



**Almasi Bottlers Limited v Njau & another (Suing as the Legal Representatives
of the Estate of John Njau Mumbi - Deceased) (Civil Appeal E083 of 2023)
[2025] KEHC 3198 (KLR) (Civ) (20 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 3198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E083 OF 2023

GL NZIOKA, J

JANUARY 20, 2025

BETWEEN

ALMASI BOTTLERS LIMITED APPELLANT

AND

MERCY WACUKA NJAU 1ST RESPONDENT

BENJAMIN NJAU MAINA 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF JOHN NJAU
MUMBI - DECEASED**

*(Being an appeal from the decision of Honourable Y. M. Barasa Principal
Magistrate delivered on 31st August 2023 vide Naivasha CMCC No. E256 of 2021)*

JUDGMENT

1. By a plaint dated 4th April, 2021 the plaintiffs (herein “the respondents”) sued the defendant (herein “the appellant) seeking for orders of: -
 - a. Damages under the *Fatal Accidents Act*, for the benefit of the Estate and the beneficiaries of the deceased;
 - b. Damages under the *Law Reform Act* (Cap 26);
 - c. General damages for loss of consortium;
 - d. Special damages of Kshs. 179,650 as pleaded
 - e. Interest on the said damages at such rate and for such a period, as the court deems fit.



- f. Costs of the suit.
 - g. Any other relief the court deems fit to grant.
2. The respondents' claim arose out of a road accident that occurred on 12th February 2021, wherein one John Njau Mumbi (herein "the deceased plaintiff") was fatally injured. It is averred that the deceased plaintiff was at the material time travelling as a lawful fare paying passenger in the motor vehicle KCM xxxS.
 3. That the subject motor vehicle was involved in the accident with motor vehicle registration No. KCL xxxE, owned by the appellant and driven at the material time driven by its agent. The appellant is held to blame for its agent's negligently driving thus causing the accident and resultant death of the deceased.
 4. The particulars of negligence attributed to the appellant's agent are stated at paragraph six (6) of the plaint.
 5. However, the claim was opposed by the appellant vide a statement of defence dated 5th July 2022 wherein the appellant denied knowledge of occurrence of the accident and that it owns the subject motor vehicle registration No. KCL xxxE and/or the deceased suffered fatal injuries, Similarly, the particulars of negligence attributed to the appellant's driver were denied.
 6. However, the appellant averred on a without prejudice basis that, if the accident occurred, then it was caused by the deceased plaintiff solely or substantially contributed to it.
 7. The matter was fully heard and by a judgment dated 31st August 2023, the appellant was held to be 100% liable for causing the accident and the respondents awarded damages as follows: -

Under the Law Reform Act

- a. Pain and suffering.....Kshs. 50,000
- b. Loss of expectation of life.....Kshs. 100,000

Under the Fatal Accident Act

- c. Loss of dependency.....Kshs. 5,851,200
- Total.....Kshs. 6,001,200
- d. The plaintiff was awarded special damages of Kshs. 179,650
- e. The plaintiff was further awarded costs of the suit plus interest.

8. However, the appellant is aggrieved by the decision of the court on the following grounds: -
 - a. That the learned trial Magistrate erred in law and facts in using the wrong principle in the assessment of damages and liability thereby arriving at an erroneous decision.
 - b. That the learned trial Magistrate erred in law and facts by misdirecting himself in assessment of damages awardable to the respondent which was manifestly high and in awarding liability.
 - c. That the learned trial Magistrate erred in law and facts by failing to consider the evidence adduced by the appellant.
 - d. That the learned trial Magistrate erred in law and facts by failing to consider the submissions by the appellant.
9. Pursuant to the aforesaid, the appellant is seeking for the following orders: -



