



**Maingi v Juma & another (Suing as Legal Representatives to the Estate of Angeline Aoko Juma (Deceased)) (Civil Appeal E26 of 2022) [2024] KEHC 14503 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14503 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E26 OF 2022  
DK KEMEL, J  
NOVEMBER 22, 2024**

**BETWEEN**

**DAVID MAINGI ..... APPELLANT**

**AND**

**DANIEL OMONDI JUMA ..... 1<sup>ST</sup> RESPONDENT**

**JUMA WADHIER ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS LEGAL REPRESENTATIVES TO THE ESTATE OF ANGELINE AOKO JUMA (DECEASED)**

*(Being an appeal from the judgment of Hon. Christabel Agutu (SRM) delivered on 10th May 2022 in Ukwala CMCC 150 of 2018)*

**JUDGMENT**

1. The appeal herein arises from the judgement of Hon Agutu dated 10/5/2022 in Ukwala PMCC No. 150 of 2018. The Respondent had filed a claim at the trial court under the [Fatal Accidents Act](#) and [Law Reform Act](#). Wherein she claimed the following reliefs:
  - a. General damages.
  - b. Special damages of Kshs 168, 910/=.
  - c. Interest on General and Special damages
  - d. Any other relief the court deems fit and just to grant
2. The trial court apportioned liability to 80% :20% in favour of the Respondent. On the aspect of quantum of damages, the trial court awarded as follows:



- i. Loss of dependency under the *Fatal Accidents Act* – Kshs 800 000/-
  - ii. For pain and suffering under the *Law Reform Act*- Kshs 10,000/=
  - iii. For loss of expectation of life under the *Law Reform Act*-Kshs 100000/=
    - Total .....Kshs 910,000/=
    - Less 20% contribution Kshs 182,000/=
    - Total) .....Kshs 728,000/=
  - iv. Special damages Kshs 139 560/=
  - v. Costs
  - vi. Interest on general and special damages at courts rates.
3. Dissatisfied with the judgement of the trial court, the Appellant has appealed to this court vide his Memorandum of Appeal dated 25/5/2022 wherein he raised the following grounds of appeal:
- a. The learned trial magistrate erred in fact and in law by apportioning liability at 20% to the Appellant yet the Respondent was wholly to blame.
  - b. That the learned trial magistrate erred in fact and in law when she gave judgement in favour of the Respondent despite the fact that there was no credible evidence or proof of negligence on the part of the Appellant.
  - c. That the learned trial magistrate erred in law and fact by adopting a multiplier of 10 years for the deceased who was 55 years old without taking into account the vagaries of life.
  - d. That the learned trial magistrate erred in law and fact by using the minimum wage of Kshs 10, 000/ instead of using the minimum wage for the unskilled labour in the year 2018 when the deceased died which ought to be Kshs 6, 736/30.
  - e. The trial court erred in awarding damages for loss of dependency which were inordinately yet there was no proof of dependency.
  - f. That the learned trial magistrate erred in law and fact in awarding the sum of Kshs 100, 000/ for loss of expectation of life which was excessive.
  - g. That the learned trial magistrate erred in law and fact in failing to consider the Appellant’s submissions.
4. The appeal was canvassed by way of written submissions. Both parties duly filed and exchanged submissions.
5. This being the first appellate court, its duty is well spelt out namely to re-evaluate and analyze the evidence tendered in the trial court and subject it to an independent analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court as was stated in *Selle & Another vs Associated Motor Boat Company Ltd & others* [1968] 1EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on



some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

6. The evidence before the trial court was as follows: PW1 Daniel Omondi Juma testified that the deceased was his mother and that he together with Juma Wadhier are legal representative to the mother’s estate. He adopted his statement dated 13/11/2018 as his evidence in chief. He produced a bundle of documents which comprised of limited grant of letters of administration, burial permit, copy of certificate of death, post mortem report, letter from assistant chief, police abstract, bundle of eight receipts, demand notice. He stated that the deceased was a farmer making about Kshs 25, 000/ per month and that she educated and fed the family. That the deceased was then aged 55 years at the time of her demise.

