



**Njagi & another v Njogu & another (Suing as the Legal Representatives  
of the Estate of Esther Mutindi - Deceased) (Civil Appeal  
E042 of 2021) [2025] KEHC 7744 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7744 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E042 OF 2021  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**EPHANTUS KINYUA NJAGI ..... 1<sup>ST</sup> APPELLANT**

**KENSILVER EXPRESS LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOSEPH GITONGA NJOGU ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK MUTUNGI NJOGU ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF ESTHER  
NZISA MUTINDI - DECEASED**

*(Being an appeal from the judgment of the learned magistrate Hon. G.M. Mutiso (SPM)  
delivered on 21st September 2021 at Wanguru in Wanguru SPMCC No. 11 of 2017)*

**JUDGMENT**

1. This appeal is on quantum wherein in the trial court the Appellants had been sued by the Respondents who claimed both general and special damages, costs of the suit and interests in all the above damages and any other relief that this honourable court may deem fit to grant. This arose from a road traffic accident that occurred on 17<sup>th</sup> October 2016 where the deceased was a lawful pillion passenger on motorcycle registration No. KMDF 390C along Mwea – Makutano road near Research Centre when motor vehicle registration No. KBE 190V Isuzu Bus was negligently and recklessly driven at a high speed and without due care and attention by the 1<sup>st</sup> Appellant who lost control and hit the said motorcycle leading to the deceased sustaining fatal injuries.
2. In their defence to the plaint dated 25<sup>th</sup> January 2017, the Appellants blamed both the deceased and the rider of the aforesaid motorcycle for causing the accident through their negligence as they



denied all the other averments in the plaint. After trial, judgment was delivered on 21<sup>st</sup> September 2021 where the Appellants were held 100% liable for the accident and damages were assessed as follows: Damages under the Fatal Accident Act at Kshs.3,102,480/- . Damages under the [Law Reform Act](#) at Kshs.150,000/- . Special damages at Kshs.130,025/- . Respondents were also awarded costs and interest.

3. The Appellant is aggrieved by the decision of the trial magistrate and has preferred the present appeal on 3 grounds:
  - a. That the learned magistrate erred in law in awarding general damages for loss of dependency at Kshs.3,102,480/- which amount is manifestly excessive and high considering the injuries sustained by the Respondent.
  - b. That the learned magistrate erred in law and in fact in failing to consider the written submissions of the Appellant on record and the authorities annexed therein in support of the Appellants case while arriving at the award in damages.
  - c. That the judgment of the learned trial magistrate is against the law and weight of the evidence on record and against the doctrine of stare decisis.
4. They thus prayed for the appeal to be allowed and judgment of the lower court be set aside and they also be awarded costs of the appeal.

#### **Appellants submissions**

5. The Appellants submitted that the deceased died at the age of 23 years as per the death certificate and from the chief's letter, he was survived by his father and son. Further, the deceased was a farmer said to be earning Kshs.30,000/- per month yet no evidence was adduced to corroborate that evidence. They relied on the cases of *Beatrice W. Murage vs Consumer Transport Limited & Another* [2014] eKLR, *Petronilla Muli vs Richard Muindi Savi & Catherine Mwendu Mwidu* [2021] eKLR and *Monica Njeri Kamau vs Peter Monari Onkoba* [2019] eKLR as they urged this Court to adopt a minimum wage as provided for in the Regulation of Wages (General Amendment) Order 2013 and award the deceased Kshs.6,896.15/- per month.
6. They also urged the court to use a multiplier of 25 years since the trial court did not consider the vicissitudes of life such as HIV/AIDS pandemic, cancer, poverty for which they further relied in the case of *Taita Taveta University College vs Rugut & Maritim* (Suing on their own behalf and as the administrators of the estate of the late Cosmas Kipserem Kipkoech) (Civil Appeal E009 of 2021) [2022] KEHC 12772 (KLR) [31<sup>st</sup> August 2022] (Judgment) among others therein. For the dependency ratio, the deceased husband testified as PW1 and stated that he used to work as a mechanic and from the income he used to earn he used for himself and their child's subsistence. They urged the Court to use the dependency ratio of 1/3 thus making the loss of dependency awardable as Kshs.689,615/-.

#### **Respondents submissions**

7. On their part they submitted that the multiplier approach applied by the trial court was the most suitable in the circumstances for at the time of her death, the deceased was a farmer as per the death certificate earning Kshs.15,000/- per month. That during PW1's testimony it was stated that the deceased was a rider earning Kshs.1,500/- per day which she used to support her child and family at large. The trial court had relied on the case of *Gachoka Gathuri vs John Njagi Timothy & 2 Others*



[2015] eKLR and adopted a multiplicand of Kshs.12,927/ per month as the minimum wage even if her actual income was not shown in evidence and which they urged the court to uphold.

