



**Shabiby Transporters Service Limited v Musango (Suing as Legal Representative of the Estate of Festus Kisoi Nzula - Deceased) (Civil Appeal 064 of 2022) [2025] KEHC 12061 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12061 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MOMBASA**  
**CIVIL APPEAL 064 OF 2022**  
**F WANGARI, J**  
**JUNE 16, 2025**

**BETWEEN**

**SHABIBY TRANSPORTERS SERVICE LIMITED ..... APPELLANT**

**AND**

**PETER NZULA MUSANGO (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF FESTUS KISOI NZULA - DECEASED) ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. Nabibya, PM, delivered on 17th September, 2020 in Mombasa CMCC No. 1996 of 2010)*

**JUDGMENT**

1. The Plaintiff/ Respondent vide the Amended Plaint dated 19/09/2013 the Defendant/ Appellant for sued for General Damages under the *Fatal Accidents Act* and the *Law Reform Act* and Special Damages, as a result of an accident that occurred on 01/09/2008, involving the deceased and the Appellant's vehicle registration no. KAG 688X.
2. It was pleaded that the deceased who was employed by the Appellant as a driver, was driving the above mentioned vehicle in the cause of his duties, when as he was negotiating a corner, the trailer detached itself from the vehicle, rolled over and crashed the deceased causing fatal injuries. The Appellant was blamed for failing to maintain and ensure the road worthiness of the vehicle.
3. The deceased left behind his father, brother, wife and 3 minors who were depending on him. Despite demand notice, the Appellant had neglected to compensate the Respondent for the damage suffered.
4. The Defendant/