- a. That the judgment and decree of the lower court be set aside and be substituted with a proper finding by this Honourable court.
 - b. That this Honourable court be pleased to make any or further orders as may be just and expedient in the circumstances.
 - c. That the costs of this appeal be borne by the respondent.
10. The appeal was disposed of vide filing of submissions. The appellant in submissions dated; 21st November 2024 cited the case(s) of, Kemfro Africa Limited t/a Meru Express Services & another vs Lubia & Another (No.2) Civil Appeal No. 21 of 1984 [1985] eKLR and Mbogo & another vs Shah [1968] EA 93 where the Court of Appeal discussed the circumstances under which an appellate court can interfere with the discretion of the trial court on an award of damages.
 11. The appellant submitted that the award of general damages for loss of dependency was inordinately too high and faulted the trial learned Magistrate for failing to adhere to the principle of stare decisis.
 12. The appellant argued that the essence of the afore principle is that, decisions of higher courts are binding on courts below and relied on the case of Jacktone Ouma vs Maureen Achieng Odera [2016] eKLR where the High Court stated that comparable injuries should attract comparable awards.
 13. The appellant further submitted that dependency must be proved by evidence as was stated by the High Court in the case of Abdulla Rubeya Hemed vs Kayuma Mvurta & Another [2017] eKLR that a claimant must give some evidence to show he was dependent on the deceased and to what extent.
 14. That, in the present case it was not enough for the respondents to rely on the chief's letter to prove the number of dependants. That, PW2 Mercy Wacuka Njau should have produced an affidavit of service or a marriage certificate to show that she was married to the deceased.
 15. Further, she was required to establish how the deceased supported her through the production of receipts, Mpesa messages or financial statements.
 16. On the issue of the multiplier, the appellant argued that, the deceased was thirty-one (31) years old at the time of his death and therefore had another twenty-nine (29) years before attaining the age of retirement being sixty (60) years old. However, taking into account the vicissitudes and uncertainties of life the appellant proposed a multiplier of twenty-eight (28) years rather the thirty (30) years as adopted by the trial court.
 17. The appellant relied on the case of Muthike Miciimi Nyaga (suing as administrator of the estate of James Githinji Muthike (DCD) vs Dubai Super Hardware (2021) eKLR where the High Court stated that a multiplier of thirty (30) years is applied across board for a deceased person who was aged between twenty-one (21) and twenty-two (22) years old at the time of their death.
 18. On the deceased's income, the appellant submitted that, while the deceased's gross salary was Kshs. 31,840 his net salary was Kshs. 8,419 and therefore it would be safe to adopt a basic salary of Kshs. 24,380.
 19. On the multiplicand the appellant submitted that a dependency ratio of 1/3 should be applied taking into account that the deceased died with only one (1) dependent and relied on the case of; Muthike Miciimi Nyaga (suing as administrator of the estate of James Githinji Muthike (DCD) vs Dubai Super Hardware (supra) where the court adopted a dependency ratio of 1/3 as the deceased was unmarried and with his only dependents being his father and mother.



20. The appellant urged the court to set aside the trial court award of Kshs. 5,851,200 and substitute it with an award for loss of dependency be calculated as follows: $24,380 \times 28 \times 12 \times 1/3 = 2,730,560$
21. However, the respondents in submissions 21st November 2024, argued that they proved liability against the appellant through the evidence of PW2 Mercy Wacuka Njau who survived the accident and whose evidence was corroborated by the evidence of PW1 PC Ngugi who produced the police abstract and who testified that a traffic case had been instituted against the appellant's driver.
22. Further, that the appellant closed its case without calling any witnesses and therefore the respondents' evidence was uncontroverted and unrebutted.
23. On the award of damages for pain and suffering under the *Law Reform Act*, the respondents submitted that the award of Kshs. 50,000 was reasonable taking into account that the deceased died on the same day the accident occurred. The respondents relied on the case of: Alice O. Alukwe (suing on behalf of Maureen Alukwe (deceased) vs Akamba Public Road Services Ltd & Others [2013] KEHC 1206 (KLR) where the High Court awarded damages of Kshs. 50,000 in the case where the deceased died on the spot.
24. On damages for loss of expectation of life, the respondents submitted that the deceased was thirty-one (31) years old at the time of his demise and therefore the award of Kshs. 100,000 was reasonable. Reliance was placed on the case of, Makario Makonye Monyancha vs Hellen Nyangena (suing as the personal representative of the Estate of Christopher Bosire Matoke (deceased) [2014] KEHC 4476 (KLR) where the High Court stated that an award for loss of expectation of life under the *Law Reform Act* is always Kshs. 100,000 across board.
25. On the award of loss of dependency under the *Fatal Accidents Act*, the respondents relied on the case of, Wangai Thairu vs H. Ezekiel Barngetuny and Another HCCC 1638 of 1998 where the High Court outlined the principles applicable in the assessment of damages under the *Fatal Accidents Act*. That the Court stated that multiplicand is established using the net earnings of the deceased which is multiplied by the multiplier representing many years of purchase and multiplied by dependency on the deceased.
26. The respondents argued that the trial court in adopting the multiplier method to assess the damages arrived at the correct decision without having to be speculative as all the necessary elements were proved.
27. That, evidence on record through production of the death certificate showed that the deceased was thirty-one (31) years old at the time of his demise. Further, the deceased payslip for the month of February 2021 was produced that showed the deceased was earning Kshs. 31,580 before his demise. That in the circumstances the trial court's award of Kshs. 5,851,200 for loss of dependency is fair just and sufficient compensation.
28. On special damages, the respondents submitted that the trial court awarded Kshs. 179,650 which amount was specifically pleaded and proved by way of receipts.
29. Lastly the respondents urged the court to awarded costs of the appeal and of the primary suit and cited the case of; Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 Others [2014] eKLR where the Supreme Court stated that costs follow the event.
30. At the conclusion of the arguments by the parties, I recognize that the 1st appellate court is to re-evaluate the evidence adduced in the trial court afresh and arrive at its own conclusion, noting that it did not benefit from the demeanour of the witnesses as stated by the Court of Appeal in the case of; Selle & Another vs Associated Motor Boat Co. Ltd. & Others (1968) EA 123.



