



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**(APPELLATE SIDE)**

**(Coram: Odunga, J)**

**CIVIL APPEAL NO. 49 OF 2018**

**NDETI MULI.....1<sup>ST</sup> APPELLANT**

**ALBERT PHILLIP KATITI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**HOGLA MKANDO OMARI .....1<sup>ST</sup> RESPONDENT**

**JOHN KILELU.....2<sup>ND</sup> RESPONDENT**

**(Being Appeals from Judgement of the Hon. Magistrate at Machakos Law Courts by Hon. Kibiru dated 18/4/2018  
from Machakos Chief Magistrates Court Civil Case Nos. 199 of 2013)**

**BETWEEN**

**HOGLA MKANDO OMARI and JOHN KILELU**

**(Suing as administrators of the Estates of Moses**

**Maganga Mulonza (Deceased).....PLAINTIFF**

**VERSUS**

**NDETI MULI.....1<sup>ST</sup> DEFENDANT**

**ALBERT PHILLIP KATITI.....2<sup>ND</sup> DEFENDANT**

**KETER KIPROTICH.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

1. The subject of this appeal is Machakos CMCC No. 199 of 2013, a suit instituted by the Respondents herein against the Appellants for damages arising from a road traffic accident which occurred on 18<sup>th</sup> August, 2010 in which the deceased sustained fatal injuries.
2. On 16<sup>th</sup> January, 2018, a consent judgement was entered in the said matter in which liability was entered for the Respondents against the Appellant at the ratio of 80:20 and the parties agreed that the plaintiff's claim supporting documents be admitted as evidence without calling the makers and that the parties proceed to file written submissions on quantum of damages.
3. On 18<sup>th</sup> April, 2018, the Learned Trial Magistrate awarded Kshs 10,000/- as general damages for pain and suffering, Kshs 80,000/- for loss of expectation of life and Kshs 2,400,000/- as damages for loss of dependency. In arriving at the latter sum the court took into account the fact that the deceased was aged 25 years old and was *mitumba* businessman. Though it was pleaded that the deceased was earning approximately Kshs 30,000.00 per month, the Learned Trial Magistrate applied a multiplier of 30 years and a multiplicand of Kshs 10,000.00

per month. He also awarded Kshs 40,750/- as special damages.

4. This appeal is related to High Court Civil Appeals Nos. 50 and 51 of 2018 which appeals arise from the same cause of action. On 25<sup>th</sup> January, 2021, this Court directed the parties to file and exchange their submissions on the appeal. That order was made in HCCA No. 51 of 2018 but it was directed that the said order would apply to this case. The matter was then listed for further orders on 24<sup>th</sup> February, 2021. On that day, the parties were directed to furnish the soft copies of their filed documents to court.

5. As at the time of writing this judgement, only the Respondent's submissions were on record in all the three appeals. The Appellant only filed the Submissions in HCCA No. 50 of 2018. Similarly, only the Respondent furnished the Court with the soft copies.

6. As the appellant failed to file the submissions which was the mode of prosecuting the appeal, there is no material on the basis of which this appeal can succeed.

7. In the premises, this appeal fails and is dismissed with costs to the Respondent.

8. It is so ordered.

**READ, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF MAY, 2021**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Ms Odembo for the Respondent**

**CA Geoffrey**