On cross-examination, he stated inter alia; that he was not an eye witness; that his siblings are in schools and colleges

7. PW2, police constable Eugene Wanjala testified that the driver of the suit motor vehicle lost control along Kisumu-Busia road, veered off the road to the left and hit a pedestrian Angeline Aoko Juma killing her on the spot. He produced the police abstract as an exhibit.
8. PW3 Joshua Owino Odipo an eye witness, testified that as he grazed his cows along Nzoia Bridge, he saw a lady walking along the road on the left side facing Kisumu general direction. That motor vehicle reg. No. KAU 567W was approaching from Busia general direction. That the said vehicle lost control and veered off the road and knocked the lady before stopping a few metres ahead. He further testified that he rushed to where the lady was but found out that she was already dead. That a crowd gathered and identified her as Angeline Aoko Juma.
9. It was the appellant’s submissions that the driver of the suit motor vehicle was not to blame for the accident as the deceased was trying to cross the road.
10. It was likewise the appellant’s submissions that the police officer testified on cross examination that he did not bring the sketch maps to show the point of impact of the accident and hence there was no negligence attributed to the Appellant.
11. The appellant likewise submitted that Kshs 100,000/- was excessive under loss of expectation of life and proposed Kshs 80,000/=. Further, he submitted that a multiplier of 10 years and a multiplicand of ksh 15,000/= was on the higher side. On this, he proposed a multiplier of 5 years and multiplicand of 6736/= respectively. Reliance was placed on the authority in Gachoki Gathuri (suing as the legal representative to the estate of James Kinya Gachoki (deceased) vs. John Ndiga Njagi & 2 Others (2015) eKLR.
12. It was the Respondents’ submissions on apportionment of liability that the relevant evidence was adduced by PW2 (Page 131) PW3 (Page 132). Learned counsel went further to submit that PW3 was an eye witness whose evidence was adopted from the witness statement he filed (Page 12). That the witness stated that while grazing his cows along Busia-Kisumu road, he saw the deceased walking along the road on the left side facing Kisumu general direction. That he saw motor vehicle registration number KAU 567W approaching from Busia general direction. That the vehicle lost control and veered off the road on its left hand side and knocked the deceased. That the vehicle then stopped a few metres ahead.

Further, the respondent submitted that PW2 while corroborating the evidence of PW3, stated that the investigations established that indeed the deceased was walking along the road on the left hand side facing Kisumu. That PW2 also reiterated that it is the driver who lost control, veered off the road and knocked the deceased.



Respondents submitted that the record shows no cross examination of PW2 and PW3 took place thus their evidence was never controverted or challenged.

Finally, on the issue of liability, the Respondent submitted that apportionment of liability is an exercise of judicial discretion. That an appellate court will only interfere with such discretion when it is demonstrated that it was wrongly exercised or is based on no evidence or is founded on application of wrong principles. On this, reliance was placed in Machakos HCCA No. 150 Of 2019 Bash Hauliers Vs Anastacia Ndinda Kimonye.

In the view of the Respondent, the Appellant has not established a basis upon which this court can interfere with the discretion of the trial court in apportioning liability at 80:20 in favor of the Respondent.

13. On quantum, the Respondents posited that an award of Kshs 100,000/= for loss of expectation of life is within the range if not lower than what most courts award. While relying on several authorities including Eldoret HCCA No. 17 Of 2019 Joseph Gatone Karanja Vs John Okumu Soita&Another where the court awarded Kshs 150,000/= under the same head; they submitted that presently, the same lies between kshs 100 000/= and 200, 000/=.
14. On loss of dependency, the Respondent submitted that the multiplier of 10 years for a deceased who died at the age of 55 years is reasonable. As regards the multiplicand, the sum of 10, 000/ was proposed since the deceased was a peasant farmer and thus fell in the category of miners, stone cutters for which the minimum wage guidelines provides a sum of 8, 366/ which was increased by the trial court to 10, 000/ which is reasonable.
15. Finally, it was submitted by the Respondent that there is no specific law cited by the Appellant that requires special damages to be subjected to contributory negligence and hence the judgement of the trial court should not be disturbed.
16. I have considered the evidence before the trial court, exhibits together with the parties' submissions on appeal.
17. On the issue of liability, it was the evidence of the eye witness (PW3) that the Appellant's motor vehicle veered off the road and hit the pedestrian who was walking along the road, from behind. This evidence was corroborated by the evidence of PW2 police constable Eugene Wamalwa who investigated the case. Based on that, I find that the apportionment of liability to the ratio of 80:20 in favor of the Respondent to be very fair and I uphold the same. Besides, the Highway Code of traffic demands that all motorists must be cautious and on the lookout for other road users such as pedestrians. It is instructive that a properly kept and maintained vehicle and driven/controlled by a competent driver does not normally just veer off the road. It was incumbent upon the Appellant to have exercised due care and attention while cruising along the said Kisumu- Busia highway. Had the Appellant been vigilant, then the accident could have been avoided. Likewise, the Respondent being an adult, was expected to be on the lookout and to take such evasive measures in a bid to save or mitigate the impending accident. The Appellant vide his submissions has contended the apportionment of a larger liability on the Appellant yet it was the Respondent who wholly caused the accident. It is instructive that the Respondent was lawfully walking on the verge of the road and thus the Appellant owed her a duty of care. Hence, I find that the apportionment of 80% to 20% in favour of the Respondent was quite reasonable in the circumstances. I uphold the trial court's finding on liability.
18. As regards the aspect of damages, it is noted that the trial court awarded Kshs 10,000/- to cater for pain and suffering reason being that the deceased died on the spot. This therefore means that the pain and suffering did not go on for long. This is actually the trend in most precedents and this court has no



reason to interfere with that finding. On this finding, I rely on Eldoret HCCA no. 163/2011, Suluenta Kenedy Sita & Another vs. Jeremiah Ruto (2017) eKLR where the court awarded Kshs 10,000/- where the deceased died on the spot.

