



REPUBLIC OF KENYA



KENYA LAW
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**Macharia & another v Ng'ang'a (Civil Appeal E012 of 2023)
[2025] KEHC 7910 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E012 OF 2023
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

JAMLECK MAINA MACHARIA 1ST APPELLANT

JENIFER MUMBI WANJOHI 2ND APPELLANT

AND

MWANGI NG'ANG'A RESPONDENT

JUDGMENT

1. The appellant being dissatisfied with the decision of the lower Court at Baricho by Hon. S.M. Nyaga, Senior Resident Magistrate delivered on 15th December, 2022 filed a memorandum of appeal dated 31st January, 2023. The respondent was involved in a road traffic accident (RTA) on 23rd August, 2018 at around 20.00 hours along Makutano – Kwa V Road when the deceased was walking along the said road the 1st defendant who was the driver of motor vehicle registration number KCM 720U caused harm occasioning fatal injuries to the deceased.
2. The respondent filed Baricho SPMCC No. E55 of 2019 having acquired grant ad litem issued on 10th December, 2018 sought special damages, general damages and costs and interest for injuries he sustained as a result of the fatal road traffic accident.
3. After hearing the respondent's evidence, the trial court assessed and awarded damages as follows
 1. General damages
 - a. Pain and suffering - Kshs. 20,000/=
 - b. Loss of expectation of life - Ksh. 70,000/=
 - c. Loss of dependency - Kshs. 1,200,000



d. Special damages Kshs. 33, 550/=

Total Kshs. 1,323,550/=

4. The appellant has appealed to this court on the following grounds;
- a. That the learned magistrate erred in fact and in law in apportioning liability at 80% in favor of the as against the Appellants, Kshs. 20,000/= for pain and suffering, Kshs. 70,000/= for loss of expectation of life and Kshs. 1,200,00/= for loss of dependency which amount exorbitantly high in the circumstances and injuries suffered by the Respondent.
 - b. That the learned magistrate erred in fact and in law in finding that the respondent was entitled to Kshs. 1,200,000/= under the *Fatal Accidents Act* as the same was too high in view of the evidence tendered and thus the sum awarded was too high and the same is not justified.
 - c. That the learned magistrate erred in fact and in law by adopting a half (1/2) dependency ratio in calculating loss of dependency yet the deceased was 49 years old, unmarried and without a child.
 - d. That the learned trial magistrate ignored the Appellant's written submission and authorities cited with regard to the issue of dependency ratio.
 - e. The learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - f. That the trial magistrate erred in fact and in law in failing to pay regard to submissions and decisions filed alongside the Defendant's submissions that were guiding in amount of quantum that is inappropriate and applicable on similar injuries and the case she was deciding.
5. The parties filed written submissions as follows; the appellant submitted and proposed that the appellate court do set aside the learned trial Magistrate judgement delivered on 15th December, 2022 on both liability and quantum and replace with its own assessment. The propose a replacement of half (1/2) dependency ratio be substituted with a ration of a third (1/3).
6. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at my own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses. In *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.”



7. In this case there was no proof on income as well as dependency. I am guided by the case of *Frankline Kimathi Baariu & another v Philip Akungu Mitu Mborothi (suing as the Administrator and Personal Representative of Antony Mwiti Gakungu Deceased)* [2020] KEHC 5897 (KLR), the court stated: -

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.

The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

8. Also, in *Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased))* [2016] KEHC 5958 (KLR), Ngaah J. held as follows: -

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

9. Having considered the circumstance and the case and the record of this court together with the testimonies of witnesses in the trial court I am persuaded to re-evaluate the award given by the trial court and substitute the same as follows:

- a. Pain and suffering - Kshs. 20,000/=
 - b. Loss of expectation of life - Ksh. 70,000/=
 - c. Loss of dependency - Kshs. 800,000/-
 - d. Special damages Kshs. 33, 550/=
- Total Kshs. 923,500/=

Each party to bear their own costs.

Orders accordingly.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

Kabita for the Appellant

Kimata for the Respondent

Siele/Mark (Court Assistants)

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J.K. NG'ARNG'AR

JUDGE

