



Kiniu & another v Kinoo & another (Suing as the Legal and Personal Representatives of the Estate of Peter Kiarri Kinoo - Deceased) (Civil Appeal 68 of 2023) [2025] KEHC 3386 (KLR) (Civ) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL 68 OF 2023
KW KIARIE, J
MARCH 20, 2025**

BETWEEN

JAMES NJUGUNA KINIU 1ST APPELLANT

JAMES NG'ANG'A WANJIRU 2ND APPELLANT

AND

TABITHA KINOO 1ST RESPONDENT

MARY NJOKI KIARIE 2ND RESPONDENT

**SUING AS THE LEGAL AND PERSONAL REPRESENTATIVES OF THE
ESTATE OF PETER KIARRI KINOO - DECEASED**

*(Being an Appeal from the judgment and decree in Nyahururu Chief Magistrate's
CMCC No. 112 of 2019 by Hon. C.M. Muboro – Resident Magistrate)*

JUDGMENT

1. James Njuguna Kiniu and James Ng'ang'a Wanjiru, the appellants, were the defendants in Nyahururu Chief Magistrate's CMCC No. 112 of 2019. They had been sued for a claim of general damages and special damages following a road traffic accident involving motor vehicle KCP 264Z and the motorcycle registration number KMCA 029A on which the deceased was riding. As a result of the collision, the deceased sustained fatal injuries. The parties entered into a consent on liability where the appellants were 80 per cent liable, and the respondents were to shoulder 20 per cent contributory negligence. The respondents were awarded Kshs. 4,300,00.00 in general damages and Kshs. 263,615.00 special damages before factoring in contributory negligence.



2. The appellant was aggrieved by the judgment and filed this appeal through Murimi Ndumia, Mbago & Muchela Advocates. They raised the following grounds of appeal:
 - a. That the learned magistrate erred and misdirected herself in her assessment of damages under loss of dependency awardable to the respondents, which was manifestly excessive.
 - b. That the learned magistrate erred in law and, in fact, by awarding the loss of dependency as the same was not sufficiently pleaded, proved and /or ascertained based on the evidence that the respondents adduced.
 - c. The learned magistrate erred in law by failing to consider the authorities before her, touching on pertinent and substantial points of law and facts to arrive at a fair decision.
 - d. That the learned magistrate erred in assessing damages by failing to apply the principles applicable in the comparable awards similar to the trial case herein.
3. The respondent opposed the appeal through Gekong'a & Company Advocates. It was contended that the appeal lacked merits.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
5. The parties entered a consent on liability; the only issue before the learned trial magistrate was the assessment of damages.
6. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or that the award is so inordinately low or high. These principles were established by the *Privy Council in Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint vs Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.
7. When the deceased passed away, he was 43 years old. PW1 testified that he was a milk seller earning Kshs.30,000.00 monthly, but no documentary evidence was presented to the court. In *Albert Odawa vs Gichimu Githenji*; Nakuru HCCA No.15 of 2003 (2007), eKLR Justice Ringera expressed himself as follows:

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.

8. Evidence was adduced that he was married and had five children. Where the earnings the deceased was making were not established, the appropriate approach is a global sum award. The trial magistrate was alive to this fact and applied the same.
9. I have examined the decisions relied upon by the parties in the trial court and the awards made therein. I have also reviewed other relevant decisions. In the case of *David Mbuba & another v Victoria Mwangeli Kimwalu & another* [2018] eKLR, an award of Kshs. 2,500,000.00 was granted under the *Fatal Accidents Act*. In the present case, I am inclined to set aside the award of the learned trial magistrate for loss of dependency and replace it with an award of Kshs. 2,500,000/- to the estate of the deceased. This will be subject to contributory negligence. The other heads will remain unchanged.
10. This appeal is successful to that extent with half the costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 20TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

