



Mwashigadi & 2 others v Wakio ((Suing as the legal representative and on behalf of the estate of GIFT NDEGWA BONIFACE (DECEASED))) (Civil Appeal E057 of 2021) [2022] KEHC 12903 (KLR) (28 July 2022) (Judgment)

Neutral citation: [2022] KEHC 12903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E057 OF 2021
A. ONG'INJO, J
JULY 28, 2022**

BETWEEN

**MIRIAM WANJALA MWASHIGADI 1ST APPELLANT
JAMES IRERI KINYUA 2ND APPELLANT
NCBA BANK KENYA 3RD APPELLANT**

AND

**JOYCE MKAMBURI WAKIO RESPONDENT
(SUING AS THE LEGAL REPRESENTATIVE AND ON BEHALF OF THE
ESTATE OF GIFT NDEGWA BONIFACE (DECEASED))**

(From the Judgement delivered in Wundanyi Principal Magistrates Court Civil Case No. 22 of 2021 delivered on 17th September 2021 by Hon. Nyakundi Resident Magistrate)

JUDGMENT

1. The appellant's Mariam Wanyala Mwashigadi and James Ireri Kinyua appealed against the decisions of hon Nyakundi RM in Wundanyi PMCC No 22 of 2022 where judgment was entered against them in the following terms:-Liability - 90% against the 10% against plaintiffGeneral damages - 1,000,000/=Special damages - 51,400/=Less 10% - 105,140/=Net Award - 946,260/= interest on.
2. The special damages was to be paid from time of filing whereas general damages to accrue interest from date of judgment.
3. The appeal was filed based on the following grounds filed on October 13, 2021:-
 - a. That the learned Magistrate erred in law & fact in awarding general damages to the respondent amounting to Kshs 1,000,000/=.



- b. That the quantum of damages is excessive and erroneous estimate of the damages that may be awarded to the respondent with due regard and to the circumstances of the case before the subordinate court and the weight of precedents in similar circumstances.
 - c. That the learned Magistrate mis-directed herself by failing to consider the evidence and the submissions by the appellants while arriving at the judgment.
 - d. That the learned Magistrate erred in law & facts in relying on extraneous evidence in arriving at the decision on the general damages.
4. The appellants proposed that:-
 - i. Appeal be allowed.
 - ii. That the court assess damages downwards.
 - iii. That the respondent pays costs of the appeal and costs in the lower court.
 - iv. That such further relief as may appear just to the court to be also made/issued/awarded.
 5. From the proceedings in the trial court records on September 2, 2021 parties entered into consent on liability in the ration of 90:10 in favour of the plaintiff as against the defendants.
 6. Subsequently evidence of plaintiff witness – the 1st respondent herein was taken in regard to assessment of quantum of damages. She produced her statement together with documentary exhibits and prayed for compensation for the death of her child.
 7. From the plaintiff filed on April 20, 2021. It was stated that on 26th day of September 2019 at the market place in Mbale Irinea Trading Centre the deceased was lawfully playing off the road when the 1st defendant who was driving/managing and/or controlling motor vehicle Reg KCR 065 which was jointly registered in the names of the 2nd and 3rd respondents as co-owners that it knocked the deceased.
 8. It is stated that the 1st defendant drove and/or managed the said vehicle recklessly, carelessly and in a negligent manner thereby causing the accident for which the 2nd and 3rd defendants are vicariously liable for unlawful acts and/or omissions of the 1st defendant.
 9. The trial Magistrate considered the evidence of PW 1 and submissions filed by the advocates for parties as well as case law and assessed damages. This appeal was canvassing by hearing of written submissions.
 10. Having considered the pleadings, evidence in trial courts records the submissions and judgment of the lower court coupled with grounds of appeal submissions and case law. I do find that award for general damages should be a global figure considering the age of the deceased who was one year and 10 months. Award of general damages is an exercise of the courts discretion and can only be overturned if the appeal court establishes same was based on wrong principles is inordinately high or inordinately low.
 11. Looking at similar case law where the deceased were older and recent awards made were less than Kshs 1,000,000/=. It is the view of this court that an award of Kshs 650,000/= should be sufficient compensation as general damages under the *fatal accidents Act*.
 12. For pain and suffering since the deceased died on the spot the award of Kshs 100,000/= is on the higher side. The conventional figure of Kshs 20,000/= would suffice.
 13. For loss of expectation of life again the conventional figure of Kshs 100,000/= is sufficient taking into account the same parties are the beneficiaries in the *Fatal Accidents Act* as well.



14. This appeal therefore succeeds partially and the following orders are made:-

- i. Liability
 - a. 90% against the appellants
 - b. 10% against the respondents
 - c. Special damages – Ksh 51,400/=
 - d. Pain & suffering – Ksh 20,000/=
 - e. Loss of expectation of life – 100,000/=
 - f. Loss of dependency – Ksh 650,000/=

TOTAL Ksh 821,400/=

Less 10% Ksh 82,140/=

Net awarded Ksh 739,260/=

Interest on special damages to accrue from the date of filing.

Interest on general damages to accrue from date of judgment in the lower court.

15. In consideration of the partial success of appeal each party to bear own costs of the appeal. Costs in the trial court as per order of the trial Magistrate.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF JULY 2022

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court Assistant

Ms. Ngige Advocate for Appellant

Mr. Mwinzi Advocate for Respondent

Hon. Lady Justice A. Ong'injo

Judge

Ms. Ngige

I pray for a copy of the judgment.

Order

Copy of judgment to be supplied on payment of copying charges.

Hon. Lady Justice A. Ong'injo

Judge

28/07/2022

