Abdullahi & 2 others v Mulae & another (Suing as the Administrators of the Estate of the Late Muinde Kiti - Deceased) (Civil Appeal E047 of 2022) [2025] KEHC 2337 (KLR) (3 March 2025) (Judgment)

Neutral citation: [2025] KEHC 2337 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITUI

CIVIL APPEAL E047 OF 2022

LW GITARI, J

MARCH 3, 2025

BETWEEN

MOHAMED IBRAHIM ABDULLAHI ..... 1ST APPELLANT

ALI NOOR ADAM ..... 2ND APPELLANT

MOHAMUD HAUDHI ..... 3RD APPELLANT

AND

KITI MULAE ..... 1ST RESPONDENT

JOHN MWANIA KITI ..... 2ND RESPONDENT

SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE MUINDE KITI - DECEASED

JUDGMENT

1. This Appeal arises from the decision in Kitui Chief Magistrate's Court Civil Case No. 419/2019 dated 13/06/2022. In the suit, the respondents who were the administrators of the estate of the deceased Muinde Kiti who had lost his life after being involved in a road traffic accident, filed the suit claiming both special and general damages for the benefit of his estate. The subject accident involved the deceased who was a motor cyclist and the appellant's motor vehicle registration number KCP 382F. The matter proceeded before the learned Magistrate and she entered Judgment in favor of the respondent as follows:

    a. Damages for pain and suffering – 20,000/=

    b. Damages for loss of expectation of life – 160,000/=

    c. Damages for loss of dependency – 2,171,664/=

d. Special damages – 18,290/=

e. Total 2,369,954/=

The learned Magistrate also found the appellants were jointly and generally 100% liable. The appellants were dissatisfied with the Judgment and filed this appeal.

The Appeal

2. The appellant's filed the appeal against the whole of the said Judgment and decree on quantum on the following grounds:

    1. TheHonourable learned trial magistrate erred in law and fact and misdirected herself by awarding an inordinately high amount in loss of expectation of life.

    2. Thehonourable learned trial Magistrate erred in law and fact and misdirected herself by adopting an unjustified, inordinately high multiplicand unsupported by the pleadings and evidence.

    3. TheHonourable learned Magistrate erred in law and fact in adopting the dependency ration at 2/3 instead of 1/3 contrary to the evidence adduced by the plaintiff, thereby giving an inordinately high award against the appellants.

    4. TheHonourable learned trial Magistrate erred in law by giving an inordinately high and manifestly excessive award and loss of dependency which award is unsupported by law so as to amount to an erroneous award in the circumstances of the case.

    5. TheHonourable learned trial Magistrate further erred in law and fact by failing to appreciate, consider and take into account the appellant's submissions on the quantum of damages awardable in the circumstance.

    6. TheHourable learned trial Magistrate erred by making a decision on quantum that was erroneous, without proper basis.

    7. Thelearned trial Magistrate erred in law and fact by taking into account irrelevant considerations/facts while awarding General Damages.

    8. TheHonourable learned trial Magistrate erred by making a decision on quantum of damages that was erroneous, without proper basis and against the weight of evidence.

3. The appellants pray that the appeal be allowed the Judgment of the learned Magistrate be set aside. The award on the quantum of damages awarded by the trial court be adjusted accordingly to reflect fair amounts justifiable by the law and evidence and in accordance with conventional awards in previous similar cases. The appellant also asks for costs of the appeal and costs in the lower court. The appeal was canvassed by way of written submissions.

Appellants Submissions.

