Ireri & another v Njenga & another (Suing as legal representatives of the Estate of Daniel Muikamba Mwaura - Deceased) (Civil Appeal 21 of 2016) [2025] KEHC 2619 (KLR) (5 March 2025) (Judgment)

Neutral citation: [2025] KEHC 2619 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CIVIL APPEAL 21 OF 2016

CW GITHUA, J

MARCH 5, 2025

BETWEEN

NJERU HENRY P IRERI ..... 1ST APPELLANT

NJERU INDUSTRIES LIMITED ..... 2ND APPELLANT

AND

CAROLINE WARIGIA NJENGA & PAUL MWAURA NGUGI (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF DANIEL MUIKAMBA MWAURA - DECEASED) ..... RESPONDENT

(Being an appeal from the judgement and decree of Hon. C. Kithinji (RM), in Kandara CMCC No.283 of 2014 delivered on the 9th of March, 2016)

JUDGMENT

1. This appeal challenges the quantum of damages awarded to the respondents by the trial court in Kandara CMCC No. 283 of 2014.

   Liability is not contested as the parties recorded a consent on liability in the trial court at the ratio of 70: 30 in favour of the respondents against the appellants.

2. The court record shows that the respondents, in their capacity as the legal representatives of the estate of the late Daniel Muikamba Mwaura (the deceased) instituted suit in the lower court against the appellants seeking general and special damages under the *Law Reform Act* and the *Fatal Accidents Act* following the death of the deceased after he was knocked down by motor vehicle registration number KBN 168B (the suit vehicle) owned by the 2nd appellant which was being driven by the 1st appellant.

3. In the consent recorded by the parties, besides agreeing on the apportionment of liability, parties also agreed that the documents filed by the respondents be admitted as evidence and that the trial court was to assess damages on the basis of those documents and written submissions on quantum.

4. In its judgement, the trial court awarded the respondents damages as follows;

   Pain and suffering - Kshs. 10,000;

   Loss of expectation life - Kshs. 100,000

   Loss of dependency - Kshs. 2, 020,000

   Special damages - Kshs. 22,500

   The respondents were also awarded costs of the suit and interest.

5. The appellants were aggrieved by the learned trial magistrate's decision on quantum hence this appeal. In their Memorandum of Appeal dated 7th April 2016, the appellants faulted the learned trial magistrate for making a grossly excessive award for loss of dependency which, in their view was not supported by any evidence. They also faulted the trial court for allegedly failing to appreciate the evidence on record, the applicable minimum wage and the appellant's submissions thereby arriving at an award for loss of dependency which was manifestly high as to amount to an erroneous estimate of the damage suffered.

6. The appellants also complained that the learned trial magistrate erred in law and fact by failing to deduct the award made under the *Law Reform Act* from that made under the *Fatal Accidents Act* to prevent double compensation. The award of general damages for pain and suffering was also contested on grounds that the amount awarded of Kshs. 1,506,750 was inordinately high and excessive.

7. This being a first appeal to the High Court, it is an appeal on both facts and the law. The duty of the first appellate court is now well settled. It has been articulated in a host of authorities which I need not multiply here. I think it will suffice to cite the authority of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR where the Court of Appeal succinctly captured the aforesaid duty in the following terms;

   > "...This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way...."

8. As a general rule, an appellate court ought to be slow in interfering with awards made by the trial court principally because it is trite that awards of general damages are at the discretion of the trial court and they depend on the facts and circumstances of each case since no two cases can be similar on all fours. However, an appellate court can interfere with that discretion if it was satisfied that the trial court, when making the impugned award acted on wrong legal principles or misapprehended the evidence on record in some material respect and thereby arrived at a figure that was either inordinately high or low as to represent an erroneous estimate of the damage suffered – See: Butt v Khan [1978] eKLR; Gitobu Imanyara & 2 others v Attorney General [2016] eKLR;

9. Before addressing the appellants complaint regarding the award for loss of dependency which is the crux of this appeal, let me start with the appellant's claim in one of the grounds of appeal that the trial court erred in awarding the respondents Kshs.1,506,750 as general damages for pain and suffering. From the record, this claim is devoid of any substance and is completely erroneous. The record clearly

shows that the learned trial magistrate awarded the respondents Kshs. 10,000 only under this head which was the conventional sum usually awarded in cases where the deceased died soon after the accident.

10. The record further shows that the amount of Kshs. 1,506,750 was the total sum awarded to the respondents after the trial court deducted the deceased's agreed contribution of 30%. The award of Kshs. 10,000 for pain and suffering was properly made and it is hereby upheld.

11. From the grounds of appeal and the parties written submissions, it is also clear that the award of general damages for loss of expectation of life and the award of special damages were not contested and the same will remain undisturbed.

12. Turning now to the strenuously contested award of damages for loss of dependency, it is not disputed that at the time of his death, the deceased was 34 years old and he had a family comprising of a wife and two children who were dependent on him.

13. In their plaint, the respondents claimed that the deceased had an income of Kshs.15,000 per month while the 1st respondent, who was his widow claimed in her witness statement that as a casual labourer, the deceased used to earn Kshs. 500 per day which he used to support her and their children.

