



**Koech & another (Suing as Legal Representatives of the Estate of Benard Kiprotich - Deceased)
v Jaoko (Civil Appeal E025 of 2021) [2023] KEHC 20841 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E025 OF 2021**

**JR KARANJA, J
JULY 27, 2023**

BETWEEN

MARY CHEBET KOECH 1ST APPELLANT

ALICE CHERONO KOSKEI 2ND APPELLANT

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF BENARD
KIPROTICH - DECEASED**

AND

CALEB ODHIAMBO JAOKO RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the Resident Magistrate in Kericho CMCC No.102 of 2019 in which the appellants, Mary Chebet Koech and Alice Cheronos Koskei sued the respondent; Caleb Odhiambo Jaoko, for damages resulting from a road traffic accident which occurred on that day along the Kericho – Nakuru road at Kedowa on 9th July 2018 and in which the deceased Bernard Kiprotich, suffered fatal injuries. The appellants filed the suit as the legal representatives of the estate of the deceased and the deceased dependants.
2. In the plaint dated 26th March 2019, it was pleaded that the respondent was the beneficial and/or legal owner of motor vehicle Registration No. KCB 253A which was on the material date being driven so negligently and recklessly such that it violently collided with a motorcycle Registration No. KMEL 172X on which the deceased was aboard thereby causing fatal injuries to the deceased.
3. The appellant therefore prayed for damages against the respondent under both the *Law Reform Act* and the *Fatal Accidents Act*. The respondent denied the claim in its entirety and contended in his statement of defence that if the accident occurred, then it was solely caused and/or substantially contributed to by negligence of the part of the deceased, the rider of the motorcycle and its owner.

The respondent therefore prayed for the dismissal of the claim.



4. In the course of the trial, the parties arrived at a consent on liability which was thus apportioned between them at the ratio of 60% to 40% in favour of the appellants against the respondent. The quantum of damages remained the only issue left for determination by the trial court which having considered the evidence placed before it awarded damages in favour of the appellants as hereunder: -

Pain & Suffering	-	Kshs.50,000/=
Loss of expectation of life	-	Kshs.200,000/=
Loss of dependency	-	Ksh.600,000/=
Special damages	-	<u>Kshs.30,000/=</u>
Sub-Total	-	Kshs.880,000/=
Less 40% contribution	-	<u>Kshs.352,000/=</u>
TOTAL	-	<u>Kshs.528,000/=</u>

5. Being dissatisfied with the award made for loss of dependency i.e Kshs.600,000/=-, the appellants preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 19th July 2021, in which there is a general complaint that the award was too low in the circumstances and did not accord with the principles applicable in the computation of damages.
6. The appeal was canvassed by written submissions with the appellant's submissions being filed by Messrs Khan & Associates Advocates and those of the respondent by Omwenga & Co. Advocates.
7. The duty of this court was to re-visit the evidence availed before the trial court and draw its own conclusion bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (see, *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123).

In that regard, the sole evidence was that of the first appellant (PW1) who stated that the deceased was a farmer by occupation and earned monthly income of Kshs.20,000/= with which he fend for his children.

8. The trial court found that the evidence did not prove the alleged monthly earning or even dependency and deemed it necessary to assess damages for loss of dependency applying the global approach as opposed to the multiplier approach which was described in the case of *Mwanzia v Ngalali Mutua v Kenya Bus Service (Msa) Ltd & Another* by Ringera J. as:

“... 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 to 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 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.”

9. In this court's opinion, the trial court did not err in applying the global approach nor in finding that the alleged monthly earning and dependency were not proved. Indeed, there was no concrete evidence



to establish and prove the alleged earning. This therefore deprived the trial court of a facility to assess or compute loss of dependency on the basis of the multiplier approach.

10. The contention by the appellants that the award of Kshs.600,000/= was too low in the circumstances could not find support in their evidence in the trial court and is surely devoid of merit. In any event the award could have been much lower or even unnecessary regard being given to the fact the allegation on earnings and dependency were unproved.
11. An appellate court would be justified in dismissing the quantum of damages awarded by a trial court only if it's satisfied that barring other factors, the amount is so inordinately low or high that it must be a wholly erroneous estimated of the damage (see *Kemfro Africa Ltd T/a Express Service v AIM Lubia & Another* (1982 -88) 1 KAR 727).

Herein, this court is not so satisfied and must therefore find that this appeal is wanting on merit and is hereby dismissed with costs to the respondent.

Ordered accordingly

[DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF JULY, 2023.]

J. R KARANJAH

JUDGE

