



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**CIVIL APPEAL NO 6 OF 2014**

**CHANIA SHUTTLE.....APPELLANT**

**AND**

**MARY MUMBI**

**(Suing on behalf of the estate of**

**FRANCIS MUNGAI KARANJA (deceased).....RESPONDENT**

**(Being an appeal from the whole Judgment of Hon S.M. Wahome,**

**Senior Principal Magistrate delivered on 10<sup>th</sup> October 2013)**

**IN**

**REPUBLIC OF KENYA**

**IN THE PRINCIPLE (SIC) MAGISTRATE'S COURT AT VOI**

**CIVIL SUIT NO 105 OF 2013**

**MARY MUMBI**

**(Suing on behalf of the estate of**

**FRANCIS MUNGAI KARANJA (deceased).....PLAINTIFF**

**VERSUS**

**CHANIA SHUTTLE.....DEFENDANT**

**JUDGMENT**

**INTRODUCTION**

1. On 15<sup>th</sup> July 2013, the parties herein recorded a consent where liability was apportioned at 60%-40% in favour of the Respondent herein. In his judgment delivered on 10<sup>th</sup> October 2013, Hon S.M. Wahome, Senior Principal Magistrate at Voi Law Courts awarded the Respondent herein a sum of Kshs 559,450/= that was made up as follows:-

<b>i. Pain and suffering</b>	<b>Kshs 20,000/=</b>
<b>ii. Loss of expectation of life</b>	<b>Kshs 100,000/=</b>
<b>iii. Loss of dependency</b>	<b>Kshs 720,000/=</b>
<b>Less 40%</b>	<b>Kshs 336,00/= (sic)</b>
<b>iv. Special damages</b>	<b><u>Kshs 55,450/=</u></b>
	<b><u>Kshs 559,450/=</u></b>

**together with costs and interest thereon until payment in full.**

2. Being dissatisfied with the Judgment of the said Learned Trial Magistrate, the Appellant filed her Memorandum of Appeal dated 6<sup>th</sup> November 2013 on 8<sup>th</sup> November 2013 in **HCCA No 149 of 2013 Chania Shuttle vs Mary Mumbi (suing on behalf of the estate of Francis Mungai Karanja (deceased))** at the High Court of Kenya, Mombasa.
3. Its Grounds of Appeal were as follows:-

1. **THAT the Learned Magistrate erred in fact and in law in basing his findings on irrelevant issues not supported by evidence adduced or the applicable law.**
2. **THAT the Learned Magistrate erred in fact and in law in wholly disregarding or failing to accord due and proper consideration upon the defence written submissions in totality with resultant miscarriage of justice to the appellant(sic).**
3. **THAT the Learned Magistrate erred in fact and law in injudiciously, arbitrary and exorbitantly apportioning and awarding the Plaintiff the quantum of Kshs 840,000/=, special damages of 55,400 (sic) plus costs at the court rates which was excessive and manifestly high in the circumstances.**
4. **THAT the Learned Magistrate erred in fact and in law in considering the dependency ration (sic) of 2/3 in the circumstances as the deceased could not realistically have been expending 2/3 of his supposed income to support the alleged defendants (sic) who were adults, the last born was aged 25 years of age at the time of the accident.**
5. **THAT the Learned Trial Magistrate erred in law and fact in basing his findings on irrelevant issues not supported by evidence adduced or the applicable law as clearly captured in his judgment.**
6. **THAT the Learned Magistrate erred in fact and in law that the Plaintiff/Respondent had proved his (sic) case on a balance of probabilities and thereby arrived on (sic) on the wrong findings on the issues before the court.**
7. **THAT the Learned Magistrate's decision was against the weight of evidence adduced in court.**

2. On 25<sup>th</sup> August 2014, Kasango J made an order transferring the matter to the High Court of Kenya, Voi and directed the Appellant to file her Record of Appeal. On 17<sup>th</sup> November 2014, M/S Mwinzi & Co Advocates for the Respondent filed a Notice of Motion application of even date in which they sought the dismissal of the Appellant's Appeal for want of prosecution and/or in the alternative, that the monies deposited in the Voi Law Court be released to the Respondent. The Appellant opposed the said application.

