



Atenya & another v Muthengi & 2 others (Suing as the legal representative of the Estate of Joyce Mulekye Mwove) (Civil Appeal E018 of 2023) [2024] KEHC 16443 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KEHC 16443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E018 OF 2023
F GIKONYO, J
DECEMBER 20, 2024**

BETWEEN

RAHAB ATENYA 1ST APPELLANT

HERMAN ATENYA ODERO 2ND APPELLANT

AND

KELITA MWOVE MUTHENGI, ANNAH MUTINDI & RICAGRD MWASI MWOVE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOYCE MULEKYE MWOVE) RESPONDENT

(Being an appeal from the judgment of Hon. A.N. Sisenda (S.R.M) delivered on 24.04.2023 in Narok CMCC Suit No. E016 of 2020)

JUDGMENT

Appeal on damages

1. This appeal is an appeal on quantum of damages. See the memorandum of appeal dated 23.05.2023 which cites eight (8) grounds of appeal on quantum of damages.
2. The judgment of the Chief Magistrate's Court at Narok in Civil Suit No. E016 of 2020 delivered on 24.04.2023 made awards as follows: -
 - a. Liability 80:20
 - b. Loss of dependency: Kshs. 12,552.70 x 12 x 30 x 1/3 Kshs. 1,506,324/=
 - c. Loss of expectation of life. Kshs. 100,000/=
 - d. Pain and suffering Kshs. 30,000/=



- e. Special damages Kshs. 60,550/=
- Kshs. 1,696,874/=
- Less 20% contribution Kshs. 339,375/=
- NET TOTAL Kshs. 1,357,499/=
- f. Costs of the suit and interest at court rates

Background

- 3. The suit arose from a traffic accident involving motor vehicle registration No KCL 867J on 22/10/2019 along Narok-Bomet road. The deceased was a passenger on the suit motor vehicle. The suit motor vehicle lost control and veered off the road thereby causing fatal injuries to the deceased. The respondents blamed the appellant's driver. The deceased lost his life in the accident. Particulars of negligence were set out against the appellant's driver. The deceased was 24 years old.
- 4. During the trial, the respondents called two witnesses.
- 5. The appellants called one witness.

Directions of the court

- 6. The appeal was canvassed by way of written submission.

The Appellants' Submissions

- 7. The appellants submitted that the learned trial magistrate's award for damages and loss of dependency are not in tandem with settled legal principles and should hence be re-evaluated by this court. The appellants relied on Butt V Khan [1981] KLR 470, Kitavi V Coastal Bottlers Ltd [1985] KLR 470, Henry Hilaya Ilanga Vs Manyema Manyoka [1961] EA 705, Kemfro Africa Limited T/A Meru Express Services, Gathongo Kanini Versus A.M. Lubia And Olive Lubia [1987] KLR 27, Denshire Muteti Wambua Vs Kenya Power & Lighting Co. Ltd [2013] eKLR, Selle Vs Associated Motor Boat Company Limited, Jacob Momanyi Orioki V Kevian Kenya Ltd [2018] eKLR, Peters Vs Sunday Post Limited [1985] EA 424, Godfrey Wamalwa Wamba & Another V Kyalo Wambua [2018] eKLR, and Damaris Mwongeli Muia V Kenya Wildlife Service [2017] eKLR.
- 8. The appellants submitted that the amount awarded for pain and suffering is manifestly excessive and based on wrong principles and should thus be substituted with an award of Kshs. 10,000/=. The appellants relied on Halsbury's Laws of England 4th ed. vol. 12(1) page 348-883, Hyder Nthenya Musili & Another V China Wu Yi Limited & Another [2017] eKLR, and Moses Koome Mithika & Another V Doreen Gatwiri & Another (Suing as the Legal Representative And Administrator of the Estate Of Phineas Muriithi (Deceased) [2020] eKLR.
- 9. Of loss of dependence; the appellants submitted that life expectancy is 55 years. Therefore, a multiplier of 30 years adopted by the trial court was unreasonable and excessive and should hence be reevaluated by this court. The appellants urged this court to adopt a multiplier of 25 years. The appellants relied on Roger Dainty V Mwinyi Omar Haji & Another MSA CA Civil Appeal No. 59 of 2004 [2004] eKLR, Henry Waweru Karanja & Another Vs Teresiah Nduta Kagiri [2017] eKLR, Retco East Africa Limited V Josephine Kwamboka Nyachaki Another [2021] eKLR, Paul N. Kinyanjui V Esther W. Wesonga [2015] eKLR, Mary Kerubo Mabuka Vs Newton Mucheke Mburu & 3 Others [2006] eKLR, and Kemfro Vs A.M. Lubia [1982-1988] KAR 727.