14. I have gone through the record of the trial court and I have not come across any evidence proving the income the deceased was earning prior to his death and what work he was engaged in as a casual labourer.

    A perusal of the trial court's judgement reveals that, in awarding the respondents Kshs. 2, 020, 000 as damages for loss of dependency, the learned trial magistrate used the multiplier approach and adopted Kshs. 10,000 as the multiplicand guided by the Regulation of Wages (general) (amendment order) of 2015 which set the minimum wage for a general labourer at Kshs. 10,000 per month and a daily wage of Kshs. 484.30. The trial court also adopted a multiplier of 25 years and a dependency ratio of 2/3.

15. It is trite that proof of income is crucial to the assessment of damages for loss of dependency and where the income the deceased earned before his death was not clearly established by the evidence on record, the best approach to use in determining damages under this head was the global sum award as opposed to the multiplier approach.

16. I find support in this view in the case of Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] KEHC 5958 (KLR) in which the court stated thus:

    > " ....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."
    >
    > See also: Mwanzia Ngalali Mutua v Kenya Bus Services (Msa) Ltd & Another.

17. In this case, no evidence was adduced to substantiate the respondent's claim that the deceased used to earn Kshs. 500 per day or Kshs. 15,000 per month as a casual labourer. There was also no evidence to prove which sector of the economy he was working in as a casual labourer in order to ascertain which minimum wage was applicable in his case. In the circumstances, instead of resorting to the minimum wage guidelines for general labourers which may not have represented the deceased's correct earnings,

the learned trial magistrate should have used the global sum approach which in my view was the best approach in the circumstances of this case compared to the multiplier approach.

18. In considering whether the award made by the trial court was inordinately high or excessive as claimed by the appellants, I will refer to a few cases which had almost similar facts as the current case in which the court made awards for loss of dependency using the global sum approach.

19. In Kirimi & another (Suing as the *Administrators and Legal Representatives of the Estate of Agnes Ntinyari Murungi - Deceased) v Kithinji & another (Civil Appeal E042 of 2021*) [2023] KEHC 17732 (KLR) this court set aside an award of Kshs. 900,000 which had been awarded by the trial court as damages for loss of dependency and substituted it with a global sum of Kshs. 2,000,000 for a deceased who died at the age of 32 years and left behind three school going children and a husband.

20. Additionally, in Khalif v M'Kirea & another (Suing as the legal representative of the estate of JMM (deceased)) [2022] KEHC 15932 (KLR) the court upheld the global sum of Kshs. 2,000,000 which had been awarded by the trial court in respect of a deceased who died at the age of 35 years and had two minor children and his parents as dependants.

21. In this case, the deceased was at the prime of his life when his precious life was suddenly cut short by the negligence of the 1st appellant. As stated earlier, he was only 34 years old at the time of his death. Guided by the above authorities, I am of the considered view that the award of Kshs. 2,020,000 made by the trial court for loss of dependency was reasonable and was not inordinately high or excessive as claimed by the appellants. I am satisfied that the award was adequate compensation for the respondents loss of dependency and that of the deceased's two children. I therefore find no legal basis to interfere with the award and the same is hereby upheld.

22. With regard to the appellant's complaint that the learned trial magistrate erred by failing to deduct the award made under the Law Reforms Act from the award made under the *Fatal Accidents Act*, I will do no more than to reproduce the holding of the Court of Appeal in Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited [2015] KECA 318 (KLR) in which the court cited with approval its earlier decision in Kenfro Africa Ltd t/ a Meru Express Services 1976 & Another v Lubia & Another (No. 2) [1987] KLR 30 and expressed itself as follows:

> "....This Court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong..... An award under the *Law Reform Act* is not one of the benefits excluded from being taken into account when assessing damages under the *Fatal Accidents Act*; it appears the legislation intended that it should be considered. The *Law Reform Act* (Cap 26) section 2 (5) provides that the rights conferred by or for the benefit for the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the *Fatal Accidents Act*. This therefore means that a party entitled to sue under the *Fatal Accidents Act* still has the right to sue under the *Law Reform Act* in respect of the same death. The words 'to be taken into account' and 'to be deducted' are two different things. The words in Section 4 (2) of the *Fatal Accidents Act* are 'taken into account'. The Section says what should be taken into account and not necessarily deducted. It is sufficient if the judgment of the lower court shows that in reaching the figure awarded under the *Fatal Accidents Act*, the trial judge bore in mind or considered what he had awarded under the *Law Reform Act* for the non-pecuniary loss. There is no requirement in law or otherwise for him to engage in a mathematical deduction...."

23. Given the above explanation by the Court of Appeal, it is clear that the learned trial magistrate was not legally obligated to deduct any amount awarded under the *Law Reform Act* from the award made under the *Fatal Accidents Act*.

24. For all the foregoing reasons and findings, I have come to the conclusion that this appeal lacks merit and I accordingly dismiss it with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 5TH MARCH 2025.

C. W. GITHUA

JUDGE

In the presence of:

Ms. Adongo holding brief for Mr. Kebongo for the respondents.

Ms. Rigaga for the appellants.

Ms. Susan Waiganjo, Court Assistant