4. The appellant submits that the issue for determination is whether the learned Magistrate acted on wrong principles in awarding the quantum of damages. On loss of dependency, the counsel submits that owing to the age of the deceased and the fact that being a student he was not in employment, the learned Magistrate should have adopted a lump sum global figure which is a practice the courts have adopted. The appellant relies on the case of Charles Ouma Otieno & Another v Benard Otieno Ogecha (suing as the brother and Legal Representative and Administrator of the Estate of the late Oscar

Oyango Ogecha (Deceased) [2014] eKLR. The appellant also relies on the case of Stanwel Holdings Limited & Another v Racheal Haluku Emanuel & Another [2020] eKLR where the deceased was 23 years old and the court held that:

> " Consequently, I find that the global sum would be sufficient in this case, however, from the foregoing I find that the learned trial Magistrate's award was inordinately high, while the amount proposed by the appellants was too low. I therefore award a global sum of Kshs. 1,000,000/= under this head. It was also submitted that the minimum wage applied was erroneous as the minimum was for a general worker which was prevailing for the region under the Regulation of Wages (General) (Amendment) Order 2018 is Kshs. 7,240,95/= and is the amount the trial court should have adopted."

5. On the dependency ratio, the appellant submits that the learned Magistrate erred in applying the ratio of 2/3 instead of 1/3 considering that the deceased did not have any children at the time of his death and should have adopted a dependency ration of 1/3.

6. He relies on Taita Taveta University College v Rugut & Maritim, (suing on their own behalf and the administrators of the Estate of the late Cosmas Kipserem Kipkoech) (Civil Appeal E009 of 2021) 2022 KEHC 12772 (KLR) 31 August 2022 (Judgment) where the court adopted a dependency ration of 1/3 for a student who died at the age of 23. The appellants submits that the court should have awarded a dependency ration of 7,240.95 x 12 x 20 x 1/3 = 579,276/=.

Respondents Submissions.

7. He submits that the issue that arises for determination is whether the learned trial Magistrate applied the correct principles of law and available facts in assessment of damages payable to the respondents and whether the learned trial Magistrate's determination on the amount payable to the respondents was inordinately high as to present on entirely erroneous estimate of compensation to which the respondents were entitled.

8. The respondent submits on damages under The Laws Reform Act the appellants had proposed Kshs. 20,000/= in their submissions before the trial court. The learned trial Magistrate awarded Kshs. 20,000/=. He submits that the appellant cannot now turn around and say the award was excessive.

9. On the loss of Expectation of Life, it is submitted that the deceased enjoyed good health, was at the prime of his life and had more productive years ahead of him. At the time of his death he was a student aged nineteen years. He was a source of inspiration to his siblings and the parents expected so much from him. He relies on MMG v Muchemi Teresa [2015] eKLR where the court awarded Kshs. 150,000/= and Cherangany Hills Limited v BWM [2018] eKLR where Kshs. 200,000/= was awarded.

10. The respondent contends that the award of Kshs. 160,000/= was based on precedents submitted before her was appropriate and reasonable and the court should uphold it. On the quantum of damages for loss of dependency, it is submitted that the contention that the Magistrate should have adopted the minimum wage for a general worker in 2018 it submitted that same upward adjustment on the wage would be fair and just as the wage is regularly adjusted by the relevant Government Ministry to reflect economic factors of the days. That the figure adopted was fair and reasonable.

11. He relies on Daniel Kahuga & Another v Janet Jeruto & Michael Chepkwony (suing as the legal representative of the estate of Maureen Jepkoech Chepkwony (deceased). Relying on these authorities he urges the court to uphold the award of the damages for loss of dependency awarded by the learned Magistrate and dismiss the appeal.

Analysis And Determination

12. This is a first appeal and the duty of this court has been laid down in various authorities. In Selle and Another v Associated Motor Boat Company Ltd & Others [1968] I EA 123 the court stated 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."

13. The duty of the first appellate court is well spelt out and its duty is to revisit the evidence and come up with its own conclusion in the matter. The issue for determination before this court is whether the award of general damages is manifestly excessive. The circumstances under which this court can interfere with an award of damages were discussed by the court of Appeal in Catholic Diocese of Kisumu v Sophia Achieng, Civil Appeal No. 284/200 1 [2004] 2 KLR 55 the court stated as follows:

> " It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate court is not justified in substituting a figure of its own from that awarded by the court below simply because it would have awarded a different figure if it had tried the case at first instant. The appellate court can justifiably interfered with the quantum of damage awarded by the trial court only if it satisfied that the trial court applied the wrong principles by taking into account some irrelevant factor while leaving out of account some relevant one, or misapprehended the evidence and so arrived at a figure so inordinately high or so low as to represent and entirely erroneous estimate."

14. In the case of Sheikh Mustag Hassan v Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457 the Court of Appeal made a similar finding and stated that

> " the appellate court is only entitled to increase any award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reading that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect ..."

The principle upon which this court can interfere with an award of damages are well laid down in the above authorities.

15. The appellant has not challenged the finding by the learned Magistrate on the issue of liability. The finding by the learned Magistrate was well founded as the evidence of the respondent on how the accident occurred was not controverted. The respondent called an eye witness who testified on how the accident occurred. The finding on liability is upheld. The appellant has not challenged the awards for pain and suffering and for the loss of expectation of life. The awards are reasonable and fair and are not excessive. I uphold the awards.

16. The elephant in the house is the award of damages for loss of dependency. The learned Magistrate awarded Kshs. 2,171,664/= for loss of dependency based on a minimum wage of 13,572.00, 2/3 ratio and a multiplier of twenty years. The appellant submits that a ratio of 1/3 should have applied. The evidence adduced by PW1 was that he used to do farm work with the deceased and he was a boda boda rider.

17. In cross-examination, PW1 told the court that the deceased had finished school but repeated to do mathematics. The respondent did not avail documents to show that the deceased was a student. The

respondent did not produce any documents to prove that the deceased as a rider. Where the party has failed to proof the income of the deceased, courts have leaned towards awarding a global sum.

18. In the persuasive case of Moses Mairua Muchiri v Cyrus Maina Macharia (suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, Ngaah J. observed as follows:

> " It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case."

19. In Mwanzia v Ngalali Mutua and Kenya Buss Services (Msa) Ltd & Another which was quoted with approval in Albert Odawa v Gichimu Gichenji NKU HCCA No. 15 of 2003 [2007] in the KLR Justice Ringera was of the following view;

> " The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that 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 are 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."

20. What amounts to proof based on the above factors depends on the circumstances and the character of each particular case. In Charles Ouma & Another v Benard Odhiambo Ogeche [2014] eKLR the court held that:

> " I am of the considered view that the learned Magistrate fell into error in making awards under separate leads. As it were the future of the deceased who was aged 14 years old as time of the accident was uncertain. There was no knowing what he would have become had he lived his life to the full nor how much he would earn, nor was there anyway of knowing whether or not he would be able to support his brother, the respondent herein."

21. In this case the appellant has stated that the minimum wage applied was not the minimum. The respondent on the other states that it was okay for the learned Magistrate to do some upward adjustment on the wage. These disputed figures on the minimum wages show that assessment of damages under multiplier approach should be abandoned where facts do not facilitate its application. In this case the global sum approach would have been ideal and most practical approach in assessing the award of damages under the head of loss of dependency. The deceased in this case was nineteen years old.

22. In Stanwel Holdings Limited & Another v Racheal Haluku Emmanuel & Another [2020] eKLR, the court applied a global sum of Kshs. 1,000,000/= where the deceased was twenty-three years old. In this case the learned Magistrate failed to apply the correct and the applicable minimum wage and ended up awarding damages which were excessive in the circumstances.

23. Having considered the above authorities, it is not in doubt that the deceased was nineteen years old. Damages are payable to the parents or dependant. I therefore award Kshs. 1,200,000/= under this head. In the end I find that the appeal partially succeeds and order that:

1. *Fatal Accidents Act*

   Loss of defendancy Global sum of Kshs. 1,200,000/=

2. *Law Reform Act*

   a. Pain & Suffering – Kshs. 20,000/=

   b. Loss of Expectation of life – Kshs. 160,000/=

   c. Special Damages – Kshs. 18,290/=

   Total - Kshs. 1,398,290/=

3. Each party to bear its own costs of the appeal and in the lower court.

DATED, SIGNED AND DELIVERED AT KITUI THIS 3RD DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE