



Leonard v Ndemi & another (Suing as the Legal Representatives and Administrators of the Estate of Late Gerald Manthi Ndemi) (Civil Appeal E070 of 2023) [2025] KEHC 8235 (KLR) (13 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E070 OF 2023
AN ONGERI, J
JUNE 13, 2025**

BETWEEN

ANDERSON KIRUJA LEONARD APPELLANT

AND

ELIJAH NDISYA NDEMI 1ST RESPONDENT

ANNAH NDUKU NDEMI 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF LATE GERALD MANTHI NDEMI**

*(Being an appeal from the Judgment and Decree of Hon. A. M. Obura
(CM) in Voi CMCC No. E163 of 2022 delivered on 21st September 2023)*

JUDGMENT

1. The Respondents Annah Nduku Ndemi filed Voi CMCC No. E163 of 2022 as personal representatives and Administrators of the Estate of Gerald Manthi Ndemi (deceased) seeking compensation for fatal injuries sustained by the deceased on 30th November 2020 along Mwatate Mombasa Road when he was hit by motor vehicle registration No. KCX 147V while driving motor vehicle registration number KBJ 471G lorry.
2. The Appellant who was the Defendant in the primary suit filed a defence dated 15th March 2023 denying the Respondent's claim.
3. On 24th July 2023, the parties entered into a consent on liability and apportion the same at 85:15% in favour of the Respondents against the Appellant.
4. The trial court assessed damages as follows:



General damages for pain and suffering Kshs. 30,000/=

Loss of expectation of life Kshs. 100,000/=

Loss of dependency Kshs. $30,627 \times 12 \times 30 \times \frac{2}{3} =$ Kshs. 8,575,686/=

Special damages Kshs. 88,420/=

Total Kshs. 7,488,253/=

5. The Appellant has appealed against the said assessment of damages on the following grounds:-
- i. That the learned Magistrate erred in law and fact by finding that the Plaintiff has proved her case on balance of probabilities yet the Plaintiff did not tender sufficient evidence to prove the same.
 - ii. That the learned Magistrate erred in law and fact by not considering the evidence tendered by the Defendant herein.
 - iii. That the learned Magistrate erred in law and fact by deciding that the deceased herein was a driver who was earning Kshs. 30,000/= per month and used the same as a multiplier when delivering her judgment while the same had not been proved leading to an extraneous judgment of Kshs. 8,575,686/=
 - iv. That the learned Magistrate erred in law and fact by not considering that each party is bound by its pleading and that particular of facts must be set out in the pleadings and be proved.
 - v. That the learned Magistrate erred in law and fact by finding that the Defendant was at fault when the accident happened while the deceased was actually the one at fault thereby occasioning 100% liability as against the Defendant.
 - vi. That the entire judgement contradicts itself by dint of the majority of the findings by the trial court on defence in the pleadings and evidence tendered in court by Plaintiff.
6. The parties filed written submissions as follows:- the appellant submitted that the trial court erred in finding that the deceased was a heavy commercial vehicle driver earning Kshs. 30,627.45 per month.
7. The appellant argued that the deceased drove a Mitsubishi canter which was not a heavy commercial vehicle.
8. The appellant further submitted that there was no evidence that was presented in the trial court that proved the deceased employment or income and the trial court should have therefore adopted a global sum in the determination of damages.
9. The appellant submitted that the multiplier of 35 years that was applied by the trial court was excessive and alternatively proposed a multiplier of 20 years.
10. The appellant argued that the deceased was aged 29 years at the time of death and the trial court did not explain where the multiplier of 35 years came from.
11. Therefore, if a multiplier of 20 years and salary of Kshs. 21,175 (minimum wage for canter driver in Voi) were used the loss of dependency would be $\frac{2}{3} \times 21,175 \times 12 \times 20 =$ Kshs. 3,388,000.
12. The respondent alternatively submitted that the trial court's discretion in assessing damages was reasonable and the appellant did not demonstrate any specific error in principle or provide evidence to challenge the same.



