Njeru v Muriuki (Suing as the Legal Representative of the Estate of Nicholas Murimi Muriuki - Deceased) ((Suing as the Legal Representative of the Estate of Nicholas Murimi Muriuki - Deceased)) (Civil Appeal 79 of 2022) [2025] KEHC 7755 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KEHC 7755 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

CIVIL APPEAL 79 OF 2022

JK NG'ARNG'AR, J

JUNE 5, 2025

BETWEEN

JULIUS NJIRU NJERU ..... APPELLANT

AND

MARGARET WANJIRU MURIUKI ..... RESPONDENT

(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NICHOLAS MURIMI MURIUKI - DECEASED)

(Being an Appeal from the Judgment of Principal Magistrate, Wambo E.O at the Magistrate's Court at Kerugoya, Civil Suit Number 40 of 2020)

JUDGMENT

1. The Respondent (then Plaintiff) as the Legal Representative of the deceased Nicholas Murimi Muriuki, sued the Appellant (then Defendant) for general and special damages that arose when the deceased while riding a motorcycle was fatally knocked down by motor vehicle registration number KCK 473C on 10th May 2017 along Embu-Makutano Road.

2. The trial court conducted a hearing where the Respondent called three witnesses and the Appellant did not call anu witness in aid of his defence.

3. In its Judgement delivered on 31st May 2022, the trial court found the Respondent (then Plaintiff), 10% liable for causing the accident and further awarded the Respondent Kshs 50,000/= for pain and suffering, Kshs 100,000/= for loss of expectation of life, Kshs 2,000,000/= for loss of dependency and Kshs 81,055 for special damages.

4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 13th July 2022. From the grounds contained in the Memorandum of Appeal it was ascertainable that the Appellant was appealing against quantum.

5. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR).

6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Respondent's/Plaintiff's case.

7. Through her Plaint dated 8th May 2020, the Respondent stated that the deceased Nicholas Murimi Muriuki was involved in a road traffic accident on 10th May 2017. That the deceased was hit by motor vehicle registration number KCK 473C while riding his motor cycle along Embu-Makutano Road. It was her further case that the Appellant was the registered owner of the said motor vehicle.

8. It was the Respondent's case that the Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 4 of the Plaint. That as a result of the accident, Nicholas Murimi Muriuki suffered fatal injuries.

9. The Respondent prayed for special and general Damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.

10. Through her written submissions dated 25th June 2024, the Respondent submitted that the award of damages awarded by the trial court was reasonable. That the award of Kshs 50,000/= for pain and suffering was fair as the deceased did not die at the scene of the accident, as he died a day later. She relied on Retco East Africa Limited vs Josephine Kwamboka Nyachaki & another (2021) eKLR. She further submitted that the award on loss of dependency was also just and fair and that this court should not interfere with it. That the trial court was correct in adopting the global sum approach.

The Appellant's/Defendant's case.

11. Through his statement of defence dated 8th June 2020, the Appellant denied the occurrence of the accident on 10th May 2017 and further denied being the registered owners of Motor Vehicle Registration Number KCK 473C.

12. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the deceased. The particulars of negligence were contained in paragraph 6 of the Defence.

13. In his submissions dated 14th May 2024, the Appellant submitted that the award of Kshs 50,000/= for pain and suffering was excessive as the deceased did not suffer immense pain as the death occurred a few hours after the accident. He proposed an award of Kshs 20,000/=.

14. On the award of Kshs 2,000,000/= as loss of dependency, the Appellant submitted that excessive. He further submitted that an award of this head ought to be proved by evidence and that the deceased's dependants would only be his wife and son and not the deceased's sister and brother. He relied on section 4(1) of the *Fatal Accidents Act*, Pleasant View School Limited vs Rose Mutheu Kithoi & another (2017) eKLR and Mary Nabwire Omalla vs David Wachira & 2 others (2011) eKLR. The

Appellant proposed a minimum wage of Kshs 6,8896.15/= as per the Regulation of Wages (General Amendment) Order 2017, a multiplicand of 20 years and a dependency ratio of 2/3 bringing the total amount under this head to Kshs 1,103,384/=.

15. I have gone through and carefully considered the Record of Appeal dated 18th September 2023, the Appellant's written submissions dated 14th May 2024 and the Respondent's written submissions dated 25th June 2024. The only issue for my determination was whether the damages awarded were inordinately high.

16. Before I commence my analysis of the evidence, it is salient to note that the trial court's apportioning of liability was not contested in this Appeal as the parties recorded a consent of 90:10 in favour of the Respondent.

17. The principles upon which an appellate court may alter an award by the trial court have been long settled. In the case of Johnson Evan Gicheru v Andrew Morton & another [2005] KECA 16 (KLR), the Court of Appeal stated that: -

> " In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the court of appeal should be convinced that either the judge acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the appellant was entitled".

18. It is also a principle of law that awards must be reasonable and comparable to awards in similar cases. The Court in Odinga Jactone Ouma v Moureen Achieng Odera [2016] KEHC 2922 (KLR) held: -

> " .....In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed in Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 [2014] eKLR thus:
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> The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past."

19. In regard to the pain and suffering, the trial court awarded the Respondent Kshs 50,000/=. The Appellant stated that this award was excessive and proposed an award of Kshs 20,000/= while the Respondent stated that the award was just and fair. The Respondent produced a Death Certificate as P. Exh 2. I have looked at the Death Certificate and it indicated that the deceased died on 11th May 2017, which was a day after the accident. It is conceivable that the deceased suffered some form of pain before he died. The award of Kshs 20,000/= as proposed by the Appellant would be suitable if the deceased suffered an instant death. In the circumstances thereof, it is my finding that the award of Kshs 50,000/= for pain and suffering was sufficient and fair.

20. The award of Kshs 100,000/= for loss of expectation of life was uncontested and I thus uphold the same.

21. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

> Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall , subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it

may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

22. The trial court awarded the Respondent a global sum of Kshs 2,000,000/= under this head. In the Plaint, the Respondent averred that the deceased died aged 29 years old and earned approximately Kshs 30,000/= per month. The Respondent further averred that the deceased was survived by four dependants. However, when the Respondent was cross examined, she testified that she did not produce any evidence to support her claim that the deceased earned Kshs 30,000/= monthly.

23. In the absence of ascertainable proof of income, courts are allowed to make an award under loss of dependency by using the global sum approach. In 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.
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> 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."

24. Similarly 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."

25. In determining an award under this head, I have considered the parties' proposals under this head, the fact that the deceased died aged 29 years old and the fact that the deceased was survived by a widow and son. Having being guided by the global sum approach, it is my finding that the global award of Kshs 2,000,000/= under this head was sufficient, just and fair. There was no reason to interfere with the award and the same is upheld.

26. The award on special damages was not challenged by the Appellant. I thus uphold the same.

27. In the final analysis, it is my finding that there is no reason for this court to interfere with the trial court's award on general and special damages. The awards were just and fair.

28. In the end, the Memorandum of Appeal dated 13th July 2022 has no merit and is dismissed. Each party to bear their own costs in this Appeal. The costs of the main suit shall remain as awarded by the trial court.

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

Rigaga for the Appellant

Lumumbe for the Respondent

Siele/Mark (Court Assistants)

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J.K. NG'ARNG'AR

JUDGE