



Mbaario & another v Muthoni & another (Suing as Representatives of the Estate of Moses Mutwiri - Deceased) (Civil Appeal E006 of 2022) [2023] KEHC 25771 (KLR) (23 November 2023) (Judgment)

Neutral citation: [2023] KEHC 25771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E006 OF 2022
TW CHERERE, J
NOVEMBER 23, 2023**

BETWEEN

JOSEPH MBAARIO 1ST APPELLANT

CHRISTOPHER MUGAMBI 2ND APPELLANT

AND

GLADYS MUTHONI 1ST RESPONDENT

STEPHEN MURUNGI M'NARICHIA 2ND RESPONDENT

SUING AS REPRESENTATIVES OF THE ESTATE OF MOSES MUTWIRI - DECEASED

(Being an appeal from the judgment and decree in CMCC NO. 12 of 2019 by Hon. T. Gesora (CM) on 16th December, 2021)

JUDGMENT

Background

1. Gladys Muthoni & Stephen Murungi M'narichia (suing as representatives Of The Estate Of Moses Mutwiri (Deceased) Filed Suit In The Lower Court Against Joseph Mbaario and Christopher Mugambi (1st and 2nd Appellants respectively) seeking damages for fatal injuries suffered occasioned when their son Moses Mutwiri (Deceased) died as a result of a road traffic accident that occurred on 02nd January, 2018 when he knocked down by 2nd Appellant's M/V KBC 833L which was allegedly driven negligently by the 1st Appellant.



2. By a judgment dated 16th December, 2021, the court apportioned liability at 100% against the Appellants jointly and severally and awarded the Respondents damages in the sum of KES. 3,335,500/-, costs of the suit and interest.

The Appeal

3. Appellants appealed against liability and quantum but by their submissions filed on appealed 16th March, 2023 indicated that they were only appealing on quantum of damages which they contend is too high.

Analysis and Determination

4. This being the first appellate court, its duty is to re-evaluate the evidence and come up with its own conclusions but also bear in mind that it should not interfere with the findings of the trial court unless the same were based on no evidence or on misapprehension of the evidence or the trial court applied the wrong principles in reaching its findings. (See *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968) EA 123.
5. I have considered the entire record of appeal and considered the submissions filed on behalf of the Appellants and the Respondents and I shall endeavour to address each heading as hereunder.
6. The principles on which a court can interfere with an award for damages was stated by Madan JA in *United India Insurance Co. Ltd v East African Underwriters (Kenya) Ltd* [1985] E.A 898 and restated by Kneller JA in *Kemfro Africa Limited t/a Meru Express Services (1976) & Anor. vs Lubia & Anor.*, No. 2 [1987] KLR 30 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.”
7. For pain and suffering, Respondents prayed for KES. 100,000/- and Appellants made no offer. The learned trial magistrate awarded KES. 30,000/- under this heading which in my considered view is a reasonable sum.
8. Concerning loss of expectation of life, Respondents prayed for KES. 200,000/- and Appellant on the other hand made no offer. Courts have been known to grant the conventional sum of KES. 100,000/ under this head. In *Alexander Okinda Anagwe (suing as the administrator of the estate of Patricia Kezia Anagwe deceased) v Reuben Muriuki Kabuba, City Hopper Ltd, Michael A. Craig & Reuben Kamanden Mburu* [2015] eKLR where the court awarded the sum of KES. 100,000/ in the instance of a deceased person aged 25 years and in good health. Considering that the decision is over 6 years old, trial magistrate cannot t be faulted for awarding KES. 150,000/- under this heading.
9. Regarding loss of dependency, the learned trial magistrate awarded a global sum of KES. 3,000,000/-, and relied on *David Mbuba & Another v Victoria Mwangeli Kimwalu & Another* [2017] eKLR that was cited by the Respondents where the court awarded a global sum of KES. 4,000,000/-. The general approach is that comparable damages should, as far as possible, be compensated by comparable awards. The sum of KES. 3,000,000/- under this heading does therefore not fit the description of being too high.



10. From the foregoing analysis, I find that Appellants have not demonstrated that from the material placed before the court, the learned trial magistrate 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.

11. Consequently, this appeal has no merit and it is dismissed with costs to the Respondents.

DATED IN MERU THIS 23RD DAY OF NOVEMBER 2023

T.W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/ Munene

For Appellants - Mr. Njuguna for Kimondo Gachoka & Co Advocates

For Respondent - Mr. Riaga for Mutembei & Kimathi Advocates