13. On general damages the respondent argued that the trial court under this head awarded damages under the Law Reform Act and Fatal Accidents Act. For pain and suffering the deceased died on the spot as per the documents produced in court.
14. The trial court awarded the sum of Kshs. 30,000 which was reasonable in cases involving brief periods of consciousness prior to death.
15. On loss of expectation of life, the trial court awarded Kshs, 100,000 which is consistent with decisions such as in *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another* (Suing as the legal Administrator of the Estate of the late Mwangi) [2019] eKLR it was observed that: - "The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000...."
16. On loss of dependency the trial court adopted the well-accepted multiplicand/multiplier approach.
17. The deceased was aged 29 years old and in good health prior to the accident causing his death.
18. The Respondent admitted that they did not produce a payslip though the deceased was employed as a driver a fact which was not disputed.
19. It was not in dispute that the deceased was a driver and the court adopted the minimum wage applicable as provided under Regulations of Wages (General) Amendment Order 2018 which notice was produced in court by consent.
20. The production in court of the said document was not challenged during trial and as indicated it was produced by consent of both parties.
21. The deceased was working as in private sector and would have worked past retirement age (60) and at 70 years when he would require a medical fitness test before renewing his driving licence as per The National Transport and Safety Authority Driving Regulations under Driver licensing and Renewal and therefore the court was correct in its multiplicand as the deceased would have worked for a long period and would have earned a higher salary had his life not been cut short. The deceased also had dependants including a spouse and a minor child.
22. The trial Magistrate applied a multiplier of 35 and a dependency ratio of two-thirds which was reasonable.
23. On special damages the respondents produced documentary evidence of the funeral expenses incurred and other incidental expenses all of which was tendered by consent.
24. The trial court awarded Kshs. 88,420 which pleaded and specifically proved. It was thus the respondents argument that the appeal herein is unmerited and should be dismissed with costs.
25. This being a first appeal, the duty of the first appellate court is as follows:- *Selle v Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

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 demeanor of a witness is inconsistent with the evidence in the case generally."

26. The sole issue for determination is whether the assessment of general damages was excessive.
27. The appeal raises critical issues regarding the assessment of damages in fatal accident claims under Kenyan law.
28. The primary contention revolves around the trial court's award for loss of dependency, particularly the multiplicand (monthly income) and multiplier (working years) adopted.
29. On the multiplicand, the trial court relied on the minimum wage for heavy commercial vehicle drivers (Kshs. 30,627) under the Regulation of Wages (General) Amendment Order 2018.
30. The appellant argued this was erroneous as the deceased drove a Mitsubishi Canter, which is not classified as a heavy commercial vehicle.
31. Kenyan courts have consistently held that where actual earnings are not proved, the applicable minimum wage under statutory wage orders should be used as a guide (See *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR).
32. However, the classification of the vehicle is material. Under the [Traffic Act](#), a heavy commercial vehicle is defined as one with a gross weight exceeding 3,049 kg.
33. If the Mitsubishi Canter falls below this threshold, the trial court erred in applying the higher wage bracket.
34. The appropriate minimum wage for light commercial vehicle drivers in Voi (Kshs. 21,175 as per the 2018 Order) should have been applied, as correctly proposed by the appellant.
35. Regarding the multiplier, the deceased was 29 years old at death. The trial court's adoption of 35 years (implying retirement at 64) was excessive.
36. Kenyan courts typically apply a multiplier of up to 30 years for young claimants, with adjustments for vicissitudes of life (See *Kemfro Africa Ltd v Lubia & Another* [1987] KLR 30).
37. In *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR, the Court of Appeal reduced a 30-year multiplier for a 26-year-old deceased to 25 years. A multiplier of 25 years would be more appropriate here, accounting for early retirement risks in the transport sector.
38. The dependency ratio of 2/3 was reasonable given the deceased had a spouse and minor child (See *Hannah Wanjiku Muchunu v Francis Gichuhi Kariuki* [2019] eKLR).
39. However, recalculating with the corrected multiplicand (Kshs. 21,175) and multiplier (25 years): $\frac{2}{3} \times 21,175 \times 12 \times 25 = \text{Kshs. } 4,235,000$ for loss of dependency.
40. The awards under the [Law Reform Act](#) were proper: Kshs. 30,000 for pain and suffering (deceased died instantly) aligns with *Stanley Maore v Geoffrey Mwenda* [2004] eKLR, while Kshs. 100,000 for loss of expectation of life follows the conventional sum in *Mercy Muriuki* (supra).



41. Special damages of Kshs. 88,420 were specifically pleaded and proved.
42. In conclusion, the appeal partially succeeds on the loss of dependency calculation. The total award is adjusted as follows:
- i. General damages for pain and suffering: Kshs. 30,000 (upheld)
 - ii. Loss of expectation of life: Kshs. 100,000 (upheld)
 - iii. Loss of dependency: Kshs. 4,235,000 (recalculated)
 - iv. Special damages: Kshs. 88,420 (upheld)
- Total: Kshs. 4,453,420
43. Less 15% contributory negligence: Kshs. 667,013/=
44. Net award: Kshs. 3,786,407/=
45. Each party shall bear its own costs of the appeal given the partial success. The judgment of the trial court is varied accordingly.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

