



**Ouma & another v Wanyama & another (Suing as the administrators  
of the Estate of Evans Wanyama (Deceased)) (Civil Appeal  
E043 of 2021) [2023] KEHC 19282 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19282 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E043 OF 2021  
WM MUSYOKA, J  
JUNE 30, 2023**

**BETWEEN**

**KEVIN OTIENO OUMA ..... 1<sup>ST</sup> APPELLANT**

**ALICE NEREWA KIYONGA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CHRISTOPHER WANYAMA ..... 1<sup>ST</sup> RESPONDENT**

**DAVID OUMA WANYAMA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF EVANS WANYAMA  
(DECEASED)**

*(An appeal arising from the judgment of Hon. PY Kulecho, Senior Resident Magistrate,  
SRM, delivered on 3rd November 2021, in Busia SRMCCC No. 151 of 2020)*

**JUDGMENT**

1. The suit at the primary court was initiated by the respondents against the appellants, for compensation, on account of damages arising from a road traffic accident, where they prayed for general damages, special damages, and costs. The respondents are the administrators of the estate of the deceased, who was lawfully riding a motorcycle along the Busia-Kisumu road, when he was knocked down by motor-vehicle KBV 651T, causing his death. The appellants filed a defence, in which they denied liability. They averred, in the alternative, that the deceased contributed to the accident by his own negligence, or that the accident was beyond their control.
2. A trial was conducted, in which one of the respondents testified, and called a witness. The appellants did not testify, nor adduce any evidence. A judgment was delivered on November 3, 2021. Liability was assessed at 50:50, on the basis that there was ambiguity on how the accident occurred. A total of Kshs



2,326,460.00, being Kshs 50,000.00 for pain and suffering, Kshs 150,000.00 for loss of expectation of life, Kshs 4,343, 040.00 for loss of dependency, and Kshs 109, 880.00 special damages, less contributory negligence, was awarded.

3. The appellants were aggrieved, hence the instant appeal. In the memorandum of appeal, dated November 11, 2021, they aver that the submissions on damages were treated superficially; the court misdirected itself on the principles applicable in the award of damages; the award was excessive and erroneous; their submissions on general damages were not considered; and the court did not apply itself judicially to the evidence adduced.
4. Directions were given on May 3, 2023, for disposal of the appeal by way of written submissions. There has been compliance. Both sides have filed written submissions. The appellants urge that the findings and holdings of the trial court on liability, pain and suffering, and special damages be upheld; but those on loss of expectation of life and loss of dependency be revisited. The respondents submitted only on the award of damages, and urge that the awards by the trial court be upheld.
5. On liability, I note that the only evidence placed on record was by the respondents. The appellants did not testify, nor call evidence. PW1 was one of the respondents, he did not witness the accident. PW2 was the eyewitness. He was a pillion passenger on the motorcycle that the deceased was riding. He said he and the deceased were headed for Busia town, while the vehicle belonging to the appellants was travelling in the opposite direction, towards Kisumu. The vehicle was overtaking another vehicle, when it knocked the motorcycle head-on. PW3, was a police officer, who produced the police abstract. He stated that the police record did not indicate who was to blame for the accident. The evidence tendered by the respondents was not controverted by the appellants. There was no counter evidence, and the trial court had no basis for finding that the cause of the accident was ambiguous. PW2 testified that he was involved in the accident. They were hit head-on by a vehicle that was overtaking another. That would mean that they were on their right lane, facing Busia, when the appellants driver left his right lane, facing Kisumu, and entered the lane facing Busia, where PW2 and the deceased were, as he tried to overtake the other vehicle, and knocked them down. That evidence was not contradicted. The police records did not contradict that version by PW2. The mere fact that the police record did not blame any of the drivers did not make the narrative by PW2 false. In any event, PW3 did not investigate the matter, he had been called to produce the police abstract as evidence that the accident in fact happened. There was no ambiguity, in the absence of counter-evidence, and the trial court should have found the appellants 100% liable in negligence for the accident.
6. From the submissions, it emerges that the contest on assessment of damages is around the multiplier, the multiplicand and loss of expectation of life. On multiplier, the standard approach is to rely on the official age of retirement, which is now 60 years old. However, as stated in *John Muchiri Njoroge & another v Prisca Mmbone & another* [2019] eKLR (Kamau, J) and *Petrocity Enterprizes (U) Ltd v Roseline Sikudi suing as legal representative of the estate of Pascal Ngadi (deceased) & 2 others* [2017] eKLR (Korir, J), vagaries and vicissitudes of life are brought to bear, reducing the age of retirement. The standard multiplier for a 25-year-old would be a figure in the range of 15 to 20 years. The appellants propose 25 years, and I shall adopt that. The multiplicand depends on what the deceased was earning. Where there is uncertainty about it, the court relies on the minimum wage, as set in the relevant regulations or legislation. The earnings of the deceased herein were uncertain. The deceased died on February 4, 2020. The regulations in force then were the *Regulations Wages (General) (Amendment), Order, 2018*, published through Legal Notice No 2, in the special issue of the Kenya Gazette Supplement No 1 of January 8, 2019. The deceased was a motorcycle rider. The employment equivalent would be that of a driver of a car or light van, and the minimum wage for that cadre of employees was fixed at Kshs 13, 975.30, for areas outside Nairobi, Mombasa, Kisumu,



Mavoko, Ruiru and Limuru. The trial court used Kshs 13, 572.00, which is close. I shall retain the same. On the dependency ratio, the appellants propose 2/3, which is reasonable, and it is what the trial court had adopted. On the loss of expectation of life, the conventional award is Kshs100, 000.00. I have seen the authority that the trial court relied on to award Kshs150, 000.00 under this head, *Franco Mwirigi v Patrick Musyoki Munyoki & Duncan Mbole Munyoki (suing on behalf of the estate of Maurice Wambua (Deceased))*[2018] eKLR (Korir, J), and note that no reasons were assigned in that case for upholding the award of Kshs 150,000.00 by the trial court.

7. In view of everything, I shall allow the appeal on the following terms:
  - a. Liability is revised upwards to 100%;
  - b. The multiplier is reduced to 25 years;
  - c. The loss of expectation of life is reduced to Kshs 100,000.00;
  - d. The loss of dependency works out as follows:  $25 \times 13,572 \times \frac{2}{3} \times 12 = \text{Kshs } 2,714,400.00$ ;
  - e. The total works out to  $2,714,400.00 + 100,000.00 + 50,000.00 + 109,880.00 = \text{Kshs } 2,974,280.00$ ; and
  - f. Each party to bear their own costs.
8. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 30<sup>TH</sup> DAY OF JUNE, 2023**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Oduor, instructed by the LG Menezes & Company, Advocates for the appellants.

Mr. Mukisu, instructed by Mukisu & Company, Advocates for the respondents.

