Matimu v Ngeru & another (Legal Representatives of the Estate of Samuel Wanjohi Ngeru - Deceased) (Civil Appeal 57 of 2023) [2025] KEHC 4926 (KLR) (Civ) (24 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4926 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYANDARUA

CIVIL

CIVIL APPEAL 57 OF 2023

KW KIARIE, J

APRIL 24, 2025

BETWEEN

SAMUEL NYINGI MATIMU ..... APPELLANT

AND

RACHAEL WAMBUI NGERU ..... 1ST RESPONDENT

REBECCA MUTHONI NGERU ..... 2ND RESPONDENT

LEGAL REPRESENTATIVES OF THE ESTATE OF SAMUEL WANJOHI NGERU - DECEASED

(Being an appeal from the judgment and decree in Nyahururu Chief Magistrate's CMCC No. 132 of 2018 by Hon. Charles Obulutsa– Chief Magistrate)

JUDGMENT

1. Samuel Nyingi Matimu, the appellant, was the defendant in Nyahururu Chief Magistrate's CMCC No. 132 of 2018. The respondents had sued for a claim of general damages and special damages following a road traffic accident involving motor vehicle KBU 530U, which lost control, veered off the road and fatally injured the pedestrian. As a result of the accident, the pedestrian sustained fatal injuries. The learned trial magistrate held the appellant 100 per cent liable. The respondents were awarded Kshs. 71,110.00 in special damages and Kshs. 1,300,000.00 in general damages.

2. The appellant was dissatisfied with the judgment and submitted this appeal through Peter M. Karanja, Advocate. He raised the following grounds for appeal:

    a. The learned magistrate erred in law and fact by failing to find that the deceased was essentially or partly to blame for the accident herein.

b. The learned magistrate erred in law and fact for failing to find that the investigation officer was untruthful for giving contradictory evidence to what he said in the inquest proceedings.

c. The learned magistrate erred in law and fact by failing to find that the plaintiff's evidence on record was not weightier than the defence, as to warrant a 100 per cent apportionment of blame on the defendant and /or his driver.

d. The learned magistrate erred in law and fact, disregarding the defence submissions and evidence on record in reaching the final determination.

e. The learned magistrate erred in law and fact by failing to appreciate that the decision of an inquest court is not a final conviction to be relied on in determining a civil matter.

f. The learned magistrate erred in law and fact in awarding an inordinately high award under pain and suffering, yet the deceased died on the spot.

g. The learned magistrate erred in law and fact in awarding an inordinately high award under loss of expectation of life contrary to a global sum that is generally awarded.

h. The learned magistrate erred in law and fact for failing to dismiss the suit and or apportion equal blame on the deceased pedestrian for causing the accident.

i. The learned magistrate erred in law and fact in adopting a multiplier of 25 years while disregarding the uncertainties of life.

j. The learned magistrate erred in law and fact in finding the defendant 100 per cent liable for the accident, in the glaring evidence that the deceased was primarily to blame.

3. The respondent opposed the appeal through Gekong'a & Company Advocates. It was contended that the trial court did not err in determining liability and the quantum of damages.

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. In a motor vehicle accident, liability is determined from the evidence presented by the parties regarding the events leading to the crash. The courts consider the traffic laws and regulations before determining liability. In certain instances, parties opt to agree to a judgment on liability. In this case, the parties left the determination of liability to the court.

6. How, then, did the accident occur? The appellant's version was that the deceased pedestrian appeared intoxicated and was solely to blame for the incident. However, he did not provide any evidence to support this claim other than to state that the pedestrian was reeking of alcohol. The respondents contended that the appellant's motor vehicle swerved off the road and fatally struck the deceased. They called an eyewitness.

7. Kanyi Njuguna (PW2) was a motorcycle rider. His evidence was that the appellant's motor vehicle was behind him. It overtook him, and shortly, it lost control and veered off the road. It knocked down a pedestrian.

8. When an inquest was conducted, the magistrate recommended charging the driver of motor vehicle KBU 530U. An inquest is indeed an investigation, and its findings are prima facie. However, all the

cumulative evidence allowed no room for speculation regarding liability. I agree with the learned trial magistrate's conclusion.

9. 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.

10. The deceased passed away at the age of 35. PW1 testified that he was a teacher earning Kshs. 30,000.00 monthly. However, 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.

11. In cases where the earnings the deceased was making were not established, the appropriate approach is a global sum award. 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 Mwongeli Kimwalu & another [2018] eKLR, an award of Kshs. 2,500,000.00 was granted under the *Fatal Accidents Act*. In the present case, even if the global sum approach were used, I am not persuaded that the award by the learned trial magistrate was excessively high. I have no reason to overturn it.

12. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 24TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE