



**Fedha v Tuigon & another (Suing as Administrators of the Estate of Laban Kiprop - Deceased)
(Civil Appeal E019 of 2022) [2025] KEHC 3375 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E019 OF 2022**

JR KARANJA, J

MARCH 19, 2025

BETWEEN

BENSON MAHELI FEDHA APPELLANT

AND

EMILY JEPKOSGEI TUIGON 1ST RESPONDENT

HELLEN CHRUTO 2ND RESPONDENT

**SUING AS ADMINISTRATORS OF THE ESTATE OF LABAN KIPROP -
DECEASED**

*(Being an appeal from the judgment and/or decree of Hon. D.A. Ocharo Principal
Magistrate delivered on 27th July 2022 in Kapsabet PMCC No. 149 of 2010)*

JUDGMENT

1. The appeal is against the judgment of the Principal Magistrate on quantum of damages, more particularly, loss of dependency and special damages delivered on 27th July 2022 in Kapsabet PMCC No. 148 of 2019.

The grounds of appeal are set out in the memorandum of appeal dated 19th August 2022. These were canvassed between both parties by written submissions with the Respondent opposing the appeal.

2. The duty of this court was to revisit the evidence which informed the trial court's decision on the quantum of damages while taking into account that the trial court had the advantage of seeing and hearing the witnesses.



3. Being on appeal on quantum, the applicable principles of law were set out by the Court of Appeal in the case of *Kemfro Africa Limited t/a Meru Express Services & Another v Lubia & Another* [1983 – 88] KAR 777 in the following terms: -

“The principle to be observed by an Appellate Court in deciding whether it is justified in dismissing the quantum of damages awarded by a trial judge were held by the former Court of Appeal for Eastern Africa to be that: -

It must be satisfied that either the judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

4. Herein, the Appellant backed by relevant case law submitted that the trial court acted on wrong principles in assessing damages for loss of dependency such that the award made was excessive.

In making that award, the trial court rendered itself as follows: -

“the evidence tendered by the deceased’s mother is that he was aged 21 years was a horticultural farmer with a daily income of Kshs. 1000/- per day and that he was unmarried. He did not have children but he used to support his mother [PW1] who is now old and sickly. She did not produce anything to support her allegation that the deceased used to earn Kshs. 1000/- per day. In *Philip Mutua Vs. Veronicah Mula Mutiso* [2013] eKLR, it was held that where income is not proved, the income of an unskilled worker ought to apply according to the regulation of wages applicable at that time. According to the regulation of wages General Order 2018. The basic minimum monthly wage of a general unskilled worker in Kenya in 2018 was Kshs. 13,572/90. The deceased was aged 21 years, meaning he had 39 more years before attaining the mandatory retirement age of 60 years provided in Kenya. Although the deceased was not married and had no children, he used to support his mother [PW1] who lost dependency by the fact of his death. I will therefore adopt a multiplier of 2/3, I therefore calculate the loss of dependency as follows: -

Minimum wage [Kshs. 13,572/=] x 12[moths] x 39[years] x 2/3= 4,234,164 which is what I hereby award.”

5. In her evidence, the Plaintiff/ Respondent [PW1] indicated that the deceased, her son, was in gainful venture being a horticultural farmer and “boda-boda” i.e motor cycle taxi operator from which he earned Kshs. 1000/- per day. He supported her, she therefore depended on him.

However, the Plaintiff did not avail any documentary evidence to establish the alleged earning. Neither did she lead any evidence to show that she was wholly dependent on her deceased son for her upkeep. She stated that the deceased was aged twenty one [21] years at the time of his death. The death certificate [P EX. 4] rather than the birth certificate was produced to establish the age.

6. Nonetheless, the deceased age was not a factor which was disputed and/or substantially disputed by the Appellant/ Defendant. It was also not disputed that the deceased earned an income from his business venture rather than gainful employment. However, there was no evidence in whatever form availed by the Plaintiff to prove that the deceased earned Kshs. 1000/- per day from his business venture. At least, some receipts or documents from his business should have been availed but this is not to say that he did not earn any income at all.



7. Although the deceased was already an adult independent of his parents, in African societies, it may be judicially noted that parents expect to be supported by their children especially where they are not themselves in gainful employment and/or business venture and are old and sickly. What matters would be the degree of such support.

Herein, the Plaintiff/Respondent implied that the deceased wholly supported her, but she did not avail any evidence to prove the fact.

8. For the reason foregoing it was not appropriate to assess damages for loss of dependency on the basis of a multiplier approach and more so, gauged on the applicable minimum wage rate when the deceased was not in gainful employment at the time of his death. A global approach was in the circumstances more suitable.
9. In her final submissions before the trial court the Plaintiff suggested that she be awarded a sum of Kshs. 1,677,066/- on the basis of both the multiplier and the global approaches. For the multiplier approach, the amount was made up of a multiplier of kshs. 13,975/55cts [minimum wage rate], a multiplier of thirty [30] years and a dependency ratio of 1/3. This was the same amount that the Plaintiff suggested if the global approach was applied.
10. On the other hand, the Defendant suggested a global approach in the sum of between Kshs. 400,000/- to Kshs. 600,000/-. However, the trial court was of a different view and awarded damages for loss of dependency in the sum of 4,234,464/- using the multiplier approach.

As noted hereinabove, this approach was erroneous as it could not be justified by the evidence availed by the Plaintiff/ Respondent and ended up being an inordinately high award in damages under the head.

11. This court would therefore allow and sustain grounds one to six [1 – 6] of the Appellant's grounds of appeal and set aside the award of damages made by the trial court for loss of dependency to the extent that it is herein substituted for a global award of Kshs. One million and two hundred thousand shillings [i.e. Kshs. 1.2million]
12. With regard to the special damages, the Appellant contended that it was erroneous for the trial court to admit and include a receipt issued on 26th November 2019 for the sum of Kshs. 34,000/- as it was issued one [1] year after the alleged accident and was therefore irrelevant for the purposes of the claim.
In the final submissions before the trial court, the Defendant/ Appellant, did not only challenge that one receipt, but all the receipts relied upon by the Plaintiff/ Respondent to prove the specifically pleaded special damages in the sum of Kshs. 95,550/-.
13. The Defendant/ Applicant without any proof alleged that the receipts were "manufactured" for purposes of the claim. However, the Plaintiff/ Respondent contended that the claimed special damages were duly pleaded and established by production of the receipts in court [P. Ex 9].
The trial court agreed with the Plaintiff and so does this court for reasons that the Defendant/ Applicant did not avail any credible and tangible evidence to establish that the receipts were false, false documents or in any manner arising from a fraudulent activity. Consequently, grounds seven, eight and nine [8-9] of the appeal are herein found to be unmerited and dismissed accordingly.
14. Otherwise, the appeal be and is hereby allowed with regard to the award on loss of dependency for which judgment is hereby entered under the head for a sum of Kshs 1.2million less the Respondent's contributory negligence.

DELIVERED AND DATED THIS 19TH DAY OF MARCH 2025



**HON. J. R. KARANJAH,
JUDGE**

