



**Wanjiku & another (Suing as the Personal Representatives of the Estate of Joseph Njoroge Wanjiru (Deceased)) v Mwaniki & another (Civil Appeal E109 of 2023) [2025] KEHC 6712 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6712 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E109 OF 2023  
GL NZIOKA, J  
MAY 6, 2025**

**BETWEEN**

**TABITHA WANJIKU ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL MBUGUA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF JOSEPH NJOROGE WANJIRU (DECEASED)**

**AND**

**PAULINE KUTHII MWANIKI ..... 1<sup>ST</sup> RESPONDENT**

**PAUL MWANIKI NDUATI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the decision of Honourable J. Ndengeri Principal Magistrate delivered on 31st October 2023 vide Naivasha CMCC No. E015 of 2021)*

**JUDGMENT**

1. By a plaint dated 18<sup>th</sup> September 2020 the plaintiffs (herein “the appellants”) sued the defendants (herein “the respondents”) seeking for judgment against the respondents for:
  - a. Special damages at Kshs 200,030;
  - b. General damages under both the Law Reform and Fatal Accidents Acts;
  - c. Loss of consortium;
  - d. Costs of the suit.
  - e. Interest on (a) (b) (c) and (d) above



- f. Any other further relief the court may deem fit and just to grant
2. The appellants case is that on or about the 3<sup>rd</sup> day of October 2019, at about 01.30pm the deceased was lawfully, carefully and prudently riding his motor cycle registration number KMCR 283F Skygo along Nairobi-Naivasha Highway.
  3. That while at Kinungi area, the 2<sup>nd</sup> respondent drove motor vehicle registration number KCG 024G Toyota Station Wagon negligently, recklessly and/or carelessly by over-speeding and trying to overtake a third-party motor vehicle when it was not safe to do so. That as a result he encroached onto the lane where the deceased's motorcycle was thus causing a head on collision with the motorcycle. The particulars of negligence attributed to the 2<sup>nd</sup> respondent are tabulated at paragraph 8 of the plaint.
  4. The appellants aver that as a result of the accident the deceased suffered fatal injuries and his motor cycle was damaged beyond repair. The particulars of special damages in the sum of Kshs 200,030 are tabulated at paragraph 12 of the plaint.
  5. However, the respondents denied liability vide a joint statement of defence dated 24<sup>th</sup> February 2021 and instead blamed the deceased for negligently riding the motorcycle in a careless manner consequently solely or substantially causing and/or contributing to the accident. The particulars of negligence attributed to the deceased are tabulated at paragraph 8 of the statement of defence.
  6. The case proceeded to hearing with the appellants' case being supported by the evidence of (PW1) Tabitha Wanjiku Njoroge, the deceased's widow, who relied entirely on her statement filed in court.
  7. In a nutshell she testified that when she was informed of the occurrence and went to the scene, she found the deceased had already died. That her husband was a farmer and sole bread winner of her family of three (3) children. That the value of the damaged motorcycle was Kshs 60,000 based on evidence obtained from the website although it was purchased at Kshs 80,000 in the year 2017.
  8. The appellants case was further supported by the evidence of (PW2) Michael Wakaya Ngige who was in the company of the deceased when the accident occurred. He testified that the 2<sup>nd</sup> respondent's vehicle was overtaking other vehicles when it knocked the deceased motorcycle and fatally injured him. That the accident was solely caused by the negligence of the 2<sup>nd</sup> respondent.
  9. Finally, (PW3) No. 76934 PC Rodgers Wafula confirmed that the accident was on 3<sup>rd</sup> October 2019. That the driver of the motor vehicle registration No. KCG 024G was held to blame and charged with the offence of causing death by dangerous driving and fined Kshs 80,000 after pleading guilty to the charge. He produced a Police abstract as evidence in support of the appellants' case.
  10. The respondents closed their case without calling any witness.
  11. However, the parties' entered into a consent judgment was on liability in the ratio of 90:10% in favour of the appellants as against the respondents.
  12. At the close of the hearing of the case the trial court entered judgment in favour of the appellants on quantum as follows:

Liability 90:10 for the plaintiff as against first defendant

Pain and suffering -----Kshs 10,000

Loss of expectation of life –Kshs 100,000

Loss of dependency-----Kshs 800,000



Special damages -----Kshs 139,930  
Total-----Kshs 1,049,930  
Less 10%-----Kshs 944,937

