Sbi International Holdings v Juma & another (Admins of the Estate of Michael Bodo Juma) (Civil Appeal E088 of 2022) [2025] KEHC 7318 (KLR) (23 January 2025) (Judgment)

Neutral citation: [2025] KEHC 7318 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL E088 OF 2022

AB MWAMUYE, J

JANUARY 23, 2025

BETWEEN

SBI INTERNATIONAL HOLDINGS ..... APPELLANT

AND

IRENE ANYANGO JUMA ..... 1ST RESPONDENT

EDWARD JUMA BODO ..... 2ND RESPONDENT

ADMINS OF THE ESTATE OF MICHAEL BODO JUMA

(Being an appeal from the judgment of the Honourable Reuben K. Sang, SRM, Nyando Law Courts, delivered on the 19th July 2022)

JUDGMENT

Background

1. The Appellant, being dissatisfied with the judgment of the Trial Court handed down on the 19th July 2022, in Nyando PMCC No.65 of 2019, lodged the instant appeal on the following grounds:

    i. That the quantum of damages for loss of dependency is exaggerated, inordinately high, erroneous, oppressive, and punitive, and amounts to miscarriage of justice.

    ii. The learned trial magistrate ignored the Appellant's submissions, paid lip service, and made no reference to all the precedent on general damages cited before him, thus coming to a wrong decision on the quantum.

    iii. The learned trial magistrate erred in fact and in law in failing to appreciate the principles governing the award of damages, namely that like cases attract similar awards, and ignoring completely the Appellant's submissions thereon.

iv. The learned trial magistrate erred in fact and law in failing to consider the defendant's submissions on quantum.

v. The learned trial magistrate erred in awarding the sum of Kshs. 2, 880, 000/- by way of general damages under the head loss of dependency to the respondents.

vi. The learned trial magistrate considered extraneous circumstances to arrive at the erred findings in law and in fact.

vii. The learned magistrate's findings were not supported by evidence on record and no sufficient reasons for the findings were given.

viii. The honorable magistrate's decision is plainly wrong and is against the weight of evidence.

2. The Appellant filed its written submissions dated 29th January 2024, while the Respondents filed theirs on the 29th February 2024.

3. The Appellant in his submissions decried the trial court's election to use the multiplier approach to devise the general damages as Kshs. 2, 880, 000/-. In his view, there was no justification for the multiplier approach as the deceased's income was not proved. Per the Appellant, the trial court should have employed the global figure method. He relied on Kwanzia vs. Ngalali Mutua where Justice Ringera, as he then was, pronounced himself that:

> " The multiplier approach is just a method of assessing damages. It is not a principal of law or a dogma. It can and must be abandoned where facts do not support its application. It is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do."

4. The Appellant also placed reliance on Mary Khayesi Awalo & Another Vs. Mwilu Malungu & Another ELD HCCC NO. 19 of 1997 (1999) eKLR where Nambuye J., stated that-

> " As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the court's opinion that will be mere conjecture. It is better to opt for the principle of a lumpsum award instead of estimating his income in the absence of proper accounting books."

5. The Appellant further contends that no evidence was led to prove dependency as there is no document or bank account statements or fee structure to show that the deceased was provided for the listed dependents in terms of school fees, food, and upkeep.

6. To sum up, the Appellant urges this court to set aside the trial court's award of Kes. 2, 880, 000/- and substitute it with a global award of Kes. 1, 000, 000/-. To support this position, the Appellant cited the case of Florence Mumbua Ndoo & Francis Kioko (Suing as the administrators of the estate of the late Alfred Safari) v. Ezra Korir Kipngeno & Another (2017) eKLR where the court made an award of Kes. 700, 000/- to the estate of a 20-year-old deceased person in the absence of proof of earnings.

7. The Respondents in their written submissions answered the Appellant's complaint that the trial court ignored their submissions. The Respondents cited the case of Joshua Shitawa vs. Kishan Builders Limited Eldoret Civil Appeal No. 32 of 2012 (2015) eklr where the learned judge rendered himself

that final submissions are merely intended for the guidance of the court. That, unlike pleadings, there is no requirement that each and every submission or authority tendered be analyzed in the judgment.

