



**Nyangira & another v Wainaina (Civil Appeal E376 of 2023)
[2024] KEHC 14850 (KLR) (Civ) (26 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E376 OF 2023

JM NANG'EA, J

NOVEMBER 26, 2024

BETWEEN

HARRISON AMINDA NYANGIRA 1ST APPELLANT

KEVIN ODHIAMBO ODUOLI 2ND APPELLANT

AND

**WAINAINA MAREKA & ANOTHER (SUING AS THE ADMINISTRATORS OF
THE ESTATE OF PETER MAREKIA WAINAINA RESPONDENT**

*(Being an appeal from the Judgement and Decree of the Chief Magistrate at Milimani
delivered by Hon. Ruguru on 5th May, 2023 in Milimani MCCC No.E2987 of 2022)*

JUDGMENT

Grounds of Appeal and reliefs sought

1. The appellants challenge the trial court's awards on loss of dependency and loss of expectation of life on grounds that may be condensed as hereunder;
 - a. That the learned trial magistrate erred in law and fact in disregarding judicial precedent and principles and thus awarding unreasonably high amounts of damages for loss of dependency and loss of expectation of life.
 - b. That the learned trial magistrate erred in law and fact by failing to consider the appellants' submissions.
 - c. That the learned trial magistrate erred in law and fact by shifting the burden of proof of the deceased's earnings from the respondent to the appellants.
2. The appellants accordingly seek these reliefs;



- a. That the appeal be allowed.
- b. That the award of Kshs. 3,000,000/= and 150,000/= for loss of dependency and loss of expectation of life respectively be set aside.
- c. That the court does assess reasonable compensation for loss of dependency and loss of expectation of life in favour of the respondent.
- d. That the costs of the appeal be awarded to the appellants.

Background to the appeal

3. The respondents sued the appellants in the lower court for general damages, special damages, the costs of the suit and interest. They brought the suit on behalf of the estate of their son Peter Marekia Wainaina (deceased) who was knocked down and killed by the 2nd appellant's motor vehicle registration number KCH 257 H driven at the time by the 1st appellant. The death is blamed on negligent driving of the 2nd appellant's vehicle, particulars of which negligence are set out in the plaint.
4. The appellants filed a joint defence admitting occurrence of the accident but traversing the allegation of negligence, putting the respondents to strict proof.
5. In their evidence the respondents reiterate their averments in the plaint through the evidence of the 1st respondent (Reuben Wainaina Marekia). The court was told that the deceased worked for one Alice Wanjiru Ngigi who testified for the respondents as PW1. PW1 stated that she had hired the deceased to deliver flowers, grass and trees to her customers for a monthly salary of Kshs. 37,300/=. According to PW1, the deceased would pay any statutory deductions on his own. The 1st respondent testified that that deceased was taking care of him and the 2nd respondent as his parents.
6. The appellant's didn't offer evidence before the lower court.
7. The trial court reached the conclusion that the deceased's income was not proven. Although the parties agreed on the multiplier approach of assessing loss of dependency, the learned trial magistrate thought that a global award was appropriate in the circumstances and awarded Kshs. 3,000,000/= for loss of dependency. For loss of expectation of the life the respondent was granted Kshs. 150,000/=.

Guiding Principles

8. This being a first appeal I am required to reconsider the evidence adduced, evaluate it and draw my own conclusions bearing in mind that I did not hear and see the witnesses who testified{ (see *Selle & Another Vs Associated Motor Boat Company Ltd & Others* [1968] EA 123 }. The Court of Appeal for East Africa in *Peters -vs- Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”



Appellants' Submissions

9. Counsel for the appellants seem to submit on the issue of liability as well yet based on the grounds of appeal and the reliefs sought, the appeal is only on the quantum of damages for loss of dependency and loss of expectation of life. The court will therefore consider the submissions in relation to the assessment of the stated damages only.
10. The appellants contend that the respondent didn't prove the deceased's earnings of Kshs. 37,300/=. They suggest the minimum wage of Kshs. 13,572.90 per month as provided under the regulations of Wages (General) Amendment) Order, 2018 published vide Legal Notice No. 20 of 2019.
11. Regarding the award for loss of expectation of life, the appellants have not complained about the lower court's award of Kshs. 150,000/= in their submissions before this court. The appeal on this head of damages is thus deemed as abandoned. The appellants have instead expressed dissatisfaction with the award of Kshs. 100,000/= for pain and suffering. However, the grounds of appeal do not include this award as a subject of appeal.

The Respondent's Submissions

12. The respondents seem to agree that there was no clear proof of the deceased's earnings and therefore the trial courts rightly adopted the global sum method to assess damages for loss of dependency according to them. I was referred to various cases including Kitale Industries Ltd. & Another vs Zakayo Nyende & Another [2018] eKLR which favoured this approach where, as here, there is no evidence of the deceased's earnings.

Brief Analysis and Determination

13. Having perused the parties' submissions, I don't fault the trial court for using the global sum method of assessing damages for loss of dependency there being no credible evidence of the deceased's income. The learned trial magistrate did not, however, state the basis of the award of Kshs. 3,000,000/- as the same is not backed up by any judicial precedents. I will therefore endeavour to sample some relevant case law.
14. In *H. Young & Company (EA) Ltd & Another (Civil Appeal E369 of 2023) [2024] KEHC 9822 (KLR) (24 July 2024)* the estate of a deceased person of the same age as the deceased in the matter was granted Kshs. 1,500,000/= for loss of dependency.
15. In *Naman Kalibi Meme vs M'Ncebere M'ekotha (sued as the legal representatives of the estate of FN (deceased) (2022) eKLR* the deceased was 52 years old and no evidence of her income was provided. There was also no evidence that she had children. In the special circumstances of that case, a global sum of Kshs. 800,000/= was awarded. In the instant case the deceased was much younger at 24.
16. The recent case of *H. Young Company (AE) Ltd supra* is clearly comparable as it is almost on all fours with this case. I would thus award the respondents Kshs. 1,500,000/= for loss of dependency having taken into account the awards under the Law Reform Act.
17. As already noted, the appellants appear to abandon the appeal on the award of loss of expectation of life as no reference to it is made in their submissions. In any case, I don't think the trial court wrongly exercised its discretion as the award of Kshs. 150,000/= is within the range of conventional awards for such damages. I will not therefore disturb the trial court's award under this head.



Determination

18. The upshot is that the appeal succeeds to the extent that the trial court's award of Kshs.3,000,000/= for loss of dependency is set aside and substituted with an award of Kshs. 1,500,000/=.
19. Concerning the costs of the appeal, the parties will bear their own costs given that the appellants only partly succeeded.

Judgement accordingly.

J. M NANG'EA, JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 26TH DAY OF NOVEMBER 2024 IN THE PRESENCE OF:

The Appellants' Advocate, Mr Diru

The Respondents' Advocate, Ms Kandie for Mr Wanjohi

