



**Daudi (Suing as the Legal and Personal Representative of the Estate
of James Ndwiga Hudson - Deceased) v Muthoni (Civil Appeal
315 of 2019) [2025] KEHC 6412 (KLR) (Civ) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6412 (KLR)

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

CIVIL

CIVIL APPEAL 315 OF 2019

TW OUYA, J

MAY 16, 2025

BETWEEN

**MARGARET MUTHONI DAUDI (SUING AS THE LEGAL AND PERSONAL
REPRESENTATIVE OF THE ESTATE OF JAMES NDWIGA HUDSON -
DECEASED) APPELLANT**

AND

GERALD GITAU MUTHONI RESPONDENT

*(Being an appeal from the Judgement of the Honourable Resident
Magistrate at the Chief Magistrate's Court at Milimani Nairobi (Hon. S.G
Gitonga (MRS) dated 30th May 2019 in CIVIL SUIT NO. 7830 OF 2016)*

JUDGMENT

Background

1. This appeal emanates from the judgement delivered on the 30th May 2019 by Hon Gitonga in CMCC No 7830 of 2016. The plaintiff (hereinafter the Appellant) filed a suit as the Legal and personal representative of the estate of James Ndwiga Hudson (deceased) under both Law Reform and *Fatal Accidents Act* following his death as a result of a road traffic accident which occurred on the 3rd November 2012 involving motor vehicle registration number KAD735Y belonging to the Defendant (hereinafter the respondent) and the deceased who was a pedestrian along Mtongwe Road in Nairobi.
2. The Appellant entered appearance and filed a defence denying the claim entirely and pleaded contributory negligence on the part of the deceased. Liability was settled between the parties by consent by consent. The trial court proceeded to determine on damages and found in favor of the Respondent awarding damages against the Appellant under the heads of Pain and suffering Kshs. 60,000, Loss of



expectation of life Kshs. 100,000, Loss of Dependency Kshs. 68,000, special damages 41,000 all totaling to Kshs. 242,946.00 plus costs of the suit and interest at court rates.

3. The appellant being dissatisfied with the above outcome filed this appeal vide memorandum of appeal dated 12th June 2019 citing the following grounds:
 - i. That the learned magistrate erred in law and fact for using a multiplier of 1 year without taking into account comparable authorities and totally disregarding the Plaintiff's submissions on record.
 - ii. That the learned magistrate erred in law and fact by awarding inordinately low amount of Kshs.60,000/= for pain and suffering, Kshs.100,000/= for loss of expectation of life and Kshs.68,640/= for loss of dependency disregarding the Plaintiff's submissions on the issue.
 - iii. That the learned magistrate erred in law and fact in using a multiplier of only one year to calculate loss of dependency whereas the deceased was working in the informal sector.
 - iv. That the learned magistrate erred in law and fact in using a multiplication which was contrary to the statutory minimum wage of a barber working in Nairobi city County.
 - v. That the learned magistrate erred in law and fact in awarding Kshs.100,000/= for loss of life in contravention of the current court awards.
 - vi. That the learned magistrate erred in law in failing to award advocates fees of Kshs.30,000/= despite the same being pleaded and strictly proved as required in law.
 - vii. That the learned magistrate misdirected herself in ignoring the principle applicable in awarding quantum of damages and the relevant authorities on quantum cited in the written submissions presented and filed by the Appellant, consequently arriving to a wrong conclusion on the same.
4. The Appellant prays for Orders that:-
 - i. This Appeal be allowed
 - ii. This Honorable court do revise and enhance the damages awarded by the lower court.
 - iii. The Respondent pays the costs of this appeal.
5. This matter was canvassed by way of written submissions through Counsel for the Appellant while counsel for the Respondent was non-compliant. Counsel for the Appellant argued three issues revolving around the approach taken by trial court in awarding damages. First of all, counsel faulted the magistrate for using a one-year multiplier assuming that the deceased who was aged 59 years would retire at the age of 60. That the trial court would have instead used 13 years multiplier because the deceased worked in the informal sector where the retirement age is 70 years.
6. Counsel further took issue with the trial court having utilized a minimum wage of Kshs. 8,550 while the government guidelines for the period in question pegged minimum wage at Kshs. 19,369. Counsel cited this as an error of the court.
7. Lastly counsel holds that the trial court erred in failing to take into account that the appellant pleaded Kshs.30,000 being the fee paid for obtaining limited grant vide probate and administration cause number 2537 of 2024.