8. That it remained uncontested that the deceased was a farmer and died at the age of 23 years with no evidence adduced by the Appellants of her ill health prior to the accident that would have caused her to live a short life. That she would have worked until 65 years so they urged the Court to use a multiplier of 30 years as they relied on the case of *Midland Media Limited & Another vs Pauline Naukot Aule* (Suing as the legal representative of the estate of Esinyon Esokon Ekai) [2020] eKLR. They further submitted that the deceased died while expectant leaving behind one child who was a minor whom she used to cater for and her family at large. They thus urged the court to use the dependency ratio of 2/3 thus making a total of Kshs.3,102,480/-.
9. For general damages for pain and suffering, the deceased died a day after the accident and the trial court had awarded her Kshs.50,000/- which they urged the court to enhance to Kshs.100,000/- due to the inflation rate and age of the case. For this they relied on the case of *Joseph Kivati Wambua vs SMM & Another* (Suing as the legal representative of the estate of EMM – Deceased) [2021] eKLR. They further submitted that the deceased had a healthy and vigorous life which was suddenly cut short by the accident and although the trial court awarded them Kshs.100,000/- for loss of expectation of life, they urged the court to award them Kshs.200,000/-.
10. There was an eye witness – PW3 who recounted the events leading to the accident whereby the accident motor vehicle was trying to overtake when the accident occurred. His evidence remained uncontroverted so they urged the court to uphold the decision holding the Appellants 100% liable for the accident.

### **Analysis and determination**

11. This being a first appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions. For this, see the case of *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123. Patrick Mutugi Njogu – PW1 testified that on the material day he was carrying his wife, the deceased herein, on his stated motorcycle when the Kensilver Bus which was overlapping hit them from behind. His wife was pregnant and whom he was taking to hospital and in cross examination he testified he was a mechanic though the deceased was assisting in maintaining their child as she used to earn Kshs.30,000/-. Her death certificate produced proved that she was 23 years old at the time of her death being 17<sup>th</sup> October 2016 with her occupation being noted as a farmer and her child's birth certificate was produced proving he was born on 8<sup>th</sup> December 2012.
12. The Appellants opted not to give any evidence and the trial magistrate went on to consider the award of quantum of damages based on the submissions by the parties. The Appellants have also not challenged the award of Kshs.150,000/= under the *Law Reform Act* or the award of Kshs.130,025/= as special damages. The only issue that the Appellants have raised is the award of Kshs.3,102,480/= for general damages under the *Fatal Accidents Act* as they term the said award as inordinately excessive.
13. The trial court found that the multiplier approach was the most appropriate in assessing the damages for loss of dependency in this case wherein the trial magistrate used the minimum wage of Kshs.12,927/- as per the Wages (General Amendment Order) 2017, multiplier of 30 years since the deceased died at the age of 23 years yet was supposed to work for another 40 years and she was married and had a child thus used the dependency ratio of 2/3.
14. Loss of dependency is a question of fact to be proved by evidence. The deceased was survived by her husband and child. It is my finding that in the absence of tangible proof of earnings, the trial court should have adopted a global sum approach in assessing damages for loss of dependency instead of the



multiplier method. For this I am guided by the decision in *Moses Mairua Muchiri vs Cyrus Maina Macharia* (Suing as the personal representative of the Estate of Mercy Nzula Maina (Deceased) [2016] eKLR, where the Court 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.”

15. .In assessing damages under for loss of dependency using the global sum approach, I will consider the awards made in the following similar past awards: In *Stanwel Holdings Limited & Another vs Racheal Haluku Emanuel & Another* [2020] eKLR the court reduced an award of Kshs.2,000,000.00/= for loss of dependency (a global sum) to Kshs.1,000,000/= for the estate of a 23-year-old deceased. In *Ainu Shamsi Hauliers Limited vs Moses Sakwa & Another* (Suing as the administrators of the estate of the Ben Siguda Okach (Deceased) [2021] eKLR, the Court on Appeal upheld an award of Kshs.2,000,000/= for loss of dependency where the deceased was 40 years old and had left behind a wife and two young children.
16. Having regard to the decisions in the above cited cases, I find that a global sum of Kshs.2,500,000/= will be adequate compensation for the Respondents under loss of dependency since the deceased died at a young age, had a wife and was survived by one child and also considering the inflation of the Kenyan Shilling, age of the authorities referred to above and the current high cost of living.
17. The doctrine of stare decisis binds this court to the findings of the Court of Appeal and the Supreme Court. The objective of adherence to the doctrine is: certainty, clarity, predictability and legitimacy within the law when deciding on similar issues. The importance of this doctrine was enumerated in the Supreme Court of Kenya in *Supreme Court Petition No. 4 of 2012 (2013) eKLR Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others* stated: “Adherence to precedent should be the rule and not the exception ....; the labour of judges would be increased almost to breaking point if every past decision could be reopened in every case, and one could not lay one’s own course of bricks on the secure foundation of the courses laid by others who had gone before him.”
18. As to whether the Appellants submissions were considered by the trial court, I find that indeed the trial court considered the Appellants submissions as proved in page 4 of the trial court’s judgment where the said court held as follows: “...On quantum, I have considered the rival submissions. There is no proof of income, the court shall result to the minimum wage as was held in .....” Therefore, this ground automatically fails.
19. For the foregoing reasons, the upshot of this Court’s decision is that the Appellants appeal partly succeeds and the same is hereby allowed in part. The effect of this decision is that the trial court’s judgment on loss of dependency is hereby set aside and/or vacated and the same be and is hereby replaced with a decision that judgment be and is hereby entered in favour of the Respondents herein against the Appellants for the sum of Kshs.2,780,025/- made up as follows:

Damages under the Fatal Accident Act at Kshs.2,500,000/-

Damages under the *Law Reform Act* at Kshs.150,000/-.

Special damages at Kshs.130,025/-

Each party to bear their own costs of this appeal.

30 days stay of execution is granted.



**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JUNE 2025  
IN THE PRESENCE OF:**

Rigaga for the Appellants

N/A for the Respondents

Siele/Mark (Court Assistants)

.....

**J. NG'ARNG'AR**

**JUDGE**

