



REPUBLIC OF KENYA



**KENYA LAW**

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**Kamongo Waste Paper Limited v Muturi (Suing as the Administrator  
of the Estate of Martin Mwangi (Deceased)) (Civil Appeal  
E006 of 2020) [2022] KEHC 3057 (KLR) (21 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3057 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E006 OF 2020  
GWN MACHARIA, J  
APRIL 21, 2022**

**BETWEEN**

**KAMONGO WASTE PAPER LIMITED ..... APPELLANT**

**AND**

**STEPHEN NDUNGU MUTURI ..... RESPONDENT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF MARTIN MWANGI  
(DECEASED)**

*(This was an appeal from the judgment and decree in the Chief Magistrate's Court CMCC  
No. 1093 of 2018 delivered by Hon. Lyna Sarapai, SRM on the 24th November, 2020)*

**JUDGMENT**

**The Appeal**

1. The instant appeal is with respect to the judgment by Hon. Lyna Sarapai, Senior Resident Magistrate in Naivasha Chief Magistrate's Court delivered on the 24<sup>th</sup> day of November, 2020 in CMCC No. 1093 of 2018 where the trial found as follows in favour of the Respondent:

Liability 50:50%

Pain and Suffering Kshs. 70,000.00

Loss of expectation of life Kshs. 100,000.00

Loss of Dependancy Kshs. 912,000.00

Special damages Kshs. 30,000.00

Total award Kshs. 1,112,000.00



2. The Appellant being aggrieved by the said decision of the learned trial magistrate filed its Memorandum of Appeal dated the 30<sup>th</sup> November, 2020 with prayers that the appeal be allowed and the liability and damages be adjusted.
3. The Appeal was canvassed by way of written submissions.
4. This being the first appeal, I am required to consider the evidence adduced, evaluate it and draw my own conclusions, bearing in mind that I did not hear and see the witnesses who testified see: *Selle & Another Vs Associated Motor Boat Company Ltd & Others* [198] EA 123 here the Court stated as follows: -

“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.

### **Background**

5. The Respondent initiated the claim vide a Complaint filed on the 20<sup>th</sup> November, 2018. It was the Respondent’s case that his son, the deceased was involved in a fatal accident on the 1<sup>st</sup> January, 2018 along Naivasha-Mai Mahiu Road when the motor cycle KMCK 840V which he was travelling as pillion passenger rammed into motor vehicle KAW 121G which was stationary in the middle of the road without any warning signs. He particularized the elements of negligence of the Appellant, its agent and/or driver and/or servant and/or a person under their authority in paragraph 5 of the Complaint and further relied on the doctrine of res ipsa loquitur.
6. The Applicant sought for judgment against the Respondent for:
  - a. General damages under the *Fatal Accidents Act* and *Law Reform Act*.
  - b. Special damages of Kshs. 101,735.00
  - c. Costs of this suit and interests.
7. The Respondent’s claim was opposed by the Appellant vide a statement of defence dated the 11<sup>th</sup> January, 2019 in which it denied negligence on its part as well as the deceased succumbing to the injuries as a result of the said accident.

### **Evidence**

8. The Respondent in support of its claim called two witnesses.
9. PW1, Stephen Ndun’gu testified that the deceased was his last born amongst the five children he had. He had obtained letters of administration ad litem which he produced as P. Exhibit-1a and a receipt as P.Exhibit-1b. He adopted his statement. Produced abstract as P. Exhibit-2, Motor vehicle copy of records & receipt as P.Exhit-3a & 3b respectively, Death Certificate and burial permit as PE-4a & 4b respectively, letter from the chief as P. Exhibit-5, Bundle of receipts as P. Exhibit-6 and P.Exhibit-7.
10. It was further stated by PW1 that he did not witness the accident and the deceased was a 22-year old business man who ran a shop and was a motor cycle mechanic and would spare around Kshs. 6,000.00



to Kshs. 7,000.00 for him and the other members of the family. Additionally, the deceased was not married as at the time and had no child. He produced a demand letter as P. Exhibit -8.