3. In his Ruling dated 15<sup>th</sup> April 2016, Muya J who heard and determined the said application held that the said application had been filed prematurely as the proceedings from the lower court had not been typed to enable the Appellant file its Record of Appeal as had been ordered by Kasango J. He directed that the said proceedings be typed within the shortest time possible and not more than fourteen (14) days of the time of delivery of his said Ruling, which in essence was fourteen (14) days from 9<sup>th</sup> May 2016, when this court read the said Ruling on his behalf.

4. In view of the fact that Muya J may not have been aware of the challenges of typing of proceedings at the High Court of Kenya, Voi, this court gave the Appellant additional time to file its Record of Appeal. Its undated Record of Appeal was filed on 22<sup>nd</sup> July 2016. Its Supplementary Record of Appeal dated 4<sup>th</sup> October 2016 was filed on the same date. Whereas the court receipt was clear that payment of filing fees was made on 4<sup>th</sup> October 2016, the court stamp erroneously showed the date of filing as 4<sup>th</sup> September 2016.

5. Although the Appellant's Record of Appeal was undated, this court nonetheless determined this matter on its merits as Article 159(2)(d) of the Constitution of Kenya, 2010 mandates courts to administer justice without undue regard to technicalities.

6. The Appellant's Written Submissions and List of Authorities were both dated and filed on 28<sup>th</sup> November 2016 while the Respondent Written Submissions and List of Authorities were both dated 19<sup>th</sup> January 2017 and filed on 23<sup>rd</sup> January 2017.

7. When matter came up on 13<sup>th</sup> February 2017, both parties requested this court to deliver its Judgment based on their respective Written Submissions which they did not highlight but relied on, in their entirety. The Judgment herein is therefore based on the said Written Submissions.

## **LEGAL ANALYSIS**

4. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

5. This was aptly stated in the cases of **Selle vs Associated Motor Boat Company Ltd [1968] EA 123** and **Peters vs Sunday Post Limited [1985] EA 424** where in the latter case, the court therein rendered itself as follows:-

**“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”**

6. Having looked at the Appellant's grounds of appeal and in particular to its Written Submissions, it was clear that the said grounds all related to the question of whether or not the Learned Trial Magistrate was justified in awarding the Respondent the sum of Kshs 895,450/= plus costs and interest thereon. The issues the Appellant raised in its Written Submissions for determination by this court which issues the Respondent also adopted in her Written Submissions were as follows:-

**a. Whether the dependency ratio of 2/3 that was applied by the Learned Trial Magistrate was justified; and**

**b. Whether the award by the Trial Magistrate was excessive.**

7. This court therefore addressed the said issues under the following distinct heads.

## **I. FATAL ACCIDENT'S ACT CAP 32 (LAWS OF KENYA)**

8. It was the Appellant's submission that the Respondent failed to prove both the dependency and the deceased's earnings as was required by the law and as such she was not entitled to the damages that were awarded by the Trial Court.

9. In assessing the damages under this head, the court had to consider the multiplicand, the multiplier and dependency ratio. The same have been dealt with as shown hereunder.

### **AA. MULTIPLICAND**

10. The Appellant referred this court to the definition of "earnings" in Section 2 of the Insurance (Motor Vehicle Third Party Risks) Amendment Act, 2013 which was "revenue gained from labour or services and includes the income or money received from employment, business or occupation or in the absence of documentary evidence of such revenue, the applicable minimum wage under the Labour Relations Act, 2007, or the determination of income whichever is higher."

11. It was its argument that although the Respondent had testified that Francis Mungai Karanja (hereinafter referred to as "the deceased") used to get a profit of Kshs 30,000/= out of which he sent her a sum of Kshs 20,000/= for fees and subsistence, she did not adduce any evidence to prove the deceased's earnings. The Appellant therefore urged this court to adopt a multiplicand of Kshs 6,000/= which was the minimum wage of a shop attendant as provided in the Schedule of Ministry of Labour.