13. It is against the above decision that the appellants appeal on the following grounds:
- a. That the Honourable court misdirected itself in law and fact by arriving at the conclusion that the plaintiffs had not proven ownership of motor cycle registration number KMCR 283F Skygo, in total disregard to the evidence produced in court, and in particular the transfer document.
  - b. That the Honourable court misdirected itself in law and fact by failing to address the issue of loss of consortium which had been pleaded and submitted upon in its judgment
  - c. That the Honourable court misdirected itself in law and fact by failing to appreciate the degree and/or standard of proof, for claims on proof of earnings.
  - d. That the Honourable court erred in law and fact by failing to appreciate the evidence adduced by the appellants that gave rise to an inference of the earning capacity of the deceased.
  - e. That the Honourable court misdirected itself in law and fact by arriving at the conclusion that where there is no proof of earnings presented before court, then a global amount is applied as opposed to the use of the minimum wage.
  - f. That the Honourable court erred in law and fact by failing to consider the appellant's submissions and authorities on awards made in similar cases
  - g. That the Honourable court misdirected itself in law and in fact by delivering a judgment without addressing the facts and the issues and also failing to give the ratio decidendi.
14. Consequently, the appellants pray that this Honourable court grant orders that: -
- a. That the appeal be allowed with costs.
  - b. That this Honourable court be pleased to enhance the award on Loss of dependency from Kshs 800,000 to Kshs 6,240,000. as submitted, or such other higher award as will be deemed fit by the Honourable court.
  - c. That this Honourable court be pleased to set aside the order declining to award damages for loss of motor cycle and substitute it with an order awarding loss of motor cycle as pleaded in the plaint.
  - d. That this Honourable court be pleased to make an award for loss of consortium as pleaded in the plaint.
  - e. That such further order be made by the Honourable court as it may deem fit and just to grant.
15. The appeal was disposed of vide filing of submissions. The appellants filed submissions dated 4<sup>th</sup> July 2024 and invited the court to consider the holding in the case of; *Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini vs A. M. Lubia and Olive Lubia [1982-88] KAR 727* wherein the Court of Appeal stated the factors to be considered by the appellate court before interfering with an award of damages by the trial court. That these factors include where the trial court took into account an irrelevant factor or left out a relevant factor or that the amount awarded is inordinately low or inordinately high that it is wholly erroneous estimate of damages.



16. The appellants argued that the award of Kshs. 800,000 for loss of dependency was inordinately too low in light of the evidence produced and case law cited. That despite both parties submitting that the court adopt the multiplier approach, the trial court adopted a global sum approach. Further, the trial court did not give an explanation as to how it arrived at the award of Kshs. 800,000 or whether it considered the number of dependents, their age and level of dependency.
17. The appellants relied on the case of; Moses Maina Waweru vs Esther Wanjiru Githae (suing as the personal representative of the Estate of the late David Githae Kiririo Taita [2022] eKLR where the High Court stated that the criteria to be used in determining an award for loss of dependency are; the number of dependents, the age of the dependents and level of dependency, and that the award ought to be higher where the dependents are young.
18. That the trial court failed to consider the evidence adduced to the effect that the deceased was Thirty-nine (39) years old at the time of his death and the appellants' proposal of a multiplier of Twenty-six (26) years. The case(s) of, Richard Nyamwea Oruru vs Alice Kemunto Ombori & another [2020] eKLR and Kenya Power & Lighting Co. Limited vs Maria Kerubo Kiango (suing as the legal administrator of the Estate of Peter Kianga Okoti (deceased) [2021] eKLR were cited where the High Court adopted a multiplier of Twenty (20) years and Twelve (12) years where the deceased were aged Forty-five (45) and Forty-eight (48) years old respectively.
19. The respondent further submitted that the deceased left behind a wife and three (3) children and proposed a dependency ratio of 2/3. That in addition the deceased was a farmer who earned Kshs. 1,000 per day and Kshs. 30,000 per month and that the appellants. proposed an award for loss of dependency be calculated as follows:  $30,000 \times 12 \times 26 \times 2/3 = \text{Kshs. } 6,240,000$ .
20. The appellants further cited the case of, AINU SHAMSI HAULIERS LIMITED vs Moses Sakwa & another (suing as the administrator of the Estate of Ben Siguda Okach (deceased) [2021] eKLR where the High Court upheld the trial court's award of Kshs. 2,000,000 as loss of dependency where the deceased was a driver, aged Forty (40) years old and left behind a wife and two young children. The appellants urged the court to enhance the award of loss of dependency to Kshs. 6,240,000.
21. The appellants submitted that the trial Magistrate totally failed to make an award for loss of consortium despite the same being raised in the pleadings and witness statements. Further the respondents never challenged the same during trial or in their submissions.
22. The respondent cited case of Kihara & another vs Mutuku (Civil Appeal 27 of 2018) [2022] KEHC 15626 (KLR) (17 November 2022) (Judgment) where the High Court stated that the judgment of the trial court that was silent on the issue of future medical expenses that was pleaded and evidence adduced as incomplete.
23. The appellants further submitted that the trial court erred by declining to award damages for loss of the motorcycle on the ground that Makindu Motors had not signed the transfer documents. That the appellants produced a certificate of examination, the logbook, and the duly signed transfer form for the Skygo motorcycle registration No. KMCR 283F. That the court should take judicial notice of the signature on the transfer document and the logbook as belonging to Makindu Motors and award damages of Kshs. 60,000 as pleaded.
24. Lastly, the appellants submitted that costs are awarded to compensate a successful party and argued that the appeal is meritorious and should be allowed with costs together with interest to be borne by the respondents.



