



Wangui v Liheleze & another (Suing as Personal Representatives of the Estate of- Lucy Muhonja Ndeda - Deceased) (Civil Appeal E407 of 2021) [2025] KEHC 2883 (KLR) (Civ) (13 March 2025) (Judgment)

Neutral citation: [2025] KEHC 2883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E407 OF 2021

TW OUYA, J

MARCH 13, 2025

BETWEEN

SUSAN WANGUI APPELLANT

AND

REBA MMBOGA LIHELEZE 1ST RESPONDENT

BENSON NDEDA MUSAKALALE 2ND RESPONDENT

**SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF- LUCY
MUHONJA NDEDA - DECEASED**

JUDGMENT

Background

1. This Appeal arises from the judgement delivered on 12th August 2018 in CMCC 5856 of 2019. The suit was initiated in the lower court by Benson Ndeda Musakale and Another the respondents herein against Susan Wangui Kariuki the Appellant herein arising out of a road traffic accident involving motor vehicle registration number KCN xxxN and the late Lucy Muhonja Ndeda Pedestrian. The matter proceeded for full trial and the trial court held the appellants liable and judgement entered in favor of the Respondent for Kshs.2,514, 051.
2. Being aggrieved by the said judgement, the appellant filed this appeal vide memorandum of appeal dated 9/7/2021 on grounds that:
 - i. The Learned Magistrate erred in fact and in law in finding that the Respondent was entitled to general Damages of kshs.2,554,051/=



- ii. The Learned Magistrate erred in fact and in law in finding that the Respondent was entitled to general Damages that were too high in view of the evidence tendered and the injuries she suffered. The award was too high and the same is not justified.
 - iii. The Learned Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
3. The Appellant prays for orders that:
- a. This appeal be allowed with costs.
 - b. The Judgement delivered on 8th January, 2021 by Honourable A. N Makau (Principal Magistrate), be set aside and the award made therein to be re-assessed.
 - c. That costs of this Appeal be borne by the Respondent.

Submissions

4. The matter was canvassed by way of written submissions by counsel for both parties . The Appellant’s submissions are summed up on the issue of quantum of damages. The award was for Kshs. 2,514,051 with 100,000 for loss of expectation of life, Kshs. 10,000 for pain and suffering and Kshs. 2,404,051 for loss of dependency. The appellants argue that the award of Kshs. 2,404,051 for loss of dependency was inordinately high considering the death certificate did not indicate the occupation of the deceased. And that the trial court erred in adopting a multiplier approach. He argues that a multiplier approach is only appropriate in the instance where the income of the decease person is proved using pay slips and occupation is proved using the Minimum Wage Guideline. He cites the authority of: Stanwel Holdings Limited & another V. Racheal Haluku Emanuel & another (2020) Eklr where it was held that:

“The court of appeal has reaffirmed the various variables to be taken into account on proof of income and employment when it comes to the question whether one has to produce bank statements, book of accounts, receipts, and testimonials as the safest way to determine the parameters that one was in active employment or his income earnings.”

5. The appellant argues further that the award under loss of dependency was inordinately high for a 19-year-old as there was no basis for applying the Minimum Wage Guideline. The appellant urges the court to adopt the global sum approach and proposes a sum of Kshs. 800,000 for loss of dependency. He relies on the authorities of:
- a. Joseph Muthuri V. Nicholas Kinoti Kibera (2022) eKLR
Where the court of appeal adopted a global sum approach and awarded a 19-year-old deceased a sum of kshs.1,000,000.
 - b. Stanley Muiru Njunguna & Ann Nkirote V SK
Where the court record revealed that the deceased was a 21-year-old clothes seller but there was no proof of exact monthly income. The court set aside the trial court award on loss of dependency and replaced it with a global sum of kshs. 700,000.
 - c. Stanwell Holdings Limited & company V. Racheal Haluku Emanuel & another (2022) eklr
The court herein applied a global sum approach and awarded kshs. 1,000,000 for loss of dependency for a 23-year-old for a gardener who had had two wives , two children and a mother as dependents.



6. Counsel also prays for costs in his favor and urges the court to set aside the trial court judgement and to reassess the quantum based on their submissions.
7. The respondent argues that the court should not interfere with the judicial discretion of the trial court and cites the authority of *Said Sweilem Gheithan Saanum V Commissioner of Lands (being sued through Attorney General) & 5 others (2015) Eklr* which held that the court of appeal can only interfere with the exercise of court's judicial discretion if satisfied that the trial court has misdirected itself on law; or that he misapprehended facts or that he took into account or consideration facts of which he should not have taken account or he failed to take into account of considerations of which he should have taken account of or that his decision was wrong.
8. Counsel justifies the award of kshs. 100,000 for pain and suffering despite their prayer for kshs. 50,000 and argues that the award was in order because the deceased underwent much pain and suffering. He cites the authority of *Alexander Okinda Anangwe (Suing as the administrator of the Estate of Patricia Kezia Anangwe deceased v Reuben Muriuki Kuhuha, City Hopper Limited and 2 Others (2015)eklr* where the court awarded kshs. 100,000 where the deceased died on arrival to the hospital while the plaintiff had prayed for kshs.50,000.
9. Counsel submits on the issue of loss dependency that the deceased was aged 19 years at the material time and worked as a caterer earning kshs.30,000 and that a death certificate was attached to support the deceased age. He cites the authority of *Jacob Ayiga Maruja & Another Simeon Obayo (2005)eKLR* where court held that the profession of a person can be proved by means other than production of certificates. He submits that a multiplicand of kshs. 14,658.85 was considered was the minimum wage for a caterer in 2018 and relies on the case of *Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku & Another(2014)eklr* where the court held that the choice of a multiplier is a matter of court's discretion. The respondents herein submitted a multiplier of 41 years to be reasonable considering that life was cut short abruptly thereby awarding kshs.2,404.051.40. That this was a sound judgement by the trial court and this appellate court should not depart from the same.

