



**M'Itwaruchio & another (Suing As Legal Rep' of the Estate of Henry Mutuma – Deceased) v Mutindwa Enterprises Limited (Civil Appeal E152 of 2023) [2025] KEHC 8844 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E152 OF 2023  
HM NYAGA, J  
JUNE 19, 2025**

**BETWEEN**

**SALESIO M'MARETE M'ITWARUCHIO ..... 1<sup>ST</sup> APPELLANT**

**PATRICK NGUGI MUTUMA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS LEGAL REP' OF THE ESTATE OF HENRY MUTUMA – DECEASED**

**AND**

**MUTINDWA ENTERPRISES LIMITED ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The appellant filed suit in the lower court as the legal representative of the estate of Henry Mutuma (Deceased).
2. By a plaint dated 23<sup>rd</sup> June, 2022, the plaintiff sought general and special damages against the respondent herein arising out of a road traffic accident that occurred on 11<sup>th</sup> March, 2022 along Maua-Meru road, whereby the deceased suffered fatal injuries.
3. By consent, liability was apportioned at 80%:20% as between the respondent and the deceased respectively. The parties then proceed to file submissions on quantum. In a judgment delivered on 23<sup>rd</sup> August 2023, the trial court entered the same as follows:-
  - i. Liability 80% - 20%
  - ii. Pain and suffering Ksh. 15000/=
  - iii. Loss of dependency – Ksh. 500,000/=



- iv. Special damages – Ksh. 77,950/=
    - Total Ksh. 752,950/=
    - Less 20%
    - Net Total 602,000/=
  - v. Costs and interests
4. Aggrieved by the said Judgment, the appellant lodged the memorandum of appeal dated 20<sup>th</sup> September, 2023 which set out the following grounds: -
- a. The learned trial magistrate erred both in law and fact by awarding the Appellants an amount that is inordinately too low under the circumstances.
  - b. The trial magistrate erred in law and fact by failing to take into consideration and or misapprehending the principles relevant and therefore arriving at a wholly unjust decision.
  - c. The Honourable trial magistrate erred both in law and fact by relying on extraneous factors in arriving at the judgement.

When the appeal came up for directions, parties were directed to file submissions. Only the appellant filed his.

**Appellants Submissions**

- 5. The appellant submitted that in the trial he had relied on the decision in Kakamega Civil Appeal No. 106/2018 Francis Odhiambo Ngunja & Another – vs- Josephine Malala Owinji. The appellant submitted that the awards made by the lower court were there and it failed to ascribe any reasons for the same.
- 6. The appellant faulted the trial court for picking a tandem figure of Ksh. 10,000/= as the monthly income of the deceased without laying a basis for it. It was submitted that the trial court ought to have adopted the global sum approach.

**Relying on Bashir Ahmed Butt- - vs- Ahmed Khan (1982 – 1988) KA,**

- 7. The appellant submitted that eh judgment of the lower court was a good candidate for interference, on the grounds that the trial court proceeded on the wrong principles.
- 8. On the award for pain and suffering, the appellant sated that the evidence was that the deceased did not die instantly as he was rushed to hospital by a good Samaritan where he was declared dead on arrival. Replying on Sukari Industries Limited – vs- Clyde Mashimbo Juma Homa Bay High Court Civil Appeal No. 68/2015 (2016) eKLR, the appellant submitted that an award of Ksh. 100,000 would have been reasonable.

**Analysis and Determination**

- 9. This appeal is only on the quantum of damages awarded by the trial court. It is trite law that this court will not interfere with the discretion of the trial court in awarding damages unless it as shown that the court proceeded on the wrong principles, or that the award if in ordinally high or low. This was so stated in the case of Gitobu Imanyara Vs- .....XXXXXXXXXX.....where it was held:-

XXXXXXXXXXXXXXXXXX



10. The appellant's gripe is with the award made for pain and suffering, and for loss of dependency. He appears content with the other awards, made by the lower court. I will address each category of award appealed against.

11. For pain and suffering, it is well settled law that the same is awardable even where the deceased dies instantly.

12. The trend by the courts has to give a conventional award, of course, a conventional award has no real legal basis. It is just an approach adopted by the court's to standardize that particular award.

In Hyder Nthenya Musili and Another -vs- China Wu Yi Limited and another (2017) eKLR, the court explained the basis of this award as follows:-

XXXXXXXXXXXXXXXXXXXX

13. In my view, the award by the trial magistrate was within the range of the conventional figure awardable. No evidence was adduced by the appellant to convince the court that he deserved a higher figure. The burden was upon him to do so and having failed to adduce such evidence, he cannot fault the trial court.

14. Similarly, under the head of loss of dependency, no evidence was adduced as to the deceased's occupation and income. The appellant left it to the court to grape in the dark as what award it was to make.

15. The trial court had an option to apply the multiplier approach as the global award approach. It cannot be faulted for choosing the former.

In the case of Mwanzia – Vs- Ngalali Mutua & Kenya Bus Limited, the court (Ringera, J) held as follows as regards the two awards

(XXXXXXXXXXXXXXXXXXXX)

Similarly in Serena Korir & Another – vs- S. S (2019) eKLR, the court held as follows:-

(XXXXXXXXXXXXXXXXXXXX)

while the appellant would wish to fault the trial court for the award, it made, he has to blame himself to a large extent. Courts rely on evidence and if he failed to adduce such evidence as to enable the court arriving at an informed decision, then he can only blame himself.

16. Having looked at the matter, I find no reason to interfere with the decision of the trial court. In the upshot, this appeal is dismissed.

17. The respondent did not appear in the matter. Therefore, there shall be no orders as to costs on this appeal.

**DATED, SIGNED & DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**H.M. NYAGA**

**JUDGE**

