



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoka v Njeru (Suing as Legal Representative of the Estate of Felix Rache Njeru - Deceased)  
(Civil Appeal 8 of 2023) [2023] KEHC 25594 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL 8 OF 2023  
LM NJUGUNA, J  
NOVEMBER 22, 2023**

**BETWEEN**

**PETERSON NJERU NJOKA ..... APPELLANT**

**AND**

**ENID CIANJOKA NJERU (SUING AS LEGAL REPRESENTATIVE OF THE  
ESTATE OF FELIX RACHE NJERU - DECEASED) ..... RESPONDENT**

*(Appeal arising from the decision of Hon. J.W. Gichimu SPM in Senior Principal  
Magistrate's Court at Runyenjes Civil Case No. 53 of 2020 delivered on 26th January 2022)*

**JUDGMENT**

1. The appeal herein has been filed vide memorandum of appeal dated 20<sup>th</sup> February 2023 wherein the appellant being dissatisfied with the above-mentioned decision, now seeks orders that:
  - a. The appeal be allowed;
  - b. The judgment be set aside and the award be re-assessed; and
  - c. Costs of the appeal be awarded to the appellant.
2. This appeal is premised on the grounds that the trial magistrate erred in law and fact:
  - a. In failing to appreciate the principles available for consideration in awarding general damages which led to an erroneous assessment of damages, resulting in an award that is inordinately high;
  - b. In awarding general damages for pain and suffering at Kshs. 20,000/=, loss of expectation of life at Kshs.120,000/=, loss of dependency at Kshs. 1,500,000/=, which amount is excessive considering the nature of the claim in comparison to similar cases;



- c. By failing to appreciate the appellant's submissions and authorities on award of damages by other courts in similar circumstances; and
  - d. By failing to follow the rule of precedents in awarding the general damages.
3. According to the plaint dated 25<sup>th</sup> June 2020, the deceased was lawfully walking along the Embu-Meru road near Nembure within Embu County when the appellant, his agent or servant so negligently drove, managed and/or controlled motor vehicle registration number KCL 438Q and caused it to hit and fatally injure the deceased. The respondent sought judgment against the appellant for general damages for pain and suffering, loss of expectation of life and loss of dependency, and costs of the suit with interest.
  4. The appellant filed a statement of defense denying all the allegations made in the plaint and outlined particulars of negligence on the part of the deceased, which contributed to his death.
  5. At the hearing, PW1, the respondent herein stated that on the material day, she received a phone call that her husband had been hit by the motor vehicle belonging to the appellant. She stated that the deceased was 68 years old at the time of his death and was a farmer earning approximately Kshs. 50,000/= per month. That the deceased was a retired civil servant and was survived by two children, one who lives with a disability and who solely depended on the deceased for maintenance. She stated that she incurred funeral expenses of Kshs. 230,700/= among other expenses. On cross examination she stated that her children are aged 50 years and 42 years and one of them is married. That she earns pension as a retired civil servant.
  6. PW2 Jacinta Wanjira Muriuki who knew both PW1 and the deceased, stated that on the day of the accident, she met the deceased at the stage and he told her that he was planning to spend the night at the farm. That after they spoke, the deceased crossed the road and after he had reached the other side, he was hit by the motor vehicle while he was outside the road. It was her testimony that the motor vehicle was being driven at high speed and only managed to stop about 100 meters from the scene. That she called PW1 to inform her but she did not pick the call. That police arrived at the scene and took the body to the mortuary. On cross-examination, she stated that the vehicle was a white matatu and the deceased was hit while walking off the road.
  7. PW3, John Njagi Njiru testified that on the day of the accident, he was along the road at around 7PM and he saw the deceased on the opposite side of the road. That the matatu was being driven at high speed and it knocked down the deceased who was standing outside the road, killing him. That the driver of the motor vehicle ran away and he blamed the driver for the accident. On cross-examination, he stated that the motor vehicle stopped about 12 meters from the point of impact.
  8. PW4, James Murimi stated that he witnessed the accident. He testified that on the material day, he was working on the deceased's shamba when the deceased gave him money and instructed him to pay the other employees and then deliver milk. That the deceased went to the road to buy cigarettes and after he had crossed the road and was beyond the white line, he was hit by the motor vehicle, which stopped about 200 meters from the point of impact.
  9. PW5, P.C. Leonard Githinji of Runyenjes Police Station traffic section, produced the police abstract. He stated that the fatal traffic accident was reported and an OB was recorded. That the body of the deceased was collected and taken to Runyenjes Level 4 Hospital. On cross-examination, he stated that he was not the maker of the police abstract, neither was he the investigating officer in the case. That he did not know if anyone had been charged with a traffic offence in relation to the incident and was therefore unable to apportion blame for the accident.