25. However, in response the respondent filed submissions dated 25<sup>th</sup> July 2024 and argued that the trial court arrived at the right decision in denying the appellants damages for loss of the motor-cycle as they did not prove ownership. That the damages sought was a claim for special damages and ought to have been specially pleaded and proved. The case of *Bonham Carter vs Hyde Park Hotel Ltd* (1948) 64 T.R. 177 in support of that submission.
26. Further that the appellants did not produce an assessment report to prove material damage. The case of *Nkune Dairy Farmer Co-op Society Ltd & Another vs Ngacha Ndeiya* [2010] eKLR was relied on where the Court of Appeal stated that a claimant was only required to show the extent of damage and what it would cost to restore the damaged item to as near as possible to the pre-damage condition and accepted the motor vehicle assessor's report as sufficient evidence proof of damages.
27. That furthermore, in the case of; *Omari Gulea Jana vs BM Muange* (2010) eKLR the High Court held that the motor vehicle assessment report was crucial evidence to enable the court to establish damage to the motor vehicle and failure to produce it in evidence was inadequate to strictly prove the claim.
28. The respondents further submitted that the appellants failed to prove that the deceased was the owner of the suit motorcycle. That the logbook produced listed Makindu Motor Limited as the owner of the motorcycle, while the transfer document was blank as it did not have; the names of the transferor and transferee, a description of the transferred vehicle, and a date and only had a signature. That in the case of; *Ashur Ahmed Transporters Limited vs Abdushakoor Makhan Anil* (2008) eKLR the High Court held that the respondent could not receive compensation as he did not prove ownership of the accident vehicle.
29. On the award of loss of consortium, the respondents argued that it is only awarded to spouses who survive an accident and cannot thus provide consortium. That once a spouse dies, the award is not available to the surviving spouse. The case of; *Acceler Global Logistics v Gladys Nasambu Waswa & another* [2020] eKLR was cited where the High Court stated that loss of consortium is not indefinite, that in the event of death, the claim is unavailable.
30. Finally, on loss of dependency, the respondents submitted that the trial court had discretion to either use the multiplier approach or the global sum approach as there was no proof of the deceased's monthly income in that the appellants did not produce any books of account or registration of business. The case of; *Moses Mairua Muchiri vs Cyrus Maina Macharia* (suing as the personal representative of the Estate of Mercy Nzula Maina (deceased) [2016] eKLR was quoted where the High Court stated that where it is difficult to ascertain the multiplicand with precision, courts can make a global award subject to the circumstances of each case.
31. The respondents argued that the award of Kshs. 800,000 as loss of dependency was adequate and should not be disturbed. That, in the case of; *Mwangi* (suing as the administrators of the Estate of Peter Maina Mwangi (deceased) vs Arim (Civil Appeal E045 of 2021) [2022] KEHC 3295 (KLR) (8 July 2022) (Judgment) the High Court upheld the decision of the trial court to adopt the global sum approach and the award of Kshs. 600,000 for loss of dependency where the deceased was Thirty-nine (39) years old and no documentary proof of his earnings was produced.
32. That similarly, the High Court in *Gilbert Kimatare Nairi & another* (suing as personal representatives of the Estate of Jackline Sein Lemayian (deceased) vs Civiscope Limited [2021] eKLR concurred with the trial court adopting the global sum approach and upheld the award of Kshs. 600,000 for loss of dependency where the deceased was aged 31 Thirty-one (31) years old.
33. At the conclusion of hearing of appeal, I note the role of the 1<sup>st</sup> appellate court is to re-evaluate the evidence adduced in the trial court afresh and arrive at its own conclusion, noting that it did not benefit



from the demeanour of the witnesses as held by the Court of Appeal in the case of; *Selle & Another vs Associated Motor Boat Co. Ltd. & Others* (1968) EA 123.

