



Onywere & another v Monsanto Kenya Limited & 3 others (Civil Appeal E1329 of 2023) [2025] KEHC 1649 (KLR) (Civ) (7 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1649 (KLR)

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

CIVIL

CIVIL APPEAL E1329 OF 2023

H NAMISI, J

FEBRUARY 7, 2025

BETWEEN

JOSEPH ONYWERE 1ST APPELLANT

JEMIMAH MONYORO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF KELVIN OMARI ONYWERE (DECEASED) AND NEXT FRIEND OF LIAM OMARI 2ND APPELLANT

AND

MONSANTO KENYA LIMITED 1ST RESPONDENT

ALLOYS SURESH 2ND RESPONDENT

RODGERS WANYONYI 3RD RESPONDENT

BENJAMIN KIMELI 4TH RESPONDENT

(Being an Appeal from Judgement of Hon. Wendy K. Micheni, Chief Resident Magistrate delivered on 10 November 2023 in Nairobi CMCC No. E 5203 of 2019)

JUDGMENT

1. This appeal arises from a suit filed by the Appellants against the Respondents, jointly and severally, for:
 - i. Special Damages of Kshs 183,301/=
 - ii. Funeral Expenses
 - iii. General Damages under the Fatal Accident Act and the *Law Reform Act*;
 - iv. Costs of the suit



- v. Interest on (i), (ii) and (iii) above
2. The suit was instituted by the Appellants in their capacity as parents and administrators of Kevin Omari Onywere (Deceased) under the Law Reform Act and dependants of the Deceased under the Fatal Accidents Act.
 3. The particulars of the suit are that on 30 November 2018, the Deceased was a passenger in motor vehicle registration number KBS 356J, driven by the 2nd Respondent. The said motor vehicle rammed into motor vehicle registration number KBJ 844C, which was driven by the 3rd Respondent. Consequently, Kelvin Omari Onywere lost his life. He was 29 years old at the time of his demise, a sales representative at Jumbo Chem Limited since 12 November 2018 and a father to a minor child.
 4. The 1st and 2nd Respondents entered appearance and filed their Statement of Defence, denying the Appellants' claim in toto and attributing the cause of the accident to the negligence of the 3rd Respondent.
 5. Interlocutory judgement was entered against the 3rd and 4th Respondents.
 6. At the hearing, both Appellants testified. The 1st Appellant adopted his witness statement dated 8 July 2019. On cross examination, the 1st Appellant confirmed they (the Appellants) would rely on the Deceased, though he did not have any evidence to demonstrate the same.
 7. Similarly, the 2nd Appellant adopted her witness statement in which she testified that upon graduation from Egerton University, the Deceased had been employed as a Spray Supervisor at Finlays Horticulture Limited earning a monthly salary of Ksh 31,643/=. In March 2017, he joined Nikifarm East Africa Limited as a sales representative, earning a monthly salary of Kshs 40,000/=. On 26 November 2018, the Deceased began his employment at Jumbo Chem Kenya Limited where he was earning a monthly salary of Kshs 60,000/=. The Deceased had worked at Jumbo Chem Ltd for only 3 days before his life was cut short by the accident.
 8. The 1st Appellant produced a bundle of documents including the Certificate of Death, Police Abstract, Post Mortem Form, Motor vehicle searches and letters of appointment at Finlays Horticulture Ltd, Nikifarmcare East Africa Ltd and Jumbo Chem Kenya Ltd. The basic pay at Nikifarmcare East Africa Ltd was kshs 40,000/-. At Jumbo Chem Ltd, the basic pay was Kshs 60,000/ =.
 9. The 2nd Respondent testified and adopted his witness statement of 7 November 2019. The Respondents did not produce any documents.
 10. In its judgement, the trial court addressed the issues of liability and quantum of damages. On the issue of liability, the trial court attributed 100% liability to the Respondents, jointly and severally.
 11. On the issue of damages, the trial court considered the cases of Kenya Breweries Ltd -vs- Saro [1991] KLR 408 and Dismas Muhami Wainarua -vs- Sopon Kasirimo Maranta (suing as administrator and or personal representative of the estate of Partinini Supon (Deceased) [2021] eKLR in applying a multiplicand of 1/3. The trial court further observed that where one does not tender evidence of employment to prove monthly earnings, the Regulation on Wages General Order (Minimum Wages) should be taken into account as the court's point of reference. Accordingly, the trial court held the view that at the time of the Deceased's demise, the minimum wage was Kshs 13,573/=.The court calculated the quantum of damages for loss of dependency as follows:

$Kshs\ 13,573/= \times 1/3 \times 12\ months \times 30\ years = Kshs\ 1,628,759/=$