Analysis

10. This court takes into consideration the submissions by both counsel and notes that the substratum of this appeal lies on the quantum of damages. The court will therefore not delve into matters of liability because the same is not disputed. Having settled the above, this court will first look into the context of the deceased at the time she met her death. The respondents pleaded in the plaint that the deceased was aged 19 years at the time of her death and was working as a caterer earning kshs.30,000 per month. The evidence relied upon was a copy of the deceased Identity Card and death certificate which prove the deceased dates of birth and death respectively together with the testimony of the plaintiff (deceased's father) that the deceased worked as a caterer and was earning kshs. 30,000 per month. There is no evidence or proof of the allegation that the deceased worked as a caterer or what she earned. As pointed out by the appellant, even the death certificate attached does not mention the occupation of the deceased in the space provided for that information. In the circumstances, it would be safe to presume that the profession of the deceased at the time of her demise was unknown.
11. Claims for loss of dependency are covered under section 4 of the *Fatal Accidents Act* Cap 32 Laws of Kenya which provides that:

Action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it



may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgement, shall find and direct;...

12. The claim for loss of dependence as stated in *Melbrimo Investment Company Limited v Dinah Kemunto & Francis Sese* (suing as personal Representative of the Estate of Stephen Sinange alias Reuben Sinange (Deceased) [2022] KEHC 738 (KLR) constitutes the multiplicand, the dependency ratio and the multiplier. The court addressed the same under the distinct and separate headings shown hereunder. In the absence of evidence adduced to show the income the deceased used to generate during her lifetime, it becomes speculative to attempt to use a multiplier.
13. The common thread in *Moses Mairua Muchiri vs Cyrus Maina Macharia* (Suing as the Personal representative of the estate of Mercy Nzula Maina (Deceased) [2016] eKLR, *Mary Khayesi Awalo & Another vs Mwilu Malungu & Another* [1999] eKLR and *Eston Mwirigi Ndege vs Patrick Gitonga* [2018] eKLR was that where the earnings of a deceased person were unknown, then a global award/ sum ought to be adopted. For the above reasons, the multiplicand, dependency ratio and the multiplier may not be appropriate to determine damages for loss of dependency in the instant case.
14. In instances where the deceased earning has not been proven, the decision in *Mary Khayesi Awalo & Another Vs. Mwilu Malungu & Another* [1999] Eklr, Nambuye J. (as she then was) stated that:

“As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjecture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books.”
15. In *Moses Mairua Muchiri V Cyrus Maina Macharia* (suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eklr, the court stated:

“In the instant case a bank statement was produced but as noted, it is not clear how much of the deposits made were the deceased’s net income; what is clear is that the deceased was relatively educated and that she had not only the capacity to earn but that she was also earning an income, however irregular or uncertain it may have been, before her obviously untimely death...

I would not also have ignored the fact that the deceased was still living with her father and her siblings and that she spared part of their income for their upkeep and maintenance. It has been acknowledged that in Kenya, children, regardless of their age, are expected to provide and indeed do provide for their parents whenever they are in a position to do so to the extent of their abilities. (See *Sheikh Mushtaq Hassan versus Nathan Mwangi Kamau Transporters & 4 Others* (1986) KLR 457).

In the above case, the court awarded a global sum of Kshs 1,700,000/= under the head of loss of dependency.

16. Similarly, in *Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi* (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR where the court stated:

“(23) In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary



into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.

- (24) The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

In the above case, the deceased was aged 36 years and had two young children aged 8 and 16 years respectively. The court made a global award of kshs.1,300,000.

17. Going by the trend demonstrated by the courts above, this court will therefore adopt the lumpsum approach taking into account that the deceased was aged 19 years at the time of her demise, had no children but was still living with her parents and siblings and that she may have spared part of her income for their upkeep and maintenance. This court therefore deems it fit to set aside the trial court award on loss of dependency of kshs.2,404,051.40 and substitute it with a global sum of kshs.1,500,000. This appeal therefore succeeds partially.

Determination

This appeal hereby succeeds partially and will read as:

- a. Award for general damages
 - i. Loss of expectation of life – kshs 100,000/=
 - ii. Pain and suffering – kshs. 10,000/=
 - iii. Loss of dependency – kshs. 1,500,000/=Total kshs. 1,610,000
- b. Each party to bear their costs of this appeal

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF MARCH, 2025

ROA 14 days

HON. T. W. Ouya

JUDGE

For Appellant.....Njuguna

For Respondent.....Aluodo

Court Assistant...Jackline