11. In cross-examination, PW1 reiterated that he did not witness the accident and the same occurred in the middle of the night. The deceased was a business man but he didn't have proof before court.
12. PW2, Francis Ng'ang'a Karanu was the eye witness. He testified that he was a businessman and on the particular night, a motor cycle overtook him and ahead there was a stationary lorry in the middle of the road and rammed into it. No signs to caution other road users had been mounted by the said motor vehicle. The owners of the stationary motor vehicle were outside by the fire. He later found out that the lorry KAW 121G had broken down. The motor cycle rammed into the lorry as there was an oncoming motor vehicle. He contended the lorry was being slowly driven as there was no occupant and the driver indicated he was waiting for a mechanic. PW2 testified that they stopped and helped the injured and asked a good Samaritan to take the deceased to the hospital where he was pronounced dead on arrival. PW2 reported the accident and no one threatened the Appellant's driver.
13. In cross examination, PW2 stated he was not related to the deceased and never knew him. He also reiterated that the motor vehicle was stationary in the middle of the road. He recorded his statement with the police on the same day.
14. DW1, Peter Mutua Kioko was the driver of the subject motor vehicle. He adopted his statement. He further testified that he started driving in 1994 and was employed by the Appellant in 1998. On the particular night he was driving slowly at around 30 KPH. He had a sound behind the lorry and stopped. He found three people. He went to the police station and on coming back he found that the deceased had succumbed. The three people he saw were on a motor cycle and had been injured. He testified that he has never been charged with any traffic offence and that his record as a driver was untainted.
15. In cross examination, that he indicated he did not have his driver's license and had not presented the same to court. He reiterated that the motor vehicle had no defects and was on motion. It was taken to the police station for inspection while he drove it to the police station. He had not brought any inspection report. He had driven for over ten hours. No one could corroborate his testimony. The police informed him the motor cycle was to blame.

## Submissions

### Appellant's submissions

16. The Appellant's submissions in support of the appeal were filed on the 27<sup>th</sup> day of January, 2022. On the issue of liability, it faulted the Learned Trial Magistrate for apportioning liability equally. It was the Appellant's submission that the motor vehicle was in motion when it was hit from the rear by the motor cycle the deceased was and the Respondent had failed to prove the negligence on the part of the Appellant.
17. On the same limb, it was submitted by the Appellant that the Learned Trial Magistrate faulted in finding that the motor vehicle was stationary while it was the defence testimony that the same was in motion.
18. The Appellant further submitted that cyclists in Kenya are more prone to early deaths thus the multiplier of 38 years ought not to have been applied for a 22 year old deceased. It was proposed by the Appellant that a multiplier of 30 years would have been applied instead. The case of *West Kenya Sugar Co. Ltd v Falantina Adungosi Odionyi (Suing as the legal representative of Patrick Igwala Odionyi-*



deceased) [2020] eKLR where the Court employed a multiplier of 33 years for a 21 year old deceased was cited to buttress the submission.

19. On the earnings of the deceased, it was the Appellant's submissions that the same was not proven and it faulted the trial court for awarding Kshs. 12, 000.00 as the monthly income.
20. On the issue of the awards under the Law Reforms Act, the Appellant urged the court to uphold the Kshs. 70,000.00 for pain and suffering as well as Kshs.100,000.00 for loss of expectation of life. However, it urged the Court to deduct the same from the awards of the Fatal Accidents Act as the Respondent being the Dependant ought not to benefit twice. It cited the position of the court in Transpares Kenya Limited & another v S M M (Suing as Legal Representative for and on behalf of the Estate of E M M (Deceased)) [2015] eKLR where the Court in quoting the court of appeal decision in Court of Appeal in Kemfro v A. M. Lubia & Another, [1982-1988] KAR 727 stated as follows;

“The net benefit will be inherited by the same dependants under the Law Reform Act and that must be taken into account in the damages awarded under the Fatal Accidents Act because the loss suffered under the latter Act must be offset by the gain from the estate under the former Act.’
21. In view of the following, the Appellant urged the Court to set aside the award.