12. On its part, the Respondent argued that the deceased had a general shop at Tana River where he paid a sum of Kshs 3,000/= for rent. She said that he earned a monthly income of Kshs 30,000/= from the said shop in addition to income from the matatu business. This is the evidence that she adduced in the Trial Court show that the Respondent testified as much.

13. A perusal of the proceedings revealed that as was correctly pointed out by the Appellant, the Respondent did not adduce any documentary evidence to support the fact that the deceased used to earn a monthly income of Kshs 30,000/=. The only documents she adduced as evidence before the Trial Court were the Limited Grant, Certificate of Death, Police Abstract Report, Birth Certificates and Receipts in support of the funeral expenses.

14. In his Judgment, the Learned Trial Magistrate observed that the Respondent had proposed a sum of Kshs 20,000/= to be adopted while the Appellant had suggested an income of Kshs 6,000/= as the Respondent did not furnish the Trial Court with proof of the deceased's earnings. He adopted the sum of Kshs 10,000/= as a conventional figure to calculate the deceased's earnings.

15. Notably, the Appellant did not adduce any evidence to rebut and/or controvert the Respondent's evidence relating to the deceased's evidence. The Appellant's submission that this court ought to adopt the sum of Kshs 6,000/= as the minimum wage for a shop attendant did not persuade this court as it did not adduce any evidence to prove that the deceased was a shop attendant and not a businessman as the Respondent herein had contended.

16. This court noted that the deceased's children were all adults. It was reasonable to expect that the deceased raised them and also maintained the Respondent in addition to incurring other expenses at Tana River where he resided and carried out his business. Clearly, a sum of Kshs 6,000/= would have been extremely low.

17. However, as there was no proof of income, this court was of the view that a monthly income in the sum of Kshs 10,000/= was modest for a fifty six (56) year old African male with a family. The Respondent seemed to have accepted this figure as the multiplicand as she did not appeal against the said conclusion.

18. In arriving at the said conclusion, this court had due regard to the case of **Jacob Ayiga Maruja &**

**Another V Simeon Obayo CA167/200 [2005] eKLR** where the Court of Appeal rendered itself on the question of failure to adduce proof of income. It stated as follows:-

**“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things. In this case, the evidence of the respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed.”**

19. In the case of **Authur Nyamwate Omutondi & Others V United Millers Limited & 2 Others [2009] eKLR**, Mwera J (as he then was) also stated as follows:-

**“... It is clear that the claim that the deceased was a businesswoman at the time of her death was not established. She had a trading licence up to 31<sup>st</sup> December 2002. She did not renew it in 2003 when she died. Thus Sarah cannot be presumed to have been a fish monger in 2003 as the plaintiff set out to prove. Further, it was not proved by accounts or other means that Sarah earned shs.100,000/=. A transfer bank slip for shs.60,000/=, could not be proof of income. Proof of income is basic to a claim of loss of dependency under the Fatal Accidents Act because one can only be supported financially by what was earned in hard pounds and cents. If income is not proved then no award of dependency can issue. However, in our present case this court is prepared to take a minimum sum of shs.4,000/= as what Sarah could earn in rural Migori to support herself and the nephew (PW1). With a multiplier of eight (8) the court awards him shs.256,000/=...”**

20. Whilst this court was of the view that the Respondent could have done better by adducing some sort of documentary evidence of the deceased's income, it could not begrudge her for not adducing the same in evidence due to the informal nature of the businesses the deceased was engaged in. However, she could have at least attempted to provide some sort of proof that the deceased would send her a sum of Kshs 20,000/= for her a monthly sustenance to demonstrate her dependency on the deceased.

21. Be that as it may, this court was prepared to accept her evidence that the deceased who was aged fifty six (56) years was engaged in some sort of economic activity to support the Respondent who was his wife and to cater for his living expenses in Tana River.

22. Accordingly, bearing in mind the aforesaid case law on the question of income that is not proven by documentary evidence and the inflationary trends over the years, this court was not persuaded to interfere with the Learned Trial Magistrate's finding regarding the deceased's income and retained the same at Kshs 10,000/= as it was a modest figure by all standards.

