



REPUBLIC OF KENYA



**Nyange v Kisilu & another (Both suing on behalf of the Estate of Peter Kisilu - Deceased)
(Civil Appeal E063 of 2023) [2025] KEHC 594 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E063 OF 2023
AN ONGERI, J
JANUARY 17, 2025**

BETWEEN

NEVERSON NYANGE APPELLANT

AND

KISASI KISILU 1ST RESPONDENT

JAMILLA TABITHA MALII 2ND RESPONDENT

BOTH SUING ON BEHALF OF THE ESTATE OF PETER KISILU - DECEASED

*(Being an appeal from the Judgement and Decree of Hon. C. K. Kithinji
(PM) in Voi CMCC No. E247 of 2022 delivered on 27th October 2023)*

JUDGMENT

1. The Respondent filed Voi CMCC No. E247 of 2022 following a road traffic accident (RTA) that occurred on 21st September 2022 along the Wildlife Works Murram Road involving the deceased Peter Kisilu who was walking along the road and motorcycle registration number KMFV xxx belonging to Appellant.
2. As a result of the accident, the deceased who was knocked from behind by the motor cycle registration number KMFV xxx lost his life.
3. The parties entered into a consent on liability and apportioned liability at 80:20% in favour of the deceased against the Appellant.
4. The trial court apportioned liability as follows:-
Damages for pain and suffering Kshs. 100,000/=
Loss of expectation of life Kshs. 100,000/=



Loss of dependency Kshs. 4,065,408/=

Loss of consortium Kshs. 150,000/=

Special damages Kshs. 140,000/=

Total Kshs. 4,555,408/=

Less 20% contributory negligence Kshs. 911,081.60

Final award Kshs. 3,644,326/=

5. The Appellant is aggrieved with the award and has appealed to this court on the following grounds:-
- i. That the Learned Principal Magistrate erred in awarding to the Plaintiffs the sum of Shs. 4,065,408.00 for loss of dependency under the *Fatal Accidents Act* which said sum is so excessive as to amount to an erroneous estimate of the damages payable to the Respondents.
 - ii. That the Learned Principal Magistrate erred in adopting a multiplier of 18 years whilst assessing damages for loss of dependency and that the multiplier used in assessing damages is too high in all the circumstances.
 - iii. That the Learned Principal Magistrate erred in failing to take into account the vicissitudes and uncertainties of life when he adopted a multiplier of 18 years whilst determining damages for loss of dependency.
 - iv. That the Learned Principal Magistrate erred in adopting a multiplicand of Kshs. 28,232.00 whilst assessing damages for loss of dependency and that the multiplicand used in assessing damages is too high.
 - v. That the Learned Principal Magistrate erred in fact in awarding to the plaintiffs a sum of Shs. 100,000.00 for pain and suffering when there was clear evidence before him that the deceased died a few hours after the accident.
 - vi. That the Learned Principal Magistrate failed to give any or any adequate reasons of how he arrived at the figure of Shs. 100,000.00 damages for pain and suffering which he awarded to the Plaintiffs/Respondents.
 - vii. That the Learned Principal Magistrate erred in fact in awarding to the plaintiffs a sum of Shs. 150,000.00 for loss of Consortium when there was no adequate evidence led in respect of the same and without giving any or any adequate reasons for awarding the same.
 - viii. That the Learned Principal Magistrate erred in fact in awarding to the plaintiffs a sum of Shs. 140,000.00 for special damages when there was no credible and documentary evidence adduced before him in support thereof.
 - ix. That the Learned Principal Magistrate erred in making awards under the various heads by failing to take into account that the general damages awarded to the plaintiffs would be invested to earn interest. If the Learned Principal Magistrate had bourned that factor in mind it is reasonably possible that he would have awarded a lesser amount to the plaintiffs under each head.
 - x. That the Learned Principal Magistrate erred in failing:-
 - a. To appreciate the significance of the various facts that emerged from the evidence of the plaintiff's witnesses.



- b. To consider or properly consider all the evidence before him and/or
 - c. To make any or any proper findings on the aspect of quantum of damages on the evidence before him.
- xi. That the Learned Principal Magistrate erred in failing to consider or properly consider the written submissions filed by counsel for the Defendant/Appellant.
6. This being a first appeal, the duty of the first appellate court is as follows: In *Selle -vs- Associated Motor Boat Co.* [1968] EA 123 where the Court held: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

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 demeanor of a witness is inconsistent with the evidence in the case generally.”

- 7. I find that this appeal is only on quantum since the parties entered into a consent judgment on the issue of liability and assessed liability at 80:20% in favour of the Respondent against the Appellant.
- 8. The sole issue for determination in this appeal is whether the trial court failed to take into account relevant factors and/or applied wrong principle in arriving at the award of Kshs. 3,644,326/=.
- 9. I have considered the submissions by both parties in this appeal.
- 10. I have also re-evaluated the findings of the trial court on each of the headings in awarding the damages.
- 11. There is no evidence that the trial court ignored the submissions by the Appellant or used the irrelevant factors and/or applied wrong principles in arriving at the quantum of damages awarded.
- 12. The deceased was a married man aged 40 years working as a security officer at Wildlife Works Company earning Kshs. 30,582.08 at the time of his demise.
- 13. The deceased left behind a widow and two children and also two parents.
- 14. The Appellant did not adduce evidence during the trial to counter the Respondent’s testimony.
- 15. The trial court awarded conventional awards for loss of expectation of life and damages for pain and suffering of Kshs. 100,000/= each.
- 16. The trial court found that the deceased was earning Kshs. 28,232 per month and applied a multiplier of 18 years and a dependency ratio of $\frac{2}{3}$ $28,232 \times 12 \times 18 \times \frac{2}{3} \times = 4,065,408/=$
- 17. I find that the award in respect of loss of consortium is also reasonable.
- 18. I find no basis to interfere with the award of the trial court.



19. The only time an appellate court can interfere is when the award is based on irrelevant factors or where the trial court applied wrong principles or where the award is too high or too low as to warrant interference.

20. I find the appeal herein lacking in merit and I dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF JANUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOL.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina/Trizah

