



**Gitonga & another v Gitobu & another (Suing as legal representatives of the Estate of BM Ntiritu - Deceased) (Civil Appeal 9 of 2020) [2022] KEHC 12244 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12244 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL APPEAL 9 OF 2020  
HPG WAWERU, J  
JUNE 30, 2022**

**BETWEEN**

**REUBEN GITONGA ..... 1<sup>ST</sup> APPELLANT**

**FRANCIS MIANO ANTHONY ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FAITH KARIMI GITOBU ..... 1<sup>ST</sup> RESPONDENT**

**HENRY KITHINJI NTIRITU ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF BM NTIRITU -  
DECEASED**

*(Appeal from original Decree passed on 30/07/2020 in  
Nanyuki CM Civil Case No 44 of 2019 – V M Masivo, RM)*

**JUDGMENT**

1. This is an appeal in respect to quantum of damages awarded in the decree of the lower court passed on 30/07/2020. That court apportioned liability at 50% to 50% between the drivers of the motor vehicle (a lorry) and a motor cycle involved in a road accident in which the driver of the motor cycle died. He will be referred to as the Deceased in this judgment. The Respondents filed suit for damages under the Law Reform Act and the Fatal Accidents Act.
2. The trial court held that there was no evidence of the Deceased's income upon which it could properly assess loss of dependency, and therefore awarded a global sum of KShs 3,200,000/00 under the Fatal Accidents Act. The court also awarded under the Law Reform Act KShs 50,000/00 for pain and suffering and KShs 120,000/00 for loss of expectation of life. The proved special damages of KShs 95,850/00 were also awarded.



3. The grounds of appeal set out in the memorandum dated 19/08/2020 challenge the trial court's award of a global sum for loss of dependency rather than an assessment of the same based on an income (grounds 3 and 5 (possibly)). The rest of the grounds of appeal challenge the quantum of loss of dependency awarded.
4. This being a first appeal, I have read through the record of the trial court in order to evaluate the evidence tendered there and arrive at my own conclusions regarding the same. I have borne in mind however, that I did not hear and see the witnesses testify, and I have given due allowance for that fact.
5. I have also considered the written submissions filed on behalf of the parties, including those filed before the trial court; I have also considered the cases cited both here and before the trial court.
6. It was common ground that the Deceased had an income which was derived mainly from his work of ploughing farms for people on contract basis using hired tractors. He did not own a tractor himself. Appropriately guided by the paucity of evidence of actual income, and also by the many authorities cited, the trial court found that the global award approach in respect to loss of dependency would be the most appropriate and just in the circumstances of the case. This approach found favour of both parties in their written submissions before the trial court. In their own submissions dated 20/03/2020 the Appellants (defendants) opined –

“Your honour we humbly submit that in the circumstances, a lump-sum award of Kshs.300,000/00 under this head (loss of dependency) would be most appropriate guided by the following authorities...”

It is not apparent why that stand of the Appellants has now changed in this appeal. After analyzing many decisions of superior courts, the trial court held –

“It is trite law that where there is no proof of the deceased's income a conventional figure may be used or the minimum wage. The global approach will be the appropriate method in this case. The multiplier approach is not suitable in the current case for the simple reason that the deceased's earnings (were) not proved...”

7. It was common ground that the deceased had some income from his occupation as a tractor driver for hire, and that there was no evidence of what this income was in terms of shillings and cents. The trial court was thus entitled in the circumstances to take the global award approach for loss of dependency, and it cannot be faulted for doing so. There is no merit in the grounds of appeal challenging this finding.
8. The complaints with regard to the quantum of loss of dependency awarded are that the award was “totally unsupported by any evidence” and that the sum awarded was “so manifestly excessive as to be erroneous.” In regard to the submissions of the Appellants, the trial court said –

“...the Defendants have proposed a lump sum payment of KShs 300,000/00. No authorities were supplied to court in support of this figure. I find the amount proposed to be on the lower side considering the circumstances of the case....”

The trial court then proceeded to analyze some seven (7) comparable cases whose awards ranged between KShs 1,000,000/00 and KShs 4,104,000/00. From the citations of the cases, the time frame of the awards was between the year 2003 and 2019.

9. An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. See the case of *Butt -vs- Khan* (1978) eKLR. The



Appellants herein have not demonstrated that the trial court proceeded on any wrong principle, or that it misapprehended the evidence in some material respect, and that therefore it arrived at a global award of loss of dependency that was inordinately high.

10. Upon my own assessment of the material placed before the trial court, I find that the award of KShs 3,200,000/00 for loss of dependency was a fair and just estimate. There is no merit in the grounds of appeal that challenge the award.

11. In the event, this appeal is dismissed with costs to the Respondents. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 29TH DAY OF JUNE 2022**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 30TH DAY OF JUNE 2022**