### **Respondent's submissions**

22. On the Respondent's part, they filed their submission on the 2<sup>nd</sup> day of December, 2021. On liability, it was urged that the Court do uphold the findings of the Learned Magistrate as the testimonies of the two witnesses who witnessed the accident were conflicting as the Appellant's statement was that he was on the move while the Respondent's testimony was inclined towards the motor vehicle being stationary. The abstract blamed none of the parties and no sketch map was presented as to how the accident occurred. The Learned Trial Magistrate noted that the cause of death as stated in P. Exhibit-4 was hypovolemic shock which would resonate with the Respondent's case that the deceased hit a stationary object at a high speed.
23. On the loss of expectation of life, the Respondent urged the Honourable Court to uphold the award and not be deducted from the award under the Fatal Accidents act.
24. The Respondent on the issue of the multiplier urged the court to maintain the 38 years as applied in the Trial Court as the deceased was 22 years at the time of his death and having not been an employee subjected to retirement at the age of 60, he would have worked way beyond that aged.
25. The decision of the trial court to use a monthly income of Ksh. 12,000.00 was supported by the Respondent on grounds that the same was within discretion of the Trial Court and it was judiciously exercised.
26. The Respondent further urged the Court to uphold the findings of the Learned Trial Magistrate on the special damages of Kshs. 30,000.00 as the same was unchallenged by the Appellant.
27. The submissions of the Appellant focused on the testimony of PW1 who was in the company of the deceased and gave an account as to how the accident. He blamed the Respondent. He testified that having both had reflector jackets, he could see the deceased in front of him and they were on the climbing lane when the Respondent's motor vehicle going downhill hit encroached on the said lane and hit the deceased.
28. The Respondent urged the Honourable to dismiss the Appeal with costs.



## Analysis and Determination

29. The duty of this Honourable Court, being the first Appellate Court is to re-examine and re-evaluate the evidence on record and arrive at its own conclusion. It should also bear in mind that it did not see nor hear the witnesses and give an allowance for that. This position was emphasized in the case *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR (Civil Appeal No. 161 of 1999) in the following manner:-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

30. I have carefully noted the submissions by both parties and I have re-evaluated the evidence on record and find that the following issues are up for determination:

- i. Whether the appellant proved its case on a balance of probability.
- ii. Quantum payable.

31. The provisions of Sections 107,109 and 112 of the *Evidence Act*, on the burden of proof, were extensively dealt with in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, in which the Court of Appeal held that:

“As a general proposition under Section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

32. In *Evans Nyakwana vs. Cleophas Bwana Ongaro* (2015) eKLR it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(1) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

33. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526 stated that:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”



34. It is undisputed that the accident occurred. As to how the accident occurred and who is to blame are contested.

35. In *Masembe v Sugar Corporation and Another* [2002] 2 EA 434}}, it was held that:

“When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his car at any time to avoid anything he sees after he has seen it... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object.”

36. Flowing from the foregoing authority, both the deceased and the Respondent were under the obligation to take necessary precautions to avoid the accident.

37. In this case, the testimonies of the two witnesses of the accident were divergent on how the accident occurred and who was to blame. The police abstract issued did not blame any party. It is undisputed that the motor cycle hit the motor vehicle from behind. However, it is unclear whether the said motor vehicle was being driven at a slow speed as claimed by the Appellant or it was stationary as claimed by the Respondent. In the event the same was moving, were the rear lights and reflectors in place? No inspection report was produced by the Appellant who claimed that the same were in perfect condition. And if the same was stationary, were there warning signs and or precautions placed?

38. The eyewitness was overtaken by the motor cycle, he could see the said motor cycle and how it rammed on the motor vehicle. However, he was not sure as to whether the motor vehicle was in motion or stationary. He indicated he confirmed the stationary status of the motor vehicle when he stopped and found the said motor vehicle unoccupied; the driver joined from the fireplace a few meters from where the accident occurred.

39. In view of the foregoing testimonies which were not corroborated by any other witness, the trial learned magistrate reasonably found that both parties contributed to the accident and held them equally liable.

40. In *Hussein Omar Farah v Lento Agencies* [2006] eKLR (Nairobi Civil Appeal No. 34 of 2005), the Court of Appeal held as follows:

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame... The trial court, as we have said, had two conflicting versions of how the accident occurred. Both parties insisted that the fault lay with the other side. As no side could establish the fault of the opposite party we would think that liability for the accident could be equally on both the drivers. We therefore hold each driver equally to blame.

41. The foregoing was reiterated in *Eliud Papoi Papa v Jigneshkumar Rameshbhai Patel & another* [2017] eKLR (High Court of Kenya at Naivasha Civil Case No. 23 of 2015) where court stated as follows:

“Thus, the court is confronted with conflicting and irreconcilable evidence regarding how the collision occurred and which driver is to blame. It is true that under Section 107 of the *Evidence Act* the Plaintiff was obligated to prove his allegations of negligence against



the Defendants. However, the existence of conflicting versions on the collision does not necessarily mean that nobody was liable; a collision involving two vehicles almost always involves fault on the part of one or both drivers....

