cannot be faulted on liability.



17. The Respondent through his witnesses was able to prove that the deceased was a pedestrian and that he was off the road when he was hit. The evidence was not rebutted by the defence thus the same remained unchallenged.
18. It is my finding therefore in the absence of evidence to the contrary the appellants were wholly to blame for the accident.
19. I therefore decline to interfere with the learned honourable magistrates finding of 100% liability against the appellants. The ground of appeal on liability therefore fails.
20. Turning on to the grounds challenging the assessment of quantum, this court is aware that, an assessment of general damages payable to an accident victim is a matter of judicial discretion by the trial court. The most important thing to consider is whether the discretion was judiciously exercised and that the court in arriving at the award was fair in its assessment.
21. The court is also to determine whether the damages awarded were proportionate in the circumstances. The damages must not be too high or too low as to cause an injustice to the parties.
22. In regard to special damages the same must be specifically pleaded and proved.
23. The question that I must now ask is on what basis is this court asked to interfere with the exercise of discretion by the learned honourable magistrate.
24. Secondly, under what circumstances can this court lawfully interfere with the exercise of discretion.
25. In *Mbogo Vs. Shab* (1968) RALR at page 93 the Court of Appeal held that a Court of Appeal should not interfere with the exercise of discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that, as a result there has been a miscarriage of justice.
26. The appellants in this matter did not in their submissions present any arguments that would point to a misdirection by the learned Hon. Magistrate to justify this court's interference with the court's exercise of discretion.
27. It is not for this court to speculate as to what a party intended to argue on misdirection. The party seeking the court's intervention must persuade the court.
28. The appellants should point the court to the particular misdirection by the judge. The appellant must also demonstrate the injustice caused to them. It should be plainly clear that the damages awarded by the court are disproportionate considering the circumstances of the case.
29. The court is to apply an objective test in assessment of suitability of the figure in issue.
30. The same should be shown to be inordinately low or high to justify intervention. The figure must be shown to be erroneous or outrageously disproportionate and unreasonable.
31. Further, the appellant should have been able to persuade this court that;
 - i. the magistrate took into account irrelevant matters in arriving at the award.
 - ii. the magistrate did not take into account relevant factors;
 - iii. the magistrate did not correctly apply the law to the facts; or
 - iv. that the decision was plainly wrong.



32. The appellants have challenged the total sum of Ksh1,557,271 awarded by the trial court as the aggregate sum of general damages and special damages.
33. The appellants in their submissions proposed a global figure of Ksh 800,000 and placed reliance on the case of *Geofrey Obiero & Another vs Kenya Power and Lighting Co. Ltd & Another* 2019 eKLR where the court awarded a sum of Ksh 1.2million to a man aged 25 years and who was of no known income or nature of work.
34. The award of damages in the present case cannot compare to this in that Pw1 gave evidence on the nature of work that the deceased was engaged in as well as his income which stood at Ksh 19,000. The deceased was said to have been 29 years old.
35. In my considered view, the sum awarded by the court below was within a reasonable range. The decision cited by the Appellants was made way back in 2019 whereas the judgment in this case was delivered on 19th January 2022. The Respondent is yet to realise the fruits of the judgment. Undeniably, this country has undergone an economic downturn which has seen the shilling depreciate considerably.
36. In view of this, I do not find the figure awarded by the magistrate to be disproportionate. it is not inordinately high to justify interference by this court.
37. In the end, I find and hold that this appeal has no merit and it is hereby dismissed with costs on both liability and quantum.
38. Let the Respondent enjoy his fruits of judgment as granted by the learned Honourable Magistrate.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2024.

HON. A.M MUTETI

JUDGE

