



**Taita Taveta University College v Rugut & Maritim (Suing on their own behalf and as the administrators of the estate of the late Cosmas Kipserem Kipkoech) (Civil Appeal E009 of 2021) [2022] KEHC 12772 (KLR) (31 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E009 OF 2021  
JM MATIVO, J  
AUGUST 31, 2022**

**BETWEEN**

**TAITA TAVETA UNIVERSITY COLLEGE ..... APPELLANT**

**AND**

**LENAH JEBUNGEI RUGUT & JOSEPH KIPROP MARITIM (SUING ON THEIR OWN BEHALF AND AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE COSMAS KIPSEREM KIPKOECH) ..... RESPONDENT**

*(Appeal from the judgment and order of the Resident Magistrate's Court, Wundanyi in SRMCC No. 14 of 2020, delivered by Hon. E. M. Nyakundi, Resident Magistrate on 17th December, 2020)*

**JUDGMENT**

1. This is an appeal against the judgment in Nakuru S.R.M.C.C No. 14 of 2020 on quantum. The parties had recorded a consent of liability at 10% as against the Respondents and 90% as against the appellant. The Respondents had sued the appellant seeking recovery of general and special damages arising from a fatal road accident involving the motor vehicle KAD 558M owned by the appellant and driven by its driver. The deceased Cosmas Kipserem Kipkoech who was a passenger at the material succumbed to injuries sustained in the said accident.
2. Th Respondents brought the suit in their capacity as the administrators of deceased's estate under both the *Fatal Accidents Act* and the *Law Reform Act*. As alluded to above, on 28<sup>th</sup> October 2020, the parties recorded a consent on liability. So, before me is only a challenge on quantum of damages. Lenah Rugut, the deceased mother testified that her son was aged 23 years and he was a student at Taita Taveta University where he was studying agriculture. It was her evidence that the deceased's expected salary upon completing his education could have been Kshs. 30,000/=. As for special damages, she claimed Kshs. 30,000/= for funeral expenses. She also claimed Kshs. 725/ for letters of administration and Kshs. 550/= for search of the appellant's motor vehicle.



3. The learned Magistrate awarded damages as follows: - (a) Pain and suffering-Kshs. 30,000/= after considering that the deceased died on the spot; (b) Kshs. 100,000/= for loss of life expectation which amount was not contested; (c) As for loss of dependency, the learned Magistrate applied a monthly income of Kshs. 25,000/=and a multiplier of 30 years. He adopted a dependency ration of 1/3 as follows. The award was as follows: - Kshs. 25,000/=x1/3x30x12 = Kshs. 3,000,000/=. As for special damages, the learned Magistrate allowed Kshs. 31,275/=. The total sum awarded is Kshs.3,161,275/= less 10%= Kshs. 2,845,147/=. The learned Magistrate further ordered special damages to attract interests from date of filing suit and the general damages to attract interests from date of judgment until payment in full. From the typed judgment, the Magistrate never made any order as to costs. However, the decree at page 233 of the record has a certificate of Costs. It's not clear how the costs were arrived at. This issue was not raised in the appeal nor was it argued before me.
4. The appellant seeks to overturn the above award on grounds that:- (a) it is manifestly excessive; (b) that the lower court applied the wrong principles of the law; (c) that the learned Magistrate applied a monthly income which was not specifically pleaded and prayed; (d) that the multiplicand applied is high and failed to consider the contingencies of life; and, (e) failing to take into account the award under the *Law Reform Act* and the *Fatal Accident Act*.
5. In his submissions, the appellant's counsel raised no issue on the dependency ratio of 1/3. He proposed multiplier of 25 years considering the age of the deceased and the vagaries of life. He proposed a monthly income of Kshs. 20,000/=, Kshs. 100,000/= for loss of life expectation, Kshs. 50,000/= for pain and suffering and Kshs. 7,500/= for special damages which was the only amount proved. In total, he suggested an aggregate sum of Kshs. 2,127,500/=.
6. The Respondent's counsel cited *Kemfro Africa Ltd & another v Lubia & another* and *Catholic Diocese of Kisumu v Sppbia Achieng Tete* in support of the proposition an appellate court will only disturb an award of damages if the trial court took into account irrelevant factor(s) or left out a relevant factor(s) or if the award is inordinately low or high. Buoyed by the said decisions, counsel urged the court to find that there is no reason to interfere with the award.
7. As stated earlier, this appeal is only against quantum of damages. The law on circumstances under which an appellate court would interfere with an award of damages is settled. An appellate court will not interfere with an award of general damages by a trial court unless the trial court acted under a mistake of law, or, where the trial court acted in disregard of principles, or, where the trial court took into account irrelevant matters or failed to take into account relevant matters, or, where the trial court acted under a misapprehension of facts, or, where injustice would result if the appellate court does not interfere; and, where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage.
8. Award of damages is an exercise of discretion of the trial court but the same should be within limits set out in decided case law and must not be inordinately so low or so high as to reflect an erroneous figure. The award must also take into account the prevailing economic environment. In the Ghanaian case of *Mensah v Amakom Sawmill* Apaloo, J. (as he then was) articulated how difficult the subject of assessment of damages is and turned to the judgment of Lord Wright in *Davies v Powell Duffryn Associated Collieries Limited* for support. This case is regarded as the pointer to the practical way in which assessment of damages should be ascertained. Lord Wright said: -