## **BB. MULTIPLE**

23. As seen hereinabove, the deceased was aged fifty six (56) years at the time he met his death through a fatal accident on 10<sup>th</sup> April 2011 along Nairobi- Mombasa Highway near Mackinon Road. The Appellant had proposed a multiplier of four (4) years while the Respondent had suggested a multiplier of fifteen (15) years. The Learned Trial Magistrate rejected both proposals and adopted a multiplier of nine (9) years. He had argued that under the Kenya labour laws, persons with disability retire at sixty five (65) years, at which age, a person who carried out a business was still able to and could work.

24. The Appellant had argued that a multiplier of nine (9) was erroneous as the Respondent did not demonstrate how adult children could still be dependent on the deceased and/or why they would have to depend on him until he was about sixty five (65) years. It added that the Learned Trial Magistrate failed to appreciate the uncertainties and vagaries of life.

25. As has been stated hereinabove, the Appellant did not rebut the Respondent's evidence that the deceased was a businessman who could have worked beyond sixty (60) years. Barring the vagaries and uncertainties of life, an average Kenyan man can engage in economic activity upto about seventy (70) years or even beyond especially where he or she is engaged in business. Indeed, there is no retirement age for businessmen or businesswomen.

26. It is important to point out that an appellate court ought not to disturb an award by a trial court merely because it could have adopted a lower figure. The Learned Trial Magistrate exercised his discretion judiciously and adopted a multiplier that was not unreasonable.

27. This court was not persuaded by the Appellant submissions that the Learned Trial Magistrate erred when he adopted a multiplier of nine (9) years. This court therefore found no basis of interfering with and/or disturbing the said Learned Trial Magistrate's finding on the multiplier as the same was fair.

### **CC. DEPENDENCY RATIO**

28. Ground of Appeal No (4) was dealt with under this head.

29. The Appellant submitted that the Respondent admitted in the Trial Court that she had a two (2) acre farm where she grew subsistence food and reared cows for milk. It pointed out that the dependants were adult children who were even married and had their own families and that it was never demonstrated how they were the deceased's dependants. It contended that since all the children were adults as at the time of the deceased's death, the Respondent's assertions that the deceased paid their school fees was a misrepresentation.

30. It was emphatic that although it was not disputing that the said children were the deceased's dependants, the dependence ratio of 2/3 that was adopted by the Learned Trial Magistrate was not applicable herein. It submitted that in the circumstances of the case herein, a dependency ratio of 1/3 was reasonable.

31. To buttress its argument, it referred this court to the case of **Benedeta Wanjiku Kimani vs Changwon Cheboi & Another [2013] eKLR** where the court therein relying on the case of **HCCC No 1438 of 1998 Beatrice Wangui Thairu vs Hon Ezekiel Bargetuny** (unreported) stated that:-

**“...there is no rule that two thirds of the income of a person is taken as available for family expenses. The extent of dependency is a question of fact to be established in each case.”**

32. It also referred this court to the definition of “**dependency**” given in Section 2 of the Insurance (Motor Vehicle Third Party Risks) Amendment Act as “that part of the deceased's earnings that he/she spent on the maintenance or financial support of his/her dependants.”

33. On her part, the Respondent argued that the fact that she was married to the deceased under customary law was sufficient to have “interdependency” and consequently, the application of 2/3 as the dependency ratio was reasonable. She placed reliance on the case of **United Millers Ltd vs Yano Omoro Oindo [2007] eKLR** where the court stated as follows:-

**“Regarding the claim under fatal accident (sic) Act, I am of the view that the deceased being unmarried and the applicant, being a surviving parent having provided his particulars of dependency as required under Section 8 of the Act, was entitled to the award under this heading.”**

34. Paragraph (5) of the Respondent's Complaint that was dated 27<sup>th</sup> August 2012 and filed on 31<sup>st</sup> August 2012 showed that the deceased's dependants were:-

**i. Mary Mumbi Mungai**

**Adult- Wife**

- ii. Joseph Kimani Mungai      Adult- son
- iii. John Karanja Mungai      Adult- Son
- iv. Elizabeth Wanjiku Mungai      Adult- Daughter
- v. Margaret Ngendo Mungai      Adult- Daughter