Analysis

8. Having carefully considered the grounds of appeal, the parties' rival written submissions together with all the authorities cited, I find that the issues arising for my determination revolve around the issue of the award of damages considering that liability was settled by consent at 90:10 ratio. This court will therefore delve into the issue as to whether the approach taken by the trial caused any prejudice to the Appellant.
9. This being a first appeal, this court is duty bound to re-analyse, re-consider and re-evaluate the evidence on record and to draw its own independent conclusion on whether the findings of the trial court should stand; although it should bear in mind that it neither heard nor saw the witnesses and to make due allowance in that respect. This was the principle laid down in *Kenya Ports Authority v Kusthon (Kenya) Limited (2000) 2EA 212* and *Selle and Anor. v Associated Motor Boat Co. Ltd and Others (1968) EA 123*;
10. This court observes that the trial court awarded damages under *Law reform Act* (Cap 6 Laws of Kenya) and *Fatal accidents Act* (Cap 32 Laws of Kenya). Under the *Law Reform Act*, the trial court awarded damages for pain and suffering in the sum of Kshs. 60,000 and Kshs. 100,000 for loss of expectation of life. These have not been appealed against hence they will not be disturbed. However, counsel has raised issue on the damages under *Fatal accidents Act* starting with loss of dependency. Upon perusal of the record, the Appellant at the trial testified that although the deceased was a barber and earned by way of commission, she had no way of proving that he earned Kshs. 15,000 per month. She also stated that her husband was the sole breadwinner and that her children were at the time aged 40,37 and 31 years at the time of her testimony (2019).
11. The approach in a claim for loss of dependency in circumstances where there is no proof of income was well guided in *Frankline Kimathi Baariu & 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.”
12. In the present case, the deceased was aged 59 years and had a wife and children aged 33,30 and 22 years respectively (at the time of his death) going by the date of the appellant's testimony and the date of accident. A global sum approach would be the most suitable to be applied in the circumstances. In the case of *Mbidyo v Wambua & another (Suing as the Personal Representatives of the Estate of Leonard Wambua Nzioka) (Civil Appeal E010 of 2022) [2023] KEHC 23569 (KLR)* where the court held:
 - “In this I am not a lone ranger. See *Moses Maina Waweru –vs- Esther Wanjiru Githae (Suing as the Personal Representative of the Estate of the Late David Githae Kiririo Taiti [2022] eKLR* where the appellate court reduced a global award of 2 million to 800,000/



= for a deceased who was 68 years old and was survived by a widow and adult children; Dora Mwawandu Samuel (Suing on her behalf and on the behalf of the Estate of Samuel Muweliani Jumamosi (Deceased) –vs- Shabir M. Hassan [2021] eKLR where the court awarded a global sum of Kshs. 400,000/= for a deceased farmer who was 59-year-old and was survived by 11 dependent children. In yet another case of Rishi Hauliers Limited vs Josiah Boundi Onyancha [2015] eKLR the appellate court reduced a global award of Kshs 800,000/= to 500,000/= for a deceased who was 50 years old and was survived by 5 children under the age of 18 years.

In this case and on the foregoing cases and the prevailing circumstances, I find that the global sum approach would have been justified.

32. The appeal is merited. The same is allowed. The judgment entered by the trial court for loss of dependency is set aside and substituted with the sum of Kshs 700,000.”

In the prevailing circumstances and based on the foregoing caselaw, this court finds that a global award of Kshs. 400,000 would have been appropriate to compensate the appellant under the head of loss of dependency. This limb of the appeal will succeed to the extent that the award by the trial court of Kshs. 68,000 for loss of dependency is set aside and substituted with an award of Kshs. 500,000.

13. From the record, the Appellant pleaded specifically for Kshs. 30,000 being the cost of legal fees for grant letters of administration vide probate and administration cause number 2537 of 2014. The amount was paid directly to her Counsel, Ombuna, Ongeri and Company Advocates as legal fees and a receipt to that effect together with the Limited Grant of Letters of Administration Ad Litem were adduced as evidence. It is trite law that special damages must be proved in order to be awarded. There is no reason given by the trial court for omitting to award this specific special damage claim which was proved before the court. This item must therefore succeed. The award of special damages of Kshs. 41,000 is hereby set aside and substituted with an award of Kshs.71,000.

14. The Appellant having partially succeeded will have half the costs of the appeal. For avoidance of doubt, the Respondent will have the full costs of the trial but based on the figures as revised in this judgement.

15. For the above reasons this appeal partially succeeds. The final award will therefore read:

i. Damages

- a. Pain and suffering..... Kshs. 60,000
 - b. Loss of expectation of lifeKshs. 100,000
 - c. Loss of DependencyKshs.400,000
 - d. Special damages.....Kshs. 71,000
- Total.....Kshs.631,000
- Less 10%.....Kshs. 63,100
- Net Award.....Kshs. 567,900

ii. Interest on the above at court rates.

iii. Each party to bear their costs



iv. Stay of execution orders granted for 30 days

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16th DAY OF MAY, 2025.

HON. T. W. OUYA

JUDGE