34. The Court of Appeal thus observed: -

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High 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. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

35. In that regard considering the grounds of appeal, it is evident that the appeal herein is on quantum. That the appellants are aggrieved in particular with the award made or not made in respect to; damage to motor cycle KMCR 283, loss of consortium and loss of dependency.

36. As regards loss of the motor cycle the trial court in declining to allow the same stated as follows: -

“24. The plaintiff was unable to demonstrate that her deceased husband had purchased the motor cycle and the amount he purchased it for. Secondly, there was no proof that the motorcycle belonged to himself exclusively. The search at the Registrar of Motor Vehicles yielded a report that Makindu motors was the registered owner of the motor cycle. The transfer documents were yet to be signed, essentially, the motor cycle was still owned by Makindu motors.”

37. I have assessed the evidence adduced by the appellants in proof of subject claim and I find that, the appellants relied on the transfer document allegedly signed by Makindu Motors Limited transferring the subject motorcycle to the deceased. The appellants argue that, it was signed by Makindu Motors Limited and the deceased and invites the court to take judicial notice of the signature on the transfer document and the log book. But the respondents argue that the transfer document is blank, without a description of the parties and although it is signed there are no name (s) against the signature(s).

38. Having considered the subject transfer form, I find that, it cannot pass as a document of transfer of title as it is blank in all parts except the purported signature of the unnamed transferor.

39. The law is settled that proof of ownership is by a logbook and the proof of registered owner is based on the records of registration of motor vehicle or motor cycle as the case herein held at the Registrar of motor vehicles. Even if the appellants wanted to rely on the subject document, they should have called the transferor Makindu Motors Limited to authenticate the transaction documents as the transferee is said to be dead.

40. I also concur with the submissions of the respondents that, the alleged value of the motorcycle was not proved. There was need to provide at least the motorcycle loss assessors report, which was not done. Furthermore, there is no evidence as to whether the motorcycle was insured or not and whether the deceased was entitled to compensation by the insurer.

41. Pursuant to the aforesaid I uphold the finding of the trial court that the particular claim of loss of the motorcycle was not proved.



42. The appellants further argue that they claimed for loss of consortium in the plaint but the trial did not address it in the judgment. I confirm from the judgment that, indeed that claim was not addressed which renders the judgment incomplete.
43. Be that as it were, the appellants argue that the claim was not challenged or opposed at the trial. I note from the evidence adduced by PW1 Tabitha Wanjiku Njoroge vide her statement dated 18<sup>th</sup> September 2020, she stated that the deceased was full of life, energetic and very health. She went on to state that, she has “lost source of support and/or livelihood” and “suffered irreparable loss and damage”
44. That, she has lost “consortium since owing to the fatal injuries sustained by her late husband, she is incapable of enjoying consortium with the spouse and her quality of life she used to enjoy has been diminished”.
45. In the submissions filed in the trial court the appellants sought for Kshs 100,000 as the conventional award for loss of consortium and relied on the case of Viscard Kipngetich (suing as the personal representative of the Estate of Ronoh Priscah Chepkemioi vs Matunda Fruit Bus Services Ltd & 4 others [2019] eKLR.
46. However, the respondents argues that, an award for loss of consortium is not available to a party whose spouse has died.
47. In reconciling the afore arguments, it suffices to note that loss of consortium occurs when an injured spouse can no longer give their spouse the love, companionship, comfort services, support or intimate relations that they provided prior to the accident or death.
48. In Mbaaruru & another v Kenya Bus Services Limited also known as Stage Coach Bus International & another [2024] KECA 432 (KLR) the Court of Appeal discussing loss of consortium stated: -
70. ... This Court in the case of Salvatore De Luca vs. Abdullahi Hemed Khalil & Another [1994] eKLR awarded loss of consortium in a fatal accident claim; the Justices of Appeal held thus:
- “So far as consortium is concerned, there is evidence that the appellant loved his wife and so did their children. The appellant has not re- married. No doubt, he had lost his wife’s companionship. There is, moreover, an impairment in the social life of the appellant and his young children who, too, have lost love, care and devotion of their mother. The learned judge clearly erred, in our view, in failing to award any damages for loss of consortium and servitium. Bearing in mind the fact that each case should be judged on its own facts, we would think that an award of Shs.40,000/= is a fair measure for this head of damages and we award the appellant this sum with interest from the date of judgement in the superior court until payment in full.”
71. We cite the above case to show that loss of consortium is a recognised claim in law, and to show the principles that apply. ... The principles to be considered include proof that the appellant loved the spouse before the accident. Loss of consortium means loss of any or all of the following; companionship, love and affection, comfort, mutual services and sexual intercourse. Since the accident he has lost his wife’s companionship, has suffered an impairment in the social life, lost love, care and devotion of his wife. It is our view that within a marriage situation, the claim for loss of consortium is recognised as sustainable when brought by a spouse who claims loss as a result of injuries caused to his/her partner by a third party, sustainable only in the status of marriage.”