35. Under Section (4) (1) of the Fatal Accidents Act, it is clear who a dependant for whose benefit a claim under the said Act can be brought. It provides as follows:-

**“Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child(emphasis court) of the person whose death was so caused, and shall, subject to the provisions of [section 7](#), be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:**

**Provided that not more than one action shall lie for and in respect of the same subject matter of complaint, and that every such action shall be commenced within three years after the death of the deceased person.”**

36. It was therefore evident that proceedings under the Fatal Accident’s Act could therefore be brought on behalf of the Respondent and her children. However, as was rightly pointed out by the Appellant, it does not automatically follow that the deceased’s wife and children will be entitled to damages under the Fatal Accidents Act.

37. Indeed, it is trite law that dependency is a matter of fact and must be proved. It must be demonstrated that persons for whose benefit the proceedings are brought under the Fatal Accidents Act were dependant on a deceased prior to his death.

38. Appreciably, in an African setting, it is expected that an adult child will assist his aging or aged parents. This is an observation that has made in in several cases. In the case of **Kenya Breweries Ltd vs Saro (1981) KLR 408**, the Court of Appeal sitting in Mombasa stated as follows:-

**“In the Kenyan society, at least as regards Africans and Asians, the mere presence in a family of a child of whatever age and of whatever ability is itself a variable asset which the parents are proud of and are entitled to keep intact.”**

39. Kneller, JA (as he then was) in **Hassan –Vs- Nathan Mwangi Kamau Transporters & 5 Others (1986) KLR 457** made a similar observation when he stated that:-

**“The fact of the matter is, however, that today parents and children in most Kenyan families do expect their children when adults to help their parents if they need it and, in my view, that should be encouraged and not fulminated against as a system of genontocracy (sic)at its worst.”**

40. In this case, there was nothing that was placed before the Trial Court to demonstrate that the deceased’s children were dependent on the deceased. As they were African adult children, it was not unreasonable to have expected that they were the ones who were actually assisting the deceased and not the deceased assisting them. This court was therefore agreed with the Appellant that the Respondent did not prove dependency of her adult children on the deceased prior to his death and that her assertion that he used to pay school fees for them was a misrepresentation and untenable.

41. Having said so, it was reasonable to have expected that as an African man, the deceased financially supported the Respondent who was his wife. However, it was not unreasonable to assume that the Respondent did not wholly depend on him because as she had testified, she was engaged in subsistence farming.

42. Notably, she did not adduce evidence that she was living in a rented house which the deceased would have been paying for. She merely stated that she lived at Thika. As the deceased and the Respondent did not have school or university going children who ordinarily take a huge chunk of parents' income, it was not unreasonable to have expected the deceased spent a substantial amount of his income on his accommodation at Garsen and travel to visit his wife who resided in Thika.

43. In this respect, this court found itself in agreement with the Appellant that a dependency ratio of 1/3 was reasonable in the circumstances of the case herein. It therefore found the dependency ratio of 2/3 that had been adopted by the Learned Trial Magistrate to have been based on the wrong principle warranting interference by this appellate court. As Ground of Appeal No (4) was successful, the dependency ratio of 2/3 is hereby set aside and replaced with a dependency ratio of 1/3.

44. The above notwithstanding, this court felt obliged to disabuse the Appellant's notion that seemed to suggest that if the deceased's children were adults then the dependency ratio could not have been 2/3. Indeed, a dependency ratio of 2/3 can still be applied even where there is a single dependant, irrespective whether or not such dependent is an adult, if evidence is adduced to demonstrate that such dependent relied on the deceased to such an extent.

45. The number of beneficiaries is only one (1) criteria of adopting a dependency ratio of 2/3 but is not the only criteria. A single dependent can be physically or mentally challenged and gobble up a great chunk of his parent's income. The age or marital status of a dependent cannot therefore be used to determine whether the dependency ratio ought to be 1/3 or 2/3. Each case has to be decided on its own merits.