The Respondents' Submissions

10. The respondents submitted that the trial magistrate justifiably awarded the respondents general damages. The respondents relied on *Butt Vs Khan* [1977] eKLR 1KAR, *Selle Vs Associated Motor Boat Company Ltd* [1968] EA 123, and *Peters Vs Sunday Post Limited* [1985] EA 424.
11. The respondents urged this court to increase the award for pain and suffering to Kshs. 50,000/= since the award made by the trial court was inordinately low. The respondents relied on *Butt Vs Khan* [1977] 1KAR, *Mercy Muriuki & Another V Samuel Mwangi Nduati & Another* (Suing as the legal administrator of the estate of the Late Robert Mwangi [2019] eKLR, *Anthony Konde Fondo & Another V Rmc(The Representative Of Fc(Deceased)* [2021] eKLR, *Josephine Kiragu Vs Vyas Hauliers Ltd* [2017] eKLR, *Sukari Industries Limited Vs Clyde Machimbo Juma, Homa Bay HCCA NO. 68 of 2015[2016]* eKLR,
12. According to the respondents, the trial court did not err in any way in adopting a multiplier of 30 years bearing in mind that the deceased was a salonist which is deemed to be self-employment and therefore would have lived beyond the age of 65 years which is the retirement age in Kenya. The respondents urged this court to maintain the multiplier. The respondents relied on *Beatrice Wangui Thairu Vs Hon. Ezekiel Barngetuny & Another, Nairobi HCCC No. 1638 of 1988*, *Alice O. Alukwe V Akamba Public Road Services Ltd & 3 Others* [2013] eKLR, *Ruth Wangechi Gichuhi Vs Andrew Mageri Luande*[2011] eKLR, and *Kemfro Africa Limited T/A Meru Express Services & Another Versus A.M. Lubia & Another* [1985] eKLR.

Analysis And Determination

Duty of court

13. As first Appellate Court, will evaluate the evidence afresh and make conclusions albeit bearing in mind that it did not have the opportunity of seeing or hearing the witnesses firsthand. See the case of *Selle & Anor –Vs- Associate Motor Boat Co. Ltd* 1968 EA 123.

Issues

14. Did the trial court commit an error in principle in assessing damages or is the quantum of damages herein inordinately low or high as to be an erroneous estimation of damages?

Quantum

15. An appellate court will only interfere with the trial court's discretion in the assessment of damages where; i) there is an error in principle; and or ii) the award of damages is so inordinately high or low as to represent an entirely erroneous estimate of damages (*Bashir Ahmed Butt vs. Uwais Ahmed Khan* (1982-88) KAR).
16. This claim was founded on the [Law Reform Act](#) and Fatal Accident Act. These laws provide for loss of expectation of life, funeral expenses and other special damages, pain and suffering, and for lost years-loss of dependency.



Loss of Dependency

17. Section 4 *Fatal Accidents Act* provides as follows: -

“Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parents, and child if the person, whose death was so caused and shall, subject to the provisions of Section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.”

The concepts of multiplicand and multiplier

18. Simply put; the formula for dependency, is the multiplicand, that is the annual net income multiplied by a suitable multiplier of expected working life lost by the deceased by the premature death, and further by a factor of the dependency ratio, that is the ratio of the deceased's income utilized on her dependants. Beatrice Wangui Thairu vs. Hon. Ezekiel Barngatuny & Another, Nairobi HCCC No. 1638 of 1988 Ringera J (as he then was).
19. The appellants submitted that, the magistrate erred in using 30 years as a multiplier in total disregard of the fact that life expectancy is 55 years. Thus, making the award in general damages inordinately high.
20. The trial court adopted a multiplier approach and adopted Kshs. 12,552.70 which is the salary of a general labourer as of 22/10/2019. The appellants did not object to the application of the minimum wage for a general laborer.
21. Their quarrel is in the multiplier adopted which they say was inordinately high. The appellants proposed a multiplier of 25 years.
22. The respondents urged this court not to interfere with the multiplier.
23. It was not disputed that the deceased died at the age of 24 years and worked as a salonist.
24. In light of the possibility that the deceased would probably work even beyond the age of 60 years, this court finds the multiplier of 30 years to be reasonable.
25. Thus, the tabulation of loss of dependence as was done by the trial court is reasonable compensation. More specifically; $Kshs. 12,552.70 \times 12 \times 30 \times 1/3 = Kshs. 1,506,324/=$
26. From the foregoing, this court finds Kshs. 1,506,324/= is reasonable compensation for loss of dependency. The award is upheld.

Loss of expectation of life

27. The respondents were awarded Kshs. 100,000/= for loss of expectation of life.
28. The appellants have not challenged this award.
29. This court will therefore uphold the award of Kshs. 100,000/=.



Pain and suffering

30. The appellants submitted that an award of Kshs. 10,000 would be sufficient. On the other hand, the respondents contest the award of Kshs. 30,000/= as being too low and should be enhanced to Kshs. 50,000/=. From the record, the respondent did not file a cross appeal.
31. From the evidence adduced, the deceased died on the spot. The respondents produced a certificate of death which confirmed that the cause of death was hemorrhage due to a road traffic accident.
32. Upon consideration of the authorities relied on by the parties herein and the evidence on death, this court finds that the award of Kshs. 30,000/= is not unreasonable or excessive compensation for pain and suffering. The award of Kshs. 30,000/= for pain and suffering is upheld.

Special damages

33. None of the parties have challenged this award.
34. This court therefore upholds the award of Kshs.60,550/=

Conclusion and orders

35. In an upshot, this court finds that the appeal herein fails. The judgment of the trial court is upheld in its entirety. Costs of this appeal shall be borne by the appellants.
36. Orders accordingly

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,
THIS 20TH DAY OF DECEMBER, 2024.**

**HON. F. GIKONYO M
JUDGE**

In the presence of: -

1. Matiri for appellant
2. Ms. Matengo for Kebongo for respondent
3. Otolu C/A