19. On loss of expectation of life, ordinarily an award under this head is conventional based on precedents. In Eldoret HCCA No. 17 Of 2019 Joseph Gatone Karanja Vs John Okumu Soita the court awarded on this head ksh 150,000/=. While in Kakamega HCCA No. 7 Of 2017 West Kenya Sugar Company Vs Philip Sumba Julaya the court upheld an award of Kshs 200 000/- under this head. In light of the above precedents, I find that an award of kshs 100, 000/= is quite in order and I uphold the same.
20. On the multiplier used in quantification, the courts are likewise guided by precedents. It is not in doubt that the deceased was aged 55 years at the time of her death. In the case of Naivasha HCCA no. 44 of 2018 Mary Wanjiru Gitau vs. Kenya Power & Lighting company Ltd, the deceased was 50 years and that a multiplier of 13 years was applied. In yet another case of Migori HCCA N. 16 Of 2020. Caleb Juma Nyabuto Vs Evance Otieno Magaka, the deceased was 50 years and that the court used a multiplier of 15 years.
21. In a nutshell I find that a multiplier of 10 years used by the trial court is within the reasonable estimates. The deceased was then aged 55 years and a peasant farmer who would live beyond the retirement age for civil servants at 60 years. Of course, there are vicissitudes and vagaries of life to be contended with but it is possible for the deceased to surpass the 60-year mark. On that score I find the multiplier adopted by the trial court was within a reasonable range and hereby uphold the same.
22. In the case of Jacob Ayiga & Another Vs. Simeon Obayo Court of Appeal no. 167 of 2000 (2005) eKLR the court held that documentation is unnecessary to prove earnings. Denying a party justice based on lack of documentation to prove earnings is tantamount to an injustice. It is in fact in contravention to Article 159(2)(d) of *the Constitution* which provides that courts should deliver justice without regard to procedural technicalities. However, even if that could be the situation, a party cannot just fetch a figure from the blues and expect the courts to accept it as the gospel truth. The Respondent was under obligation to present evidence supporting the claim for 25, 000/per month. Dependency being a question of fact, the Respondent was under obligation to avail reasonable amounts to be taken as the multiplicand. The Regulation of Wages (General Amendment) Order 2018 provides the sum of Kshs 6, 736/30 for unskilled labour. Indeed, the deceased was a peasant farmer and within the category of unskilled labourer. To this extent, the multiplicand adopted by the trial court was therefore excessive and must be interfered with. As the deceased used to provide for her family, the dependency ratio of 2/3 will be adopted. The loss on dependency will therefore be worked out as  $6736/30 \times 12 \times 10 \times 2/3 = 538,904/=$
23. Finally, the Appellant has taken issue with the trial court's failure to subject the 20% contribution on the special damages. Indeed, the issue of special damages out to be a stand-alone head of damage that ought not to be affected by deductions since they comprise expenses incurred by a party who seeks reimbursement from the tort-feasor and hence they should not be subjected to contributory negligence. The Appellant's submission in that regard is without any basis whatsoever.
24. In view of the foregoing observations, it is my finding that the Appellant's appeal partially succeeds. The judgement of the trial court dated 10/5/2022 is hereby set aside and substituted with judgement being entered for the Respondent against the Appellant as follows:
  - a. Liability apportioned between  
Appellant and Respondent.....80% to 20%
  - b. Pain and suffering.....Kshs 10, 000/=



- c. Loss of expectation of life..... Kshs 100, 000/=
- d. Loss of dependency.....Kshs 538, 904/=
- Total..... Kshs 658, 904/=
- Less 20% contribution.....Kshs 131, 780.80/=
- Net.....Kshs 527, 123.20/=
- Special damages.....Kshs 139, 560/=
- Grand Total.....Kshs 666, 683.20/=

The Appellant is awarded half costs in this appeal while the Respondent shall have the full costs in the lower court.

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2024.**

**D KEMEI**

**JUDGE**

In the presence of:

M/s Onyango.....for Appellant

Omondi.....for Respondent

Ogendo.....Court Assistant