46. This court therefore tabulated the damages under this at Kshs 360,000/= which was made up as follows:-

$$1/3 \times 10,000 \times 12 \times 9$$

**Kshs 360,000/=**

## **II. LAW REFORM ACT CAP 26 (LAWS OF KENYA)**

47. This court had due regard to the case of **Butt vs Khan (1977) 1 KAR** in which it was held as follows:-

**“An Appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”**

48. As seen hereinabove, a court exercises its discretion in awarding damages for pain and suffering or loss of expectation of life. However, as was stated hereinabove, an appellate court cannot review any award downwards merely because it could have awarded a lower figure if it was the trial court. It can only interfere with or disturb such an award if the same is inordinately high or inordinately low so as to come up with a wholly erroneous estimate.

49. This court had also due regard to the cases of **Premier Dairy Limited vs Amarjit Singh Sagoo & Another [2013] eKLR** where the court therein awarded a sum of Kshs 75,000/= for pain and suffering and to the case of **Alexander Okinda Anagwe (suing as the administrator of the estate of Patricia Kezia Anagwe deceased) v Reuben Muriuki Kahuha, City Hopper Ltd, Michael A. Craig & Rueben Kamande Mburu [2015] eKLR** where Ougo J awarded a sum of Kshs 100,000/= for loss of expectation of life.

50. It was clear that the award of Kshs 100,000/= and Kshs 20,000/= that the Learned Trial Magistrate awarded for loss of expectation of life and pain and suffering respectively were reasonable in the circumstances of the case herein as the same were comparable to awards that have been made by other courts.

51. This court did not therefore find any basis for interfering with the award the Learned Trial Magistrate awarded under this head.

### **III. SPECIAL DAMAGES**

52. There was nothing in the Appellant's Written Submissions to suggest that it was objecting to the award of 55, 450/= being funeral expenses. The receipts that were placed before the Trial court were in the sum of Kshs 56,400/=. The claim for special damages had therefore been proven.

53. This court did not therefore find any reason to disturb this award by Learned Trial Magistrate.

### **CONCLUSION**

54. Save for Ground of Appeal No (4) hereinabove which was specific on the issue of the dependency ratio and which was successful, all the other Grounds of Appeal were intertwined making it difficult for this court to address them separately.

55. Suffice it to state that the Appellant did not demonstrate to this court that the Learned Trial Magistrate determined the case on a balance of probabilities or that he had failed to consider its Written Submissions or that his award was manifestly excessive or that he did not apply the applicable law.

### **DISPOSITION**

56. Accordingly, having considered the evidence that was tendered in the Trial Court, the respective Written Submissions and the case law that was relied upon by the parties herein, this court found that the Appellant's Appeal that was dated 6<sup>th</sup> November 2013 and filed on 8<sup>th</sup> November 2013 was partially succeeded but only on the issue of the dependency ratio.

57. In the circumstances foregoing, this court hereby varies the judgment of the Learned Trial Magistrate by setting aside and/or vacating the award in the sum of Kshs 559,450/= and instead enters judgment in favour of the Respondent herein against the Appellant for the sum of Kshs 321, 270/= made up as follows:-

<b>i. Pain and suffering</b>	<b>Kshs 20,000/=</b>
<b>ii. Loss of expectation of life</b>	<b>Kshs 100,000/=</b>
<b>iii. Loss of dependency</b>	<b>Kshs 360,000/=</b>
<b>iv. Special damages</b>	<b><u>Kshs 55,450/=</u></b>
	<b>Kshs 535,450/=</b>
<b>Less 40% contribution</b>	<b><u>Kshs 214,180/=</u></b>
	<b><u>Kshs 321,270/=</u></b>

Plus costs and interest thereon at court rates until payment in full.

58. As there are no minor children which would have warranted that an order be given for apportionment of the decretal sum, this court hereby directs that the decretal sum be and is hereby released to the

Respondents' counsel forthwith.

59. Bearing in mind the economic circumstances of the Respondents vis- a-vis those of the Appellant, which is a Matatu Sacco, it is hereby directed that each party will bear its own costs of this Appeal.

60. It is so ordered.

**DATED** and **DELIVERED** at **VOI** this 30<sup>th</sup> day of March 2017

**J. KAMAU**

**JUDGE**