12. The trial court entered judgement in favor of the Appellants as follows:
- i. General Damages
 - Loss of Dependency - Kshs 1,628,759/=
 - Pain and Suffering - Kshs 100,000/=
 - Loss of Expectation of Life - Kshs 100,000/=
 - Total - Kshs 1,828,759/-
 - ii. Special Damages - Kshs 119,151/=
 - iii. Interest on (i) and (ii) at court rates from the time of judgement and time of filing suit respectively
 - iv. Costs of the suit
13. Aggrieved by the said judgement, the Appellants lodged this appeal on the following grounds:
- i. That the learned trial Magistrate erred in law and in fact in failing to consider the evidence on record that exhibited proof of earning by the Deceased by way of a letter of appointment and in so doing arrived at an erroneous decision on loss of dependency under the Fatal Accident Act;
 - ii. That the learned trial Magistrate erred in law and in fact by failing to consider the evidence presented and in so doing arrived at an erroneous decision;
 - iii. That the learned trial Magistrate erred in law and in fact by making an erroneous finding that there was no proof of monthly earnings contrary to the evidence provided by the Appellants and in so doing erroneously applied the Regulations on Wages General Order (Minimum Wages);
 - iv. That the learned trial Magistrate erred in law and in fact by failing to take into account that the Deceased had only worked for 3 days before his demise, his payslips and bank statements had not been issued;
 - v. That the learned Magistrate erred in law and in fact by while considering the loss of expectation of life occasioned on the Deceased and his family owing to the Respondent's negligence and awarded a minimal amount contrary to the evidence on record.
14. The Appeal was canvassed by way of written submissions.

Analysis and Determination

15. This being the first appeal, it is this court's duty under Section 78 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion, taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123.
16. I have keenly reviewed the Record of Appeal and the submissions by the parties. I have narrowed down the issues for determination herein to quantum of damages with respect to loss of dependency and loss of expectation of life.



Loss of Dependency

17. With regard to the loss of dependency, the bone of contention herein is whether or not a letter of appointment is sufficient evidence as proof of earning. To the Appellants, the answer is in the affirmative. In their submissions, the Appellants relied on the case of Alliance One Tobacco (k) ltd -vs- Isack Jandi Mbane [2015] eKLR in which the Court held thus:

“The fact that she was earning is proved by the letter from her employer which shows that she had been appointed to a position where she was earning Kshs 8,000/- per month. The amount used in calculating the multiplicand is the net earnings and not gross earnings.”

18. In agreeing with the holding of the trial court, the Respondents relied on the case of Juma Kigambwi -vs- Loise Wambui Kahenya (suing as the personal representative of the estate of Stephen Kahenya (Deceased) [2017] eKLR.

19. I associate myself with the reasoning in the case of Alliance One Tobacco Ltd (supra). The fact that the Appellants produced a letter of appointment addressed to the Deceased is sufficient proof of the deceased's employment and earnings on a balance of probabilities. This view was buttressed in the case of Zacharia Mutua Kiprop & another v Pauline Adhiambo & another [2019] eKLR.

20. The Appellants further submitted that the trial court ought to have calculated the quantum of damages for loss of dependency as follows:

$$\text{Kshs } 60,000 \times 12 \times 32 \text{ years} \times 2/3 = \text{Kshs } 15,360,000/=$$

21. I note, just as the trial court did, that there was no evidence presented to demonstrate the age of the minor, child to the Deceased. The Certificate of Death indicates the age of the Deceased as 29.

22. The trial court applied a multiplicand of 1/3, relying on the Dismas Muhami Wainarua case (supra) in which the Court held that:

“The deceased left behind parents. He must have supported them in some way. In that regard, the ratio could not have been 2/3. The respondent's counsel agreed that the dependency ration of 2/3 was on the higher side and suggested a ratio of 1/2. Although the deceased was not married, it would be difficult to assume without evidence that he gave 1/2 of his income towards his parents' support. The ratio of 1/3 would be appropriate.”

23. I agree with the multiplicand applied by the trial court and find no reason to disturb the same. To that extent, this Court's calculation of the damages for loss of dependency are as follows:

$$\text{Kshs } 60,000 \times 12 \times 31 \text{ years} \times 1/3 = \text{Kshs } 6,696,000/=$$

Loss of Expectation of Life

24. The Appellants submitted that the award of Kshs 100,000/= under this head was inordinately low. They proposed a sum of Kshs 500,000/=: bearing in mind that the Deceased was 28 years old, with a lifetime of opportunities ahead of him.

25. It is by now a well-known legal principle that a court sitting on appeal can only interfere with an award of damages under the following circumstances illustrated in Paul Kipsang Koech & Another v. Titus Osule Osore [2013] eKLR:

- a) where the trial court took into account an irrelevant factor, or



- b) where the trial court left out of account a relevant factor, or
- c) where the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
26. In the case of *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another* (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR the Court observed that:
- “The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs.100,000/- while pain and suffering the awards range from Kshs.10,000/- with higher damages being awarded if the pain and suffering was prolonged before death.”
27. The Appellants did not advance reasons for interference with the award under the damages for loss of expectation of life and in my opinion, the trial court did not err in awarding the conventional figure of Kshs 100,000/-.
28. The upshot of the foregoing is that the appeal partially succeeds. I set aside the judgement of the trial court delivered on 10 November 2023 and substitute the same with the following order on quantum of damages:
- i. General Damages
 - Loss of Dependency - Kshs 6,696,000/=
 - Pain and Suffering - Kshs 100,000/=
 - Loss of Expectation of Life - Kshs 100,000/=
 - Total - Kshs 6,896,000/-
 - ii. Special Damages - Kshs 119,151/=
 - iii. Interest on (i) and (ii) at court rates from the time of judgement and time of filing suit, respectively.
 - iv. Costs of the suit
29. For clarity, the finding on liability is upheld.
30. The Appellants are awarded costs of this appeal assessed at Kshs 50,000/=.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF FEBRUARY 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.Ms. Gitonga ... for the Appellants

Ms. Mugambi h/b Mr. Ombati for the 1st and 2nd Respondents

N/A for 3rd and 4th Respondents

Libertine AchiengCourt Assistant