31. The Court of Appeal thus observed: -

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

32. Furthermore, I note that it is settled law that the appellate court will only interfere with the award of damages if; in exercising its discretion the trial court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice as held in the cases of; Mbogo & another Vs Shah (1968) EA and Mkube -vs - Nyamuro 1983 KLR 403.

33. Furthermore, the Court of Appeal in Loice Wanjiku Kagunda vs. Julius Gachau Mwangi [CA 142/2003](#) (unreported) stated that: -

“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (see Manga vs Musila [1984] KLR 257).”

34. To revert back to the matter herein, the appeal is mainly on quantum and pursuant to the afore rival submissions, I find that, the only issues in dispute are the dependency ratio and multiplicand applied by the court. The evidence reveals that the deceased was a civil servant aged thirty- one (31) years old. He would have retired at sixty (60) years and therefore had active service period of twenty-nine (29) years. Therefore the proposal of thirty (30) years applied by the court is not tenable nor substantiated.

35. In the circumstances I do concur with the submissions of the appellant, taking into account vicissitudes of life, a multiplicand of twenty-eight (28) years will suffice and I adopt it.

36. The dependency ratio of 2/3 is contested on the ground that there was no proof that, the deceased was maintaining more than his son Rooney. However, I note from the statement of Mercy Wacuka Njau filed a statement dated 29th March 201 she states that, she was married to the deceased through Kikuyu customary marriage and they were blessed with one child Rooney Mwaura. That at the time of the fatal accident, the three were travelling in the same vehicle when the accident occurred and her husband died.

37. Furthermore, the plaintiff Mercy Wacuka produced a letter dated 9th August 2021 from the chief which indicates that the deceased left behind a wife Mercy Wacuka Njau, a son Rooney Mwaura and his parents Benjamin Njau and Esther Mumbi. In addition Limited grant of Letters of Administration issued to Mercy as the widow of the deceased and Benjamin Njau the deceased’s father. The subject letter legitimizes the two plaintiffs as dependants of the deceased.



38. The court further notes that, the time of hearing the case the plaintiffs' documents were produced by consent of the parties and the case closed. There was no oral evidence adduced nor cross-examination or re-examination, therefore the issues raised by the appellant herein as to whether the deceased was married and moreso to Mercy Njau are issues not canvassed nor tested at the original trial.
39. If indeed the appellant was serious on the subject issue of proof of marriage it should have been tested at the trial. It cannot be canvased through submission at the appellate stage. Further, the appellant's submission of application of a global figure is not tenable as the deceased was a civil servant and his payslip was produced and admitted in evidence. Hence guiding the trial court.
40. In my considered opinion the plaintiffs proved that, the deceased was maintaining the wife, his son and parents and therefore a dependency ratio of 2/3 is fair, just and reasonable. I find no justifiable cause to interfere with the dependency ratio of 2/3. The resultant award for loss of dependency is as follows:
 $24,380 \times 12 \times 28 \times 2/3 = 5,461,120$
41. I find that the other awards on various heads in the judgment is not contested and I shall not interfere with it. Each party to meet its costs of appeal.
42. It is so ordered

DATED, DELIVERED, SIGNED ON 20TH DAY OF JANUARY 2025

GRACE L. NZIOKA

JUDGE

In the presence of: -

Ms. Ogot for the appellant

Mr. Brian Olunga for the respondent

Mr. Komen: court assistant