10. The respondent closed her case. The appellant did not testify neither did he call any witnesses. The trial magistrate was guided by the case of *Motex Knitwear Limited Vs Gopitex Knitwear Mills Limited* [2009] eKLR in finding the appellant 100% liable for the accident. On quantum, the trial magistrate awarded Kshs. 20,000/= for pain and suffering, Kshs. 120,000/= for loss of expectation of life and a global sum of Kshs. 1,500,000/= for loss of dependency. The court also awarded special damages of Kshs. 229,300/= as pleaded and proven.
11. In this appeal, the court directed the parties to file their written submissions. However, only the respondent filed her written arguments.
12. In her written submissions, the respondent stated that the appellant's own failure to testify at the trial dealt a blow on its own case at trial and the trial court did not have any evidence to maneuver its finding in favour of the appellant. It was her argument that as a matter of practice, general damages for pain and suffering ranges between Kshs. 10,000/= and Kshs. 50,000/= and so the trial court's award of Kshs. 20,000/= under this head is fair. That under the range of award for damages for loss of expectation of life is Kshs. 100,000/= to Kshs. 250,000/= as the courts have been limiting their discretion to this extent. That the award of Kshs. 120,000/= under this head is fair given the current times. On the issue of loss of dependency, it was her submission that the appellant did not use his chance at trial to rebut the evidence adduced in support of the respondent's claim under this head and that the award of Kshs. 1,500,000/= should be upheld by this court. She termed this appeal as a tactic to delay justice and urged the court to uphold the finding of the trial court.
13. In my view, from the foregoing and from the record of appeal, the issue for determination is whether the award of general damages is fair and just.
14. This being a first appeal, I am cautious of the role of this court as stated in the case of *Selle & Another Vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where it was held thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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...”
15. On the trial court's award for pain and suffering, the appellant challenged the award of Kshs. 20,000/= . From the testimonies of PW2, PW3 and PW4, the deceased died on the spot and his body was taken to the Runyenjes Level 4 Hospital. The general principle in awarding damages under this head is that the same is to be kept at a minimum when the deceased die immediately after the impact and did not suffer pain for a long period of time. Such was the finding in the case of *West Kenya Sugar Co. Limited Vs Philip Sumba Julaya (Suing as the Administrator and personal representative of the estate of James Julaya Sumba)* [2019] eKLR where the court held thus:

“The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.”



16. The same sentiments were reshaped in the case of *Hyder Ntbenya Musili & Another Vs China Wu Yi Limited & Another* [2017] eKLR, where the Court stated as follows:

“As regards damages awarded under the *Law Reform Act*, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death.... The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/= while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.”

Therefore, the trial court’s award of Kshs. 20,000/= under this head is reasonable.

17. On the issue of damages for loss of expectation of life, the trial court awarded Ksh. 120,000/=. I do appreciate that this award must be modest and based on the reasoning that the deceased would have had a fruitful life into the unforeseeable future, which life had been cut short by the accident. This was established in the case of *Benham Vs Gambling*, (1941) AC 157 where it was held:

“In assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness, the test is not subjective and the right sum to award depends on an objective assessment of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not loss of future pecuniary prospects.”

With this in mind, I find an award of Ksh. 120,000/= to be reasonable given the circumstances.

18. On the general damages for loss of dependency, the trial court awarded a global sum of Kshs. 1,500,000/= and noted that there was insufficient documentation to prove the deceased’s earnings from farming. I note that the deceased was also a retired civil servant at the time of his death. As regards his farming activities, PW1 produced a detailed summary of the earnings and expenses for the deceased’s farming ventures. However, I do note that the same are simply a breakdown and cannot be authenticated in any way. If this court is to apply the estimated income at Kshs. 50,000/= as prayed by the respondent, there would be no firm basis to rely upon, for instance bank statements or other official financial records. I do agree with the trial magistrate that the earnings from farming activities were unascertainable and therefore, the multiplier method cannot be applied. On this, I am guided by the case of *Albert Odawa Vs. Gichimu Gichenji* (2007) eKLR where it was held;

“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.” Emphasis mine

19. As to whether the global sum awarded was inordinately high, I am guided by the following cases:



- a. In the case of Moses Wetangula & another Vs Eunice Titika Rengetiang (2018) eKLR, the court awarded a global sum of Kshs. 500,000/= where the deceased was a 42-year-old retired Kenya Defence Forces officer.
  - b. In another case of Rishi Hauliers Limited Vs. Josiah Boundi Onyancha (2015) eKLR the court awarded a global sum of Kshs. 500,000/= where the deceased had reached retirement age.
20. I am alive to the rate of inflation and this court will not look the other way in considering a global sum that encompasses inflation. In the case of Ugenya Bus Services Vs Gachoki (1982) eKLR the court of appeal held thus:
- “We have inflation with us. We all have to live with the exorbitance which inflation has brought into our lives.”
21. Therefore, I find that a global sum of Kshs. 1,000,000/= will suffice in the circumstances, keeping in mind the rate of inflation.
22. Consequently, having considered the arguments by counsel and relevant case laws, I find that the appeal herein succeeds only as regards damages for loss of dependency and loss of expectation of life. The following orders shall issue:
- a. Liability Ratio 100% against the appellant  
General damages
  - b. Pain and suffering Kshs. 20,000/=
  - c. Loss for expectation of life Kshs. 120,000/=
  - d. Loss of dependency Kshs. 1,000,000/=
  - e. Special damages Kshs. 229,300/=
- Total damages payable to the appellants: Kshs. 1,369,300/=
- f. The general damages to attract interest at court rates from the date of the judgment of the trial court;
  - g. Special damages to attract interest at court rates from the date of filing of the plaint until payment in full; and
  - h. Each party to bear its own costs of the appeal.
23. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22<sup>ND</sup> DAY O NOVEMBER, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the Respondent

