



**Chinese City Construction Company Ltd v Adhiambo & another (Suing as the Legal Representatives of the Estate of Silas Okech Nyaori- Deceased) (Civil Appeal E065 of 2021) [2023] KEHC 370 (KLR) (23 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E065 OF 2021  
KW KIARIE, J  
JANUARY 23, 2023**

**BETWEEN**

**CHINESE CITY CONSTRUCTION COMPANY LTD ..... APPELLANT**

**AND**

**TREAZER HELLEN ADHIAMBO ..... 1<sup>ST</sup> RESPONDENT**

**MARY NYAORE NYAORI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SILAS  
OKECH NYAORI- DECEASED**

*(Being an Appeal from the judgment in Oyugis Senior Principal Magistrate's  
SPMCC No. 49 of 2020 by Hon. B. Omwansa–Senior Principal Magistrate)*

**JUDGMENT**

1. Chinese City Construction Company Ltd, the appellant herein, was the defendant in Oyugis Senior Principal Magistrate's SPMCC No. 49 of 2020. This was a claim that arose from a road traffic accident where the deceased was fatally injured. The accident involved motor vehicles registration number XG6262 P-M766 Rubber Roller and motor vehicle registration number KCT 490T Isuzu D-max in which the deceased was travelling. The learned trial magistrate delivered judgment dated April 28, 2021.
2. On February 18, 2021 the parties recorded a consent at 80:20 in favour of the respondents as against the respondent.
3. The learned trial magistrate made an award of Kshs. 2,660,000.00 in general damages and special damages Kshs. 130,000.00 in favour of the respondent before factoring liability.



4. The appellant was aggrieved by the said judgment and filed this appeal through the firm of Okong'o, Wandago & Company Advocates. The following grounds of appeal were raised:
  - a. The learned trial magistrate erred in fact and law when, on the facts of the case, he awarded the respondent kshs.2, 660,000/- as damages for loss of dependency, under the *Fatal Accidents Act*, which sum was excessive, unreasonable and disproportionate, on the facts of the suit before him and which award was inconsistent with a long line of binding precedence.
  - b. The learned trial magistrate erred in fact and law in failing to apply the relevant, settled principles, while assessing damages for loss of dependency, hence awarded the respondents the sum of kshs.2, 660,000/- as general damages for loss of dependency under the *Fatal Accidents Act*, before contribution, which award was inordinately and manifestly excessive.
  - c. The learned trial magistrate erred in law and in disregarding the appellant's submissions on the award sought under the *Fatal Accidents Act*, and thus arrived at a wholly erroneous award.
  - d. The learned trial magistrate erred in law and fact in deciding the case, on the whole against the law and the evidence before him, and arrived at a decision which was wholly erroneous.
5. The appeal was opposed by the respondent through the firm of Everlyne Kuke & Company Advocates. It was argued that the award was reasonable in the circumstances of this case.
6. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
7. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs. Khan* [1981] KLR 349 at page 356 Law JA stated:

...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 a figure which was either inordinately high or low.
8. The appellant complained that the award of kshs.2, 660,000/- for loss of dependency was inordinately high. At the time of death, the deceased was aged 29 years. Evidence was adduced that he was a motor cycle rider and a farmer who was earning Kshs. 20,000.00 per month.
9. At the hearing, nothing was produced to prove the claim on earnings. Where earnings have not been proved, the proper approach is to make a global award as the trial magistrate herein did. In *Albert Odawa vs. Gichimu Githenji*; Nakuru HCCA No.15 of 2003 (2007), eKLR where Justice Ringera expressed himself as follows;

The multiplier approach is just a method of assessing damages. It is not a principle of law or a 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 amount of annual or monthly dependency and the expected length of the dependency are known 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.



10. In the case of *David Mbuba & another v Victoria Mwongeli Kimwalu & another* [2018] eKLR an award Kshs. 2,500,000.00 was given under the he *Fatal Accidents Act*. I therefore find that the award of kshs.2, 660,000/- for loss of dependency cannot be said to be inordinately high.
11. The appeal is therefore dismissed with costs.

**Delivered and signed at Homa Bay this 23<sup>rd</sup> day of January, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

