



Matakwe (Suing as the Legal Rep and Admin of the Estate of Ismael Asonga Matakwe - Deceased) v Mangrove Tree Tours & Travel Ltd (Civil Appeal E007 of 2023) [2025] KEHC 4266 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 4266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CIVIL APPEAL E007 OF 2023
RB NGETICH, J
MARCH 20, 2025**

BETWEEN

**MWANAHAWA AMULE MATAKWE (SUING AS THE LEGAL REP
AND ADMIN OF THE ESTATE OF ISMAEL ASONGA MATAKWE
(DCD) APPELLANT**

AND

MANGROVE TREE TOURS & TRAVEL LTD RESPONDENT

(This is an Appeal from The Judgment And Decree of Honourable Senior Principal Magistrate In Eldama Ravine CC No. E15 of 2021 Delivered On 31st January 2023)

JUDGMENT

1. The appellants herein who were plaintiffs in the trial court, filed suit as administrators of the estate of the late Ismael Asonga Matakwe claiming general and special damages for the benefit of the estate of the deceased who was involved in a fatal road traffic accident on 31st October 2020 while travelling as a passenger in motor vehicle Reg. No.KCY 663D which collided with motor vehicle registration number KCK 400 Q along Eldoret-Nakuru road.
2. The primary suit was dismissed on 31st August,2023 for want of proof on a balance of probability and the plaintiff being dissatisfied with the said judgment of the trial court, preferred this appeal against the defendant /respondent on the following grounds: -
 - i. That the learned trial magistrate erred in law and in fact by finding and holding that the Appellant did not discharge his burden of proof as required by the law and the decision made was made against the weight of evidence that was adduced thereby occasioning miscarriage of justice.



- ii. The learned trial magistrate erred in law and in fact by wholly absolving the Respondent from blame which finding was against the evidence that was tendered thereby occasioning miscarriage of justice.
 - iii. The learned trial magistrate erred in law and in fact by dismissing the appellant's suit when the deceased was a passenger who never had control of either of the motor vehicles which were involved in the accident.
 - iv. The learned trial magistrate erred in law and fact by failing to make any finding in regard to third party.
 - v. The learned trial magistrates erred in law and in fact by dismissing the Appellant's claim without making any finding on quantum.
 - vi. The learned trial magistrate's decision albeit, discretionary one was plainly wrong.
3. The Appeal was canvassed by way of written submissions. The Appellant submits that they reiterate that the trial magistrate did not appropriately take into account the evidence on record in finding that the appellant had not proved her case on a balance of probability as required under the law, so as to warrant her being awarded the prayers she sought. The appellant in arguing this appeal consolidate the following grounds as issues of determination by this court.
- i. Whether the learned trial magistrate erred in fact by failing to appreciate the standard of proof in civil cases.
 - ii. Whether the learned trial magistrate erred in law and in fact by not making a finding on Quantum.
4. HCA No.5 of 2023 was chosen as test suit on liability. I apportioned liability at 70: 30; the plaintiff/Appellant to shoulder 70% and the defendant/Respondent 30% liability. I hereby adopt the decision on liability in this file. The trial court upon dismissing the plaintiff's suit did not assess damages. I will therefore proceed to assess damages.

Assessment of Damages

5. From record, the deceased herein Ismael Asonga Matakwe died on the spot. Under this head, I note from trial court's submissions the plaintiff proposed Kshs 100,000 and cited Kisumu HCC no.375 of 199 Maurice Odiwuor Ogada (suing as legal representative of Jane Dorothy Anyango) v John Juma Obungu & Another and submitted that the plaintiff in this case was awarded Kshs 100,000 where the deceased died hours after the accident. The defendant proposed Kshs 10,000. I will award Kshs 20,000 under pain and suffering. Under loss of expectation of life, the plaintiff proposed Kshs 300,000 while the defendant proposed Kshs 80,000. Under this head I will award Kshs 100,000.
6. Under loss of dependency, from record, the plaintiff who was the deceased's father stated that the deceased was 29 years old at the time of his death. In view of the fact that there are other factors that which may affect the quality and length of life, I will use a multiplier of 26 years. In respect to earnings the deceased's father said the deceased repaired radios and phones but he did not produce any document to prove qualifications nor earning, I will therefore adopt minimum wage for a casual laborer in the year 2021 which is Kshs 8,108. In respect to dependency ratio, the plaintiff stated that the deceased was married with two children but his wife left leaving the two children with the plaintiff. In respect to children, the plaintiff did not produce any proof of existence of children allegedly left behind by the deceased. I will therefore adopt a ratio of 1/3 Loss of dependency $8,108 \times 26 \times 12 \times 1/3 = 843,232$



7. From the plaint, the plaintiff pleaded for Kshs 293,050. She produced receipts for items hereunder: -
- a. Filing succession.....Kshs 30,000
 - b. Mortuary expenses.....Kshs 4,500
 - c. Coffin.....kshs28,000
 - d. Hearse Kshs 50,000
 - e. Search for motor vehicle records...Kshs 550
- Total.....Kshs 113,050
8. From the foregoing I award damages as hereunder: -
- a. Pain and suffering..... Kshs 20,000
 - b. Loss of expectation of life.....Kshs 100,000
 - c. Loss of dependency..... Kshs 843,232
 - d. Special damages.....Kshs 113,050
- Grand Total.....Kshs 1,076,282
- Less 70%.....(kshs 753,397.4)
- Net.....Kshs 322,884.6
9. I therefore enter judgment for the plaintiff/Appellant against the defendant/Respondent for Kshs 322,884.6 plus costs and interest.
10. Final Orders: -
- 1. Liability apportioned at 70:30. The plaintiff/Appellant to shoulder 70liability and Defendant/ Respondent 30 liability.
 - 2. Judgement is entered for Appellant/plaintiff against the defendant/Respondent for Kshs 322,884.6.
 - 3. Costs of both trial and appeal court to be paid to the appellant.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 20TH DAY OF MARCH 2025

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RACHEL NGETICH
JUDGE

In the presence of:

Ms. Isiboe holding brief for Muhara for Respondent.

Ms. Akinyi holding brief for Mukiso for Appellant.

CA, Karanja.