8. The Respondent further avers that the choice of whether to adopt a multiplier approach or a global award approach is discretionary. Even so, the Respondent asserts that the deceased's age at the time of death was known, to wit, 28 years of age; his trade was known as a mason and small-scale farmer; and his income was known as Kes. 15, 000/-.

9. On whether there was dependency, the Respondent avers that dependency is a matter of fact and he cites Leonard O. Kisa & Another vs. Major K. Birgen (2005) Eklr as bolstering the position. In the cited case the learned judge dismissed the argument that dependency needs to be proved by documentary evidence as it is a matter of fact.

10. Further, the Respondent implores this court to affirm the multiplier used by the trial court given that there was no evidence of pre-existing sickness or reckless disposition that would have significantly shortened the deceased's life absent the unforeseen vagaries of life.

11. The thrust of the Respondents' rejoinder is that the trial court exercised its mind judiciously, and without any serious indication that the lower court misapprehended the evidence to arrive at a wild figure that is either inordinately low or inordinately high, this court should not disturb the decision.

Analysis And Determination

12. I have carefully apprised myself of the Record of Appeal, the rival submissions, the pleadings, and every other material placed before me. The overarching issue is on the quantum and especially how the trial court formulated it.

13. Considering that this is a first appeal, this court is obliged to reexamine both the law and factual basis of the suit, noting that this court did not have the benefit of observing the witnesses' demeanor as they testified. As such, this court has the latitude to arrive at its own findings of fact if it appears that the trial court failed to take into account a particular circumstance or set of circumstances or probabilities material to the estimation of the evidence or if the impression created by the demeanor of the witness is inconsistent with the evidence in the case, as was held in Selle & Another vs. Associated Motor Boat Co. LTD & Others (1968) EA123 and Abdul Hammad Saif vs. Ali Mohammed Sholan (1955) 22 EACA, 270.

14. It is the Appellant's contention that the general damages awarded were inordinately high, and he proposes that the same should be reviewed downwards to a global figure of Kshs. 1,000,000/- in consideration of analogous cases as cited. The Respondent urges this court to refrain from disturbing the trial court's award as according to him the same is meet and just in the circumstances.

15. Kemfro Afro LTD t/a Meru Express & Another Vs. A.M. Lubia and Another (1982-88) 1 KAR 727 most succinctly circumscribed the limits of the appellate court's brief in respect of general damages awarded by a trial court. The Court therein provided as follows:

> "The general principle is that the assessment of damages within the discretion of the trial court and the appellate court will only interfere where trial court, in assessing damages, either took into account irrelevant factors or left out a relevant factor or that the award was too high or too low as to amount to an erroneous estimate or that the assessment is based on no evidence."

16. In proceeding to review the decision of the trial court, I am guided by two principal questions:

i. Was the trial court justified to elect to use the multiplier approach over the global figure approach?

ii. Was dependency proved and/or did it need to be proved?

17. On what method of assessment of damages, the trial court should have adopted, there is a long line of precedents that suggest the trial court has the discretion to elect which method to use depending on the circumstances of each case.

18. In Buyala vs. Amwayi *(Suing as the Legal Representatives in the Estate of Shem Kokonya – Deceased) Civil Appeal 63 0f 2022*) (2024) KEHC 618 KLR, the Learned Court grappled with both methods of assessment and pronounced itself that:

> "It was thus not clear how much the deceased earned on a monthly basis and in such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency."

19. In Frankline Kimathi Maariu & Another vs. Philip Akungu Mitu Mborothi (Suing as the administrator and personal representative of Antony Mwiti Gakungu – deceased) 2020 Eklr the Honourable Court was of the view that where there is no satisfactory proof of the monthly income by salary proved or employment, so that it is not possible to determine the multiplicand, the court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.

20. The take home from a review of the above cited precedents is that where a court is in a quandary on how much the deceased actually earned, they can either resort to the global figure approach or employ the minimum wage as per the applicable Minimum Wage Gazette Notice, especially where the profession of the deceased is known or knowable.