49. Furthermore, in *Gitee & another v Njeri (Suing as the Administrator of The Estate of James Kimulu Mwangi - Deceased)* [2024] KEHC 4722 (KLR) the court stated that: -

“38. Be that as it were, for one to be awarded loss of consortium evidence has to be availed to the nature of the relationship between the spouses. A mere prescription of marriage will not suffice. I say so, because there are cases where though the parties may be legally married this claim will not arise if at the time of death, they were estranged or separated. Apart from pleading for loss of consortium, there was no evidence to support the same.”

50. Having considered the authorities, it is clear damages are awarded for loss of consortium where a claimant has lost a spouse through a fatal accident contrary to the respondents’ submissions that such right terminates on death of a spouse.

51. However, there are varying amounts awarded based on the circumstances of each case. The argument of conventional figure does not arise. In the case of; *Mbaaru & another v Kenya Bus Services Limited also known as Stage Coach Bus International & another (supra)* the Court of Appeal awarded Kshs 300,000 although the injured spouse did not die.

52. Further In the case of; *Salvatore De Luca vs. Abdullahi Hemed Khalil & Another* [1994] eKLR the Court of Appeal awarded Kshs. 40,000 where the injured spouse died.

53. Furthermore, in the case of; *Kwamboka (Suing as a dependant and personal representative of the Estate of Albert Nyabongoye Onchiri) v Okiro & another* [2024] KEHC 8442 (KLR) the High Court awarded damages of Kshs. 70,000.

54. Similarly, in the case of; *Pyrethrum Board of Kenya & another v Gichure (Suing as the Legal Representative of the Estate of Joseph Wambugu Kanyatta - Deceased)* [2024] KEHC 16068 (KLR) the High Court upheld the trial court award of Kshs. 100,000 for loss of consortium.

55. Pursuant to the afore authorities I find that a sum of Kshs 80,000 will suffice as adequate for loss of consortium in that although the deceased’s wife (PW1) *Tabitha Wanjiku Njoroge* testified generally on her affectionate relationship with the deceased there was no further evidence in proof thereof and of course there are no “perfect” relationship in life

56. Finally, on the issue of the proof of income of the deceased, the trial court stated that as follows: -

“22. The plaintiff did not produce for the court’s consideration proof of such earnings or even the deceased’s account to demonstrate that indeed he was making any amount from his business. The court shall adopt the global sum approach to accord damages in this case to reach an award of Kshs. 800,000.”

57. Having considered the evidence adduced in the trial court I note that the appellants did not substantiate the figure of Kshs 30,000 alleged to be monthly earning of the deceased. The argument herein that a minimum wage should have been considered does not hold water as the appellants did not even cite the Regulations applicable that stipulates the proposed minimum wage and what that minimum is.

58. To the contrary the respondents submitted that, the minimum wage for the general worker is Kshs. 7,240.90. If this court were to adopt that wage, then the calculation for loss of dependency would be  $7,240.96 \times 10 \times 12 \times 2/3 = 579.276.80$ , which is lower then what was awarded. I decline to apply it.



59. Consequently, the judgment of the trial court is upheld save for an additional award of Kshs 80, 000 for loss of consortium. Each party shall bear costs of the appeal.

**DATED, DELIVERED AND SIGNED THIS 6<sup>TH</sup> DAY OF MAY 2025**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Mr. Mbanda for the appellant

Mr. Geno for the respondent.

Ms. Hannah: court assistant.

