Kamau v Muhindi (Suing as Legal Representative of the Estate of Hillary Njuguna Mbugua) (Civil Appeal E277 of 2024) [2025] KEHC 8902 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8902 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E277 OF 2024

FN MUCHEMI, J

JUNE 19, 2025

BETWEEN

VERONICAH WANGARI KAMAU ..... APPELLANT

AND

PETER MBUGUA MUHINDI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF HILLARY NJUGUNA MBUGUA) ..... RESPONDENT

(Being an Appeal from the Judgment and Decree of Hon. C. A. Okello (PM) delivered on 17th September 2024 in Ruiru SPMCC No. E368 of 2023)

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Ruiru Principal Magistrate in SPMCC No. E368 of 2023 a claim arising from a motor vehicle accident whereby parties entered a consent on liability at 100% in favour of the respondent as against the appellant. The trial court awarded the respondent general damages for pain and suffering at Kshs. 50,000/-, loss of expectation of life at Kshs. 100,000/-, loss of dependency at Kshs. 3,285,156/- and special damages at Kshs. 550/-

2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 6 grounds of appeal summarized as follows:-

    a. The learned trial magistrate erred in law and in fact in awarding the respondent Kshs. 3,285,156/- on loss of dependency which award is too excessive in the circumstances.

    b. The learned trial magistrate erred in law and in fact in failing to take into account the nature of the deceased's work and the principles of accelerated payment, vicissitudes of life and the age of the dependants.

3. Parties put in written submissions.

The Appellant's Submissions

4. The appellant submits that it is not disputed that the deceased was a casual labourer but argues that the trial court erred by adopting a multiplicand of Kshs. 22,197/- as the deceased did not earn a specific monthly salary. The respondent produced the deceased's pay roll where payment of the wages was calculated on the number of hours worked and the daily wage was indicated as Kshs. 420/-. Furthermore, the appellant invites the court to take judicial notice that the Karimenu Dam Project was not a permanent project but only for a period that the dam was under construction. The appellant further submits that there were no bank statements to show consistency with the said figure. Accordingly, the appellant argues that the court ought to be guided by the Regulations of Wages (General) Order 2022 where the salary of casual workers is Kshs. 8,109.90/- which is equivalent to Kshs. 411 per day. To support her contentions, the appellant relies on the cases of HCCA No. 41 of 2019 – Naivasha Florence Waithira Muiruri & Another (Suing as the legal representatives of the Estate of John Mwirigi Karani (Deceased) and HCCA No. E020 of 2021 Kerugoya Phneas Mawira Muthuri vs Rose Kagendo Njagi & Another. Thus the loss of dependency ought to work out as follows:- Kshs. 8,109.90 x 12 x 20 x 1/3 = Kshs. 648,792/-.

5. The appellant argues that the court misdirected itself by applying a multiplier of 37 years on the grounds that the learned magistrate failed to consider the nature of the deceased's work and the principles of accelerated payment and vicissitudes of life and the age of the dependents.

6. The appellant submits that when settling for a multiplier one has to consider the age of the dependants and expected length of dependency. Relying on the cases of Marko Mwenda vs Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993 and Civil Appeal E004 of 2023 James Thigania & Another vs Florene Ndumi Kiumi & Another (Suing as the Administrators of the Estate of Kennedy Nzuki Kiumi), the appellant submits that a multiplier of 20 years is reasonable as the respondent testified that he was 62 years.

7. The appellant relies on the case of Beatrice Wangui Thairu vs Hon. Ezekiel Bargentuny & Another Nairobi HCCC No. 1638 of 1998 and submits that the learned magistrate failed to consider that the damages would be paid in lump sum to the respondent and also the uncertainties of life when adopting a multiplier of 37 years.

The Respondent's Submissions

8. The respondent submits that he is 62 years old and the deceased died at the age of 23 years and at the time of his demise he was working at Karimenu Dam project earning a monthly salary of Kshs. 22,197/-. The respondent further submits that he and his wife are no longer able to engage in meaningful employment to fend for themselves and were thus depending fully on the deceased's income. To support his contentions, the respondent relies on the case of Sheikh Mushtag vs Nathan Mwangi Kamau Transporters & Others (1985-1988) 1 KAR 217.

9. Relying on the case of Justo Mungathia Mwithalie & Another vs Joseph Maore Angacia & Another (Suing as the legal representative of the Estate of EKM) (Deceased) [2022] eKLR, the respondent submits that the income of the deceased is ascertained at Kshs. 22,197/- and that he worked at Karimenu Dam Project and he was 23 years old with prospects of advancing his career further. Having enjoyed a clean bill of health, the deceased would have worked until the age of 60 years and would thus enjoy 37 years of active working life.

Issues for determination

10. The main issues for determination are:-

    a. Whether the trial court erred in adopting a multiplicand of Kshs. 22,197/-.

    b. Whether the court erred in adopting a multiplier of 37 years.

The Law

11. Being a first Appeal, the court relies on a number of principles as set out in Selle and Another vs Associated Motor Boat Company Ltd & Others [1968] 1EA 123:

> "…..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 into account of particular circumstances or probabilities materially to estimate the evidence."

