



China City Construction Company Limited & another v Karis (Suing as the Administrator and Legal Representative of the Estate of the Late Didlora Mwaka Mwangala) (Civil Appeal 105 of 2023) [2024] KEHC 16186 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEHC 16186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 105 OF 2023
SM GITHINJI, J
DECEMBER 19, 2024**

BETWEEN

CHINA CITY CONSTRUCTION COMPANY LIMITED 1ST APPELLANT

KENNEDY SETE KIPROTICH 2ND APPELLANT

AND

MBURA HERBERT KARIS RESPONDENT

**SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE
ESTATE OF THE LATE DIDLORA MWAKA MWANGALA**

(Being an appeal from the Judgment of Honourable R. Amwayi – SRM dated, signed and delivered in the Chief Magistrate’s Civil Suit No.E046 of 2021 Kaloleni on 14th July, 2023)

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Magistrate Hon. R.M Amwayi delivered on 14.06.2023 in Civil Suit N0. 46 of 2021 in Kaloleni wherein judgment was entered in the following terms;
 - a. Pain and suffering Kshs. 50,000
 - b. Loss of expectation of life Kshs. 100,000
 - c. Loss of dependency Kshs. 13,572x2/3x25 Kshs. 2,714,400
 - d. Special damages Kshs.75,000Total Kshs. 2,939,400
2. The appeal is raised on the following grounds;



1. The learned magistrate erred in fact by holding that the deceased was earning Kshs. 13,572.00 per month without any evidence in support thereof.
2. The learned magistrate erred in law and in fact by applying a multiplicand of 2/3 and a multiplier of 25 years where the deceased was aged 30 years at the time of death.
3. The learned magistrate erred in law and in fact in the manner she awarded the damages.
4. The learned magistrate erred in law and in fact in the manner she analyzed the evidence and arrived at her finding.

Evidence at trial

5. Pw1 Herbert Mburu told the court that the deceased was his wife. That on 01.11.2020 at around noon he received a call from his brother that his wife had died in a Road Traffic accident and had died on the spot. That the deceased was 30 years at the time of her death and they had one daughter who died on the same day. He stated that the deceased was a home maker but was doing businesses being transport business where she used to make Kshs. 50,000 to 60,000 a month. He adopted as PEX 1-10 as per the list of documents.

Analysis and determination

6. This appeal was disposed of by way of written submissions. I have considered this appeal, submissions by parties and the authorities relied on. I have also perused the trial court's record and the impugned judgment. This being a first appeal, it is by way of a retrial, and parties are entitled to this court's reconsideration, reevaluation and reanalysis of the evidence on record in order to reach its own conclusion. The court should however bear in mind that the trial court had the advantage of seeing the witnesses testify and give due allowance for that.
7. In *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, the court held that:

“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”
8. From the grounds on the memorandum of appeal, the issue for determination is;
 1. Whether the trial court erred in awarding the quantum for damages in the multiplier, multiplicand and dependency ratio.
9. The Appellant challenges the award of the trial court of Kshs. 2,714,400 as loss of dependency for being high or inordinately excessive without any basis or justification.
10. The principles to be considered by an appellate court in deciding whether to disturb the trial court's assessment of damages were set out by the Court of Appeal for East Africa in the locus classicus case of *Bashir Butt v Khan* civil appeal No 40 of 1977 [1978] eKLR thus;

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.”



11. Further, the Court of Appeal in *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2) [1985] eKLR* held that: -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

12. As pointed out, the contested issue is the award of Kshs. 2,714,400 as loss of dependency. In arriving at the said figure, the trial court held that there was no proof of earnings thus chose to go by the applicable minimum wage of a casual laborer in 2020. The dependency ratio was guided by the chief’s letter that set out the dependants.

13. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency was dealt with sufficiently by Ringera, J (as he then was) in *Marko Mwenda v Bernard Mugambi & another Nairobi HCCC No 2343 of 1993* that:

“In adopting a multiplier the court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased...The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case

14. Having carefully considered the grounds raised herein on appeal and perused the trial court’s judgment. In my view, the trial court sufficiently applied the principles as set out in the above authority in arriving at the loss of dependency. I do not find sufficient grounds warranting interference with the trial court’s finding. Consequently, the appeal fails for want of merit and the same is hereby dismissed with costs to the Respondent. This judgment though does not significantly vary that of 8/10/2024, having been determined on consideration of the complete record of appeal, supersedes that of 8/10/2024 which is hereby withdrawn.

JUDGMENT READ, SIGNED AND DELIVERED AT MALINDI THIS 19TH DAY OF DECEMBER, 2024.

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S.M. GITHINJI



JUDGE

In the Presence of; -

Muthuri holding brief for Mr. Wachira for the Appellant

Mr. Ngure was for the Respondent (absent)

Later

Ms Mwombe holding brief for Mr. Ngure for the Respondent

