Kiunga (Suing as the Legal Representative of the Estate of Samson Kirimi Marete) v Mutuma (Civil Appeal E090 of 2023) [2025] KEHC 5818 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5818 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL APPEAL E090 OF 2023

SM GITHINJI, J

MAY 8, 2025

BETWEEN

SERAH KATHAMBI KIUNGA ..... APPELLANT

SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SAMSON KIRIMI MARETE

AND

MOSES MUTUMA ..... RESPONDENT

(Being an Appeal from the Judgment of T.M Mwangi (SPM) in Meru CMCC No. E086 of 2023 delivered on 18th of May, 2023)

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Principal Magistrate Hon. T. M Mwangi delivered on 18.05.2023 in Meru Civil Suit No. E086 of 2023 wherein judgment was entered in the following terms;

    a. Pain and Suffering Ksh. 35,000

    b. Special Damages Ksh. 112,180

    c. Loss of Expectation of Life Ksh. 100,000

    d. Loss of Dependency (Ksh. 16,000× 12 ×10 ×^{2}/3) = Ksh. 1,280,000

2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 10th June, 2023;

    a. The learned trial magistrate erred in fact and law by adopting a multiplicand of kshs. 16,000/= whereas there was overwhelming documentary evidence to award the pleaded figure head.

b. The learned trial court erred in fact and law in adopting a multiplier of 10 years contrary to already existing and cited case law.

3. The parties recorded a consent on liability at the ratio of 80:20 in favour of the Appellant against the Respondent. The Appellant's witness statement dated 14/3/2022 was admitted as evidence by consent. Her list of documents dated 14/3/2022 and a further list of documents dated 29/9/2022 were equally admitted as exhibits by consent, and the trial was marked as closed.

Appellant's Submissions

4. The Appellant through the firm of Mbogo & Muriuki Advocates filed submissions dated 16th December, 2024, urging that the deceased died whilst aged 50 years and was a motor vehicle technician in the private sector. Counsel proposed a multiplier of 15 years since the deceased was healthy, and relied on China Henan International Co-operation Ltd v China Henan International Co-operation Ltd & another [2021] eKLR, Caleb Juma Nyabuto v Evance Otieno Magaka & another [2021] eKLR and Samuel Osewe Ochillo v Simion Omwoyo Obare (2013) eKLR to support the submissions. Counsel proposed a multiplicand of Ksh. 45,309.04 because the deceased was a qualified motor vehicle technician as shown by the academic certificates and Mpesa statements produced as exhibits 11 and 7 respectively.

5. The Respondent did not file any submissions.

Analysis and Determination

6. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.

7. In Selle & another v Associated Motor Boat Co. Ltd [1968] EA the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."

8. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsel.

9. From the grounds of appeal, the only issue for determination is whether the trial court erred in adopting a multiplicand of Ksh. 16,000 and a multiplier of 10 years.

10. There is no doubt that the deceased was a trained motor vehicle technician at the time of his death, as shown by the academic certificates produced as exhibit 11. While the Appellant pleaded that the deceased earned Ksh. 50,000 per month, there is no evidence to support that position, because the Mpesa statements generally show all the transactions the deceased made without precisely pin pointing to how much he earned from his said venture. Without proof of earnings of the deceased, the trial court properly adopted the minimum wage as the appropriate multiplicand.

11. The Appellant further faulted the trial court for adopting a multiplier of 10 years for a deceased who was healthy and aged 50 years.

12. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were sufficiently dealt with by Ringera, J (as he then was) in Marko Mwenda v Bernard Mugambi & another Nairobi HCCC No 2343 of 1993 that: "In adopting a multiplier

the court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased…The multiplier approach is just a method of assessing damages and not a principle of law or 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 ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown 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. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

13. In Techard Steam & Power Limited v Mutio Muli & Mutua Ngao [2019] eKLR, the court (G.V Odunga J, as he then was) substituted a multiplier of 13 years with 10 years for a boda boda operator deceased person who was aged 50 years.

14. An appellate court would generally be reluctant to interfere with an award of damages made by trial court unless certain well-established principles are breached.

    In the case of Butt -vs- Khan [1981] KLR 349 the court of Appeal held:

    > "An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or misapprehended the evidence in some material respect, or that he made an entirely erroneous estimate of the damages."

15. Taking into account the vicissitudes and uncertainties of life which could potentially shorten human working life, I find that the multiplier of 10 years was justified.

16. I therefore find the appeal in want of merit and it is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF MAY, 2025.

S. M. GITHINJI

JUDGE

Appearances:

Miss. Oteko Adv. for the Respondent.

Mr. Muriuki Adv. for the Appellant - Mrs Nelima holding brief for the Advocate.

Mr. Muriuki Adv. for the Respondent.