“There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages that the deceased



was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a 'datum' or 'basic' figure which will generally be turned into a lump sum by taking a certain 'number of years purchase'. That sum, however, has to be tasked down by having due regard to the uncertainties,..."

9. Some of the uncertainties or questions asked are: -
  - a. How long would the deceased have continued to live if he had not met this particular accident?
  - b. How much working life did he have? This second question brings into focus the deceased's state of health and age.
  - c. Some of the uncertainties taken into account in rolling down the amount are: - the deceased may not have been successful in business in the future as he had been in the past. He might have been taken ill and become bedridden and thus incapable of earning income. Where plaintiffs are young widows, the possibility of re-marriage in the shortest possible time.
10. Lord Wright's rule, which was applied by other decided cases, was admirably summarized in *Charlesworth on Negligence* as follows: -

"Method of calculating damages: When the income of the deceased is derived from his own earnings, 'it then becomes necessary to consider what, but for the accident which terminated his life, work and remuneration, and also how far these, if realized, would have conducted to the benefit of the individual claiming compensation.' The manner of arriving at the damages is; (a) to ascertain the net income of the deceased available for the support of himself and his dependants; (b) (i) to deduct there from such part of his income as the deceased was accustomed to spend upon himself, whether for maintenance or pleasure, or (ii) what should amount to the same thing, to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents, and then; (c) to capitalize the difference between the sums (a) and (b) (i) or (b) (ii) (sometimes called the 'lump sum' or the 'basic figure') by multiplying it by a figure representing the proper 'number of years' purchase arrived at having regard to the deceased's expectation of life, the probable duration of his earning capacity, the possibility of his earning capacity being increased or decreased in the future, the expectation of life of the dependents and the probable duration of the continuance of the deceased's assistance to the dependents during their joint lives. From the sum thus ascertained must be deducted any pecuniary advantage received by the dependents in consequence of the death."

11. Any legal process should yield an appropriate compensation that is compensation, which is neither too much, nor too little. The compensation must remain fair, reasonable and just. The level must also not result in injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable. The deceased was 23 years old He was a fist year student in college. No one can say with certainty what the future held for him or how long he would have lived or worked. No one can say whether he would have successfully completed his college or when he would have secured a job. Taking into account the vicissitudes of life, no amount of speculation can yield a clear answer to these questions.
12. Guided by the principles laid down in the above cases, its manifestly clear that the trial Magistrate's findings on damages on future earnings are speculative and unsupported by the evidence.



13. The trial Magistrate did not accentuate the applicable principles in cases of this nature. Two of the persons named as dependents are brothers. Its too speculative to say the deceased would have completed college and support his siblings who are adults. Bearing in mind the uncertainties of life, and considering the age of the deceased, I find and hold that the award by the lower court both on the multiplier and the income are unrealistic and hard to justify.
14. However, notwithstanding my above reservations which are founded on the principles laid down in the above cited cases, I also note that the appellant is contended with the awards. Its only concern is the amounts awarded and the number of years applied. Simply put, the appellant is not challenging the heads of damages in the circumstances of this case.
15. Accordingly, noting that the appellant is comfortable with the heads of damages, signaling their comfort in the amounts they have suggested, I find no difficulty in endorsing the awards proposed by the appellant. I will allow a multiplier of 25 years and a multiplicand of Kshs. 20,000/= suggested by the appellant. I also allow the other awards prosed by the appellant. Accordingly, I will allow the appeal and enter judgment as follows:-
  - a. Pain & suffering.....Kshs. 20,000/=.
  - b. Loss of dependency.....Kshs. 2,000,000/=
  - c. Loss of life expectation .....Kshs. 100,000/=
  - d. Special damages.....Kshs. 7,500/=
  - Total.....Kshs. 2,127,500/=
  - Less: 10% contribution.....Kshs. 212,750/=
  - Balance.....Kshs. 1,914,750/=
  - e. The said sum shall attract interests from the date of the judgment of the lower court.
  - f. Each party shall bear its costs of this appeal.

Orders accordingly

**SIGNED AND DATED VOI THIS 29TH DAY OF AUGUST 2022**

**JOHN M. MATIVO**

**JUDGE**

**SIGNED AND DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF AUGUST 2022**

**STEPHEN GITHINJI**