The Plaintiff's and Defendant's account of the accident was equally doubtful. Of the collision however there is no dispute. In the circumstances, and based on the decision of the Court of Appeal in Hussein Omar Farah and Anne Wambui Ndiritu, I must find that the deceased and DW1 contributed equally in causing the collision and both must shoulder liability at 50:50."

42. The court will not interfere with the said finding on liability having considered the foregoing authorities.
43. The awards on loss of expectation of life and pain and suffering of Kshs. 100,000.00 and 70,000.00 respectively are not contested thus the Court will not disturb the same. However, it will address itself as to whether to deduct the same from the award under the Fatal Accidents Act.
44. The Court marries the position in David Kenei & another v Zipporah Chepkonga [2019] eKLR that there is no requirement for deduction of the one award under Law Reform Act from the other under the Fatal Accidents Act as follows:

"6. In Hellen Wanguru Waweru (Suing as the legal representative of Peter Waweru Mwenga (deceased) v. Kiarie Shoes Stores Limited (2015) eKLR, the Court of Appeal (Waki, Nambuye & Kiage JJA.) explained the principle of double compensation under the Law Reform Act and the Fatal Accidents Act as follows:

18. "Turning to the multiplier on the farming income, both courts used a multiplier of 1 year which coincided with the retirement of the deceased from salaried employment. Hellen however argues, and we think she is right, that the retirement of the deceased from his teaching job at 55 did not mean he would have retired from farming too. If anything, he would have been more useful to the dependants, as he would have had more time to concentrate on the farming business. In the premises a multiplier of 1 is manifestly on the low side and we revise it to 5 years.
19. Finally on the third issue, learned counsel for KSSL, Mr. C. K. Kiplagat was of the view that Hellen could not claim damages under both the LRA and FAA because there would be double compensation since the dependants are the same. He therefore supported the two courts below who deducted the entire sum awarded under the LRA from the amount awarded under the FAA. With respect, that approach was erroneous in law.
20. This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased's estate under the Law Reform Act and dependants under the Fatal Accidents Act are the same, and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the Fatal Accidents Act should be denied damages for pain and suffering and loss of expectation of life as these are only awarded under the Law Reform Act, hence the issue of duplication does not arise.



21. The confusion appears to have arisen because of different reporting of the Kemfro case (supra) which was heavily relied on by Mr. Kiplagat. The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio decidendi. The same case, however, is more fully reported in [1987] KLR 30 as Kemfro Africa Ltd t/a Meru Express Services 1976 & Another -VS- Lubia & Another (No. 2) and the ratio decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia, that:-

6. “An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act; it appears the legislation intended that it should be considered.

7. The Law Reform Act (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act. This therefore means that a party entitled to sue under the Fatal Accidents Act still has the right to sue under the Law Reform Act in respect of the same death.

8. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4 (2) of the Fatal Accidents Act are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the Fatal Accidents Act, the trial judge bore in mind or considered what he had awarded under the Law Reform Act for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction.”

22. The deduction of the entire amounts made under the LRA in this case was erroneous and once again, we have to interfere with the final award of damages. We observe that the High Court reduced even further the figure of Sh. 100,000 awarded for Loss of life expectation to Sh. 70,000 despite confirmation in its judgment that there was no dispute on the award. Mr. Kiplagat attempted to justify the reduction by the argument that it would be beneficial to Hellen because less amount would be deducted from the FAA award. With respect, that argument is misguided since there is no compulsion in law to make the deduction.

45. In view of the foregoing, the Court declines the request by the Appellant that the said awards under the Law Reforms Act should be deducted from the award under the Fatal Accidents Act.

46. The dependency ratio of 1/3 is not contested by either parties thus shall be upheld by the Court.

47. On the deceased's income, he was not formally employed and no evidence was adduced as to support his earnings as alleged by the appellant. However, he was stated to be a mechanic and a business man and earned Kshs. 30,000.00. It is reasonable that the deceased earned a living even in the absence of



evidence as to his earnings. The Appellant did not contest that the deceased was a mechanic. The main contention was as to his proven incomes.