12. In Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR the Court of Appeal stated that:-

> 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.

13. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-

    a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;

    b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and

    c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the trial court erred in adopting a multiplicand of Kshs. 22,197/-.

14. The Court of Appeal in Catholic Diocese of Kisumu vs Sophia Achieng Tele Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an Appellate court can interfere with an award of damages in the following terms:-

> "It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its won for that awarded by the court below simply because it would awarded different figure if it had tried the case at first instance. The appellant court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one)

or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."

15. Similarly in Sheikh Mustaq Hassan vs Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457 that:-

> " The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate court when naturally and reasonably says to himself "what figure would I have made" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own."

16. The Court of Appeal in Chunibhai J. Patel & Another vs P. F. Hayes & Others [1957] EA 748, 749 stated the law on assessment of damages under the *Fatal Accidents Act* and held:-

> The court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependents, the net earning power of the deceased (i.e his income less tax) and the proportion of his net income which he would have made available for his dependents. From this it should be possible to arrive at the annual value of dependency, which must then be capitalized by multiplying by a figure representing so many years' purchase.

17. The appellant argues that the trial court erred by using a multiplicand of Kshs. 22,197/- as the deceased's monthly income yet the same was not proved as the pay roll produced showed that the deceased did not have earn a specific monthly salary. The respondent led evidence that the deceased was a casual labourer working at Karimenu Dam Project earning a salary of between Kshs. 22,000/- and Kshs. 23,000/-.

18. The trial court in its judgment took into consideration that the respondent produced a pay slip to show that the deceased earned Kshs. 22,197/- and adopted the same as the multiplicand.

19. I have studied the record and noted that the deceased was a casual labourer as indicated in his salary payroll which was produced by the respondent. The said document shows that the deceased worked at Karimenu II Dam Project and used to earn daily wages of Kshs. 420/-. The pay on the document has been calculated based on the number of hours the deceased worked. Further the document shows the pay is for the year 2022 but it does not specify the duration of months he worked or whether he worked every day. Thus it is not clear whether the wage payments were monthly or for specific number of days per week. the respondent ought to have provided bank statements or other documentary evidence like payment vouchers to show that the deceased earned the specific sum of Kshs. 22,197/- monthly. It is my considered view that the trial magistrate erred in adopting the multiplicand of Kshs. 22,197/- since there was no evidence of monthly wage.

20. In the absence of evidence of the deceased's earnings, the court ought to have applied the gazetted minimum wage. This principle was stipulated in the case of Petronila Muli vs Richard Muindi Savi & Catherine Mwende Mwindu [2021] eKLR where the court stated:-

> On the question of the multiplicand adopted by the trial court using a minimum wage guideline, it is apparent that the deceased was engaged in informal employment where it

is difficult to tell the actual regular income. In such circumstances, the legal position is to adopt the minimum wage guideline as a guiding principle in assessing loss of income.

21. The deceased died on 11/06/2022 and thus the applicable guidelines are as per the Regulation of Wages (General) (Amendment) Order, 2022. The deceased was a casual labourer thus we can classify him as a general labourer. From the burial permit, the deceased resided at Kanyoni in Gatundu North at the time of his death which falls under the column for "all other areas". The minimum statutory wage for a general labourer was Kshs. 8,109.90/- as per the Regulation of Wages (General) (Amendment) Order, 2022. Upon re-evaluation of the evidence tendered, it is my considered view that the minimum wage applicable in respect to the deceased was Kshs. 8,109.90/-. Whether the court erred in adopting a multiplier of 37 years.

22. The appellant contends that the multiplier of 37 years adopted by the trial court is on the higher side as the learned magistrate did not factor in the vicissitudes and vagaries of life which could have shortened the life of the deceased. As such, she proposes the court adopts a multiplier of 20 years. The respondent argues that the deceased was 23 years at the time of his demise and he was in good health. Further, the respondent argues that the deceased would have worked until 60 years of age and therefore the multiplier of 37 years is reasonable.

23. The trial court in adopting the multiplier of 37 years took into consideration that the deceased would have worked until the statutory retirement age in this country that the deceased was in good health at the time of his death. There was no evidence of any complications pertaining to health that the deceased had at the time of his death. His life was cut short by the accident. It is therefore my considered opinion that the multiplier of 37 years was reasonable and the proposal by the appellant of 20 years multiplier is too low in the circumstances. The award of Ksh.3,285,156 was erroneous due to the multiplicand used.

24. The award of loss of dependency shall work out as follows: -

    Kshs. 8,109.90/- x 37 x 12 x 1/3 = Kshs. 1,200,265.20/-.

Conclusion

25. In view of the foregoing, I find that the appeal is partly successful. The award of Kshs. 3,285,156/- on loss of dependency is hereby set aside and substituted with an award of Kshs. 1,200,265.20/-.

26. The appellant will meet the costs of the appeal.

27. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

HON. F. MUCHEMI

JUDGE