21. In the lower court evidence was led to show that the deceased was a mason aged 28 years at the time of his demise. The appellant did not controvert this before the trial court though the Respondent pleaded it and called a witness who testified as to the age of the deceased and the profession he belonged to.

22. In Stallion Insurance Company Limited vs Ignazzio Messina & C S.P.A (2007) Eklr the appellate court refused to consider or deal with issues that were not canvassed, pleaded and/or raised at the lower court. It said that for a matter to be a ground of appeal, it must have been sufficiently raised and succinctly made an issue at trial.

23. Therefore, with respect, seeing as the Appellant did not adduce evidence or call a witness before the trial court to controvert testimony given under oath that the deceased earned Kshs. 15,000/- and was a mason-cum-farmer, he is precluded from casting aspersions on the earning capacity of the deceased.

24. Does it matter that that no documents were produced to reinforce the testimony that the deceased was a mason and earned the stated amount? The Court of Appeal in Civil Appeal No. 167 of 2002 Ayiga Maruja & Another vs. Simeone Obayo (2005) Eklr, when dealing with the estate of a deceased whose income could not be sufficiently proved rendered itself as follows:

> "We do not subscribe to the view that the only way to prove the profession of a person must be by way of production of certificates and that the only way of proving earning 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 that earn their livelihood in various

ways. If documentary evidence is available that it well and good. But we reject any contention that only documentary evidence can prove these things."

25. On whether dependency was proved or needed to be proved, this court will turn to Section 4(1) of the *Fatal Accidents Act* which lists the dependents as wife, husband, parent, and child of the deceased.

26. In Ngania & 2 others v Adulu (Suing as the Legal Representative of the Estate of Clinton Morgan Kiprotich) (Civil Appeal E005 of 2023) [2024] KEHC 4005 (KLR) the learned judge said that "dependency is a question of fact that must be demonstrated by way of evidence."

27. The Appellant in his submissions indicates that dependency needed to be proved by showing a fee structure or mpesa transactions to prove the deceased was paying school fees or spending on the family, respectively.

28. With respect, I doubt that this is practicable or even sound interpretation of the precedent that dependency needs to be proved. Few people in rural Africa, or anywhere, will keep records of their assistance to their kin with such a meticulousness that will someday suffice as evidence of financial support. The practice in most households is to lend help when required – and the help could take any form, whether the furnishing of cash, bank transfer, or mobile cash, or the purchase of clothing, stationery, or medicines. To require meticulous documentation of the same is to ask too much.

29. The case of Stephen Kivuti Kiura vs. Anastacia Murugi Muthui & Another (2021) Eklr, handled by Justice L. Njuguna, provides perspective on what proof of dependency entails. He rendered himself as follows:

> " It is trite law that dependency is a matter of fact and evidence must be adduced to prove the same. Though the Respondents listed the dependents, no birth certificates were produced or at the very least, a letter from the chief to show that the children exist.
>
> The wife did not ender any evidence to show that she was married to the deceased either under the statute or under customary law.
>
> To that extend, I find that no dependency was proved, and no award ought to have been made under that head."

30. What is emerging here is that the proof of dependency envisaged by precedent is one that would bring alleged dependents within the protections of Section 4(1) of the *Fatal Accidents Act*; that is, a proof that establishes the relationship between the deceased and alleged dependents. Accordingly, the wife to prove she is a wife by adducing either a certificate of marriage or a letter from the chief; and to furnish the court with birth certificates of the children, or a letter from the chief confirming the existence of the children. Anything that confirms any alleged relationship of dependency beyond peradventure.

31. Taking that into consideration, and further noting that the appellant has not disputed the relationship between the deceased and the dependents, I hold that dependency was not an issue at the trial court, and I will therefore not delve into it.

32. In the upshot, I find no reason to disturb the award by the trial court as the Appellants have not shown that the trial court employed any wrong principle, or ignored any relevant factor, or relied on an irrelevant factor to arrive at his decision. Therefore, I uphold the trial court's decision.

33. The Appellant shall bear the costs of this appeal.

DATED, SIGNED, AND DELIVERED ON THIS 23rd DAY OF JANUARY 2025.

.....

BAHATI MWAMUYE.

JUDGE.