48. In Court of Appeal Case of *Jacob Ayiga v Simon Obayo* (2005) e KLR where the court stated as follows:

“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things. In this case, the evidence of the respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed”

49. Further, in *Joseph Mwangi Wanyeki v Alex Muriithi Mucoki & another* [2019] eKLR, the Honourable Court when faced with similar circumstances stated:

“Putting the facts of this appeal in context there is no question that the Plaintiff occupation was positively confirmed to be that of farming and boda-boda business. Though economic times are hard, reasonably one can take judicial notice that in the rural and urban cities the mode of transport which has gained prominence due to its easier navigation of the terrain of our road networks is the commonly referred vessel as boda-boda. The mere fact that the deceased earnings from farming activities and boda-boda business was not supported by actual receipts and other accountable documents does not mean it is a speculative component as an estimate of the loss suffered by virtue of his death. I do not subscribe to the narrative that an approach on assessment on damages on loss of dependents is a question of mathematical precision.

The Respondent’s evidence taken as a whole satisfied the standard of proof on a balance of probabilities that the deceased earned Kshs. 30,000/= from his boda-boda business and farming activities. The Appellant never controverted this direct evidence from the claimant. I am therefore inclined to use the figure of Kshs.30,000/= as a guide to support the gross monthly income from both farming and boda-boda business enterprise.

I take judicial notice that is not every man or woman in an income generating venture has the ability to keep proper book of accounts, track daily sales, profit and loss account or even own a bank account. In so much as it may sound popular and an ideal approach as a model of business accountability the level of financial illiteracy among our citizenly are factors that should not be used against any claimant in calculating the average net income to assess damages under the Fatal Accident Act.”

50. On the issue of the deceased’s income, the Court is of the considered view that it should be assessed based on the minimum wage as provided by the relevant minimum wage regulations. This was the position in *Sukari Insutries Limited v Lensa Awuor Nyagumba & another* [2019] eKLR where it was held:

“As the deceased was an adult and a loader then in the absence of any formal evidence of income a Court can safely revert to the appropriate order. In this case the appropriate category would be The Regulation of Wages (General) (Amendment) Order, 2013 (Legal Notice No. 197) which came into operation on 01/05/2013 and was substituted by The Regulation of Wages (General) (Amendment) Order, 2015 (Legal Notice No. 117) which



came into operation on 01/05/2015 since the deceased died in January 2015. The deceased would then fall under Category (b) Column 3 thereof which provided for the wages for Turn boys within the then all Municipalities in Kenya as well as within Mavoko, Ruiru and Limuru Town Councils. Before the 2010 Constitution Migori town was under the Municipal Council of Migori. The monthly income inclusive of house allowance was Kshs. 13,468/50/=. Therefore, the figure of Kshs. 12,000/= adopted by the trial court, although lower than what was provided for and the court did not make that finding based on the Regulation of Wages (General) (Amendment) Order, 2013 as expected, remain fair and reasonable. The ground therefore fails.”

51. The deceased died on the 1<sup>st</sup> January, 2018 when Regulation of Wages (General) (Amendment) Order, 2017 legal notice dated 16<sup>th</sup> May, 2017 was in force. The deceased was an ungraded artisan and as per column four of the said schedule has a minimum monthly wage of Kshs. 13,309.80 provided. The trial court adopted Kshs. 12,000.00 which was lower than what is provided for and the Court is not persuaded that the same was unfair and/or unreasonable. The Court will not disturb the same.
52. On the issue of the multiplier, the Learned Trial Magistrate adopted 38 years as the deceased was 22 years as at the time of his death.
53. In the case *Board of Governors of Kangubiri Girls High School & Another - Jane Wanjiku & Another* (2014) Eklr, the court held that:-

“The choice of a multiplier is a matter of court’s discretion which discretion has to be exercised judiciously with reason”.
54. I have looked at the trends in decided authorities and in *David Kimathi Kaburu v Gerald Mwobobia Murungi* (2014) eKLR the court used a multiplier of 30 years for a deceased who died at the age of 28 years. In *Millicent Kimuli & Anor -vs- Mbisi Linah Catherine & Anor* [2015] eKLR; the court adopted a multiplier of 30 years for a deceased who died at the age of 30.
55. It is the considered view of this Court that the deceased having not been in formal employment would have as well worked beyond the retirement age of 60 years and the Learned Trial Court cannot be faulted for applying a multiplier of 38 years for the 22 year old deceased. The same is upheld.

### **Disposition**

56. The upshot is that the appellant’s appeal has no merit in all the grounds of Appeal and the same is dismissed with costs of the appeal to the Respondent.

It is hereby so ordered.

**DATED AND DELIVERED AT NAIVASHA THIS 21<sup>ST</sup> DAY OF APRIL, 2022.**

.....

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

Mr.Nzavi for the Respondent.

Mr. Sanjay for the Appellant.

