

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL APPEAL NO. 225 OF 2012

MANGO CHIMAREN.....1ST APPELLANT

WILLIAM GATEI MUIRURI.....2ND APPELLANT

VERSUS

EFRELI AMBIYO

EZEKIA GWENDO (Suing as the

administrator of the Estate of

WELLINGTON MUSEMBI (Deceased).....RESPONDENTS

(Appeal from the judgment of the Senior Principal Magistrate Nairobi Milimani Law Courts R O Oganyo delivered on 17th April 2012 in CMCC NO.1354 of 2010)

RULING

This is an application dated 14th January, 2020 seeking a review of the judgment of this court delivered on 12th July, 2018, whereby it was held the loss of dependency due and payable to the respondent should be based on one third of the earnings of the deceased.

In the calculations appearing in the judgment however, one third was excluded from that computation. It is clear that, this is an error apparent on the face of the record which should be corrected under Section 80 of the Civil Procedure Act, and Order 45 rules 1 and 2 of the Civil Procedure Rules. The application is opposed but there is no reason whatsoever to oppose the said application.

I am also aware of Section 99 of Civil Procedure Act which is intended to address any slip based on arithmetical errors among others. This is one such case.

The foregoing being the case, the calculations should be as follows, $5,195 \times 12 \times 17 \times 1/3 = \text{Kshs } 353,260/=$ less 20% contributory negligence, which is $\text{Kshs. } 70,652/=$ leaving a balance of $\text{Kshs. } 282,608/=$.

Accordingly the application is allowed as above with no order as to costs.

Dated, signed and delivered at Nairobi this 30th day of July 2020.

A. MBOGHOLI MSAGHA

JUDGE