



**Mwangi & another v Njuguna & another (As Administrator of the Estate of Johnson Karanja Muchuku) (Civil Appeal 96 of 2020) [2023] KEHC 21382 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21382 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL APPEAL 96 OF 2020**  
**AN ONGERI, J**  
**AUGUST 4, 2023**

**BETWEEN**

**SAMUEL KARIUKI MWANGI ..... 1<sup>ST</sup> APPELLANT**

**ANDRIAN COMPANY LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JANE WANJIRU NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN GITAU MUCHUKU ..... 2<sup>ND</sup> RESPONDENT**

**AS ADMINISTRATOR OF THE ESTATE OF JOHNSON KARANJA MUCHUKU**

*(Being an appeal from the judgment and decree by Hon. M. W. Murage(CM) in Milimani CMCC No. 3682 of 2016 delivered on 30/1/202)*

**JUDGMENT**

1. The respondents filed CMCC No 3682 of 2016 as administrators of the estate of Johnson Karanja Muchuku seeking general damages under the [Law Reform Act](#) and the Fatal Accident Act for fatal injuries sustained by the deceased on 13/7/2013 when the deceased was standing beside the road when he was hit by motor vehicle registration No KBU 952U belonging to the appellant.
2. The appellant filed a defence denying the respondent's claim.
3. The evidence in summary was that the deceased was with PW 2 when they stopped at a service lane along Thika Road where the driver of a breakdown had been fatally injured and was lying dead on the road.
4. The probox registration No KBU 952U arrived at the scene being driven at a high speed and tried to squeeze between their vehicle and the vehicle which was being towed.



5. The probox hit the vehicle being towed and the deceased. The side mirror and registration plates dropped at the scene. The probox did not stop. The deceased was taken to Neema Hospital where he passed away.
6. The driver of the probox said it was the deceased who jumped from the rail and hit his car.
7. The trial court found that the deceased was partially to blame for the accident and apportioned liability at 70:30% in favour of the respondent against the appellant.
8. The trial court assessed general damages at Kshs2,112,685.20 and special damages at Ksh 60,500 subject to 30% contributory negligence.
9. The appellant has appealed against the judgment of the trial court on the grounds that the award was manifestly excessive and that the Trial Court applied the wrong principles and arrived at an erroneous finding.
10. The parties filed written submission which I have duly considered.
11. This being a first appeal the duty of the first appellate court is to re-evaluate the evidence and to arrive at its own conclusion whether to support the findings of the Trial court while bearing in mind that the Trial court had the opportunity of seeing the witnesses.
12. In the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 the court stated as follows;

“ An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
13. The issues for determination are as follows;
  - i. Whether award of general damages was excessive.
  - ii. Whether the trial court applied the wrong principles and arrived at an erroneous conclusion.
  - iii. Who pays the costs of this appeal?
14. On the issue as to whether the award of general damages was excessive, the trial court applied a multiplier of 27 years and a multiplicand Kshs 9,780.95 being the minimum wage.
15. I find that the Trial Court was mindful of the fact that the salary of the deceased was not proved although it was alleged that the deceased was working with Githina Auto Spares earning Kshs 40,000 per month.



16. I find that in the absence of prove of the amount of salary the deceased was earning it was reasonable for the Trial Court to award the minimum wage of unskilled workers.
17. I find that there is no evidence that the trial court relied on the wrong principles and I find no reason to tamper with the award of Kshs 2.112,685.20 in respect of General damages for loss of dependency.
18. The only time an appellate court can interfere with the award of the trial court is when the award is too high or too low or where the trial court applied the wrong principles.
19. I find that the award herein is reasonable. The Appellant did not contest the issue of liability.
20. I dismiss this appeal with costs to the respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
4<sup>TH</sup> DAY OF AUGUST, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

**In the presence of:**

..... for the Appellant

..... for the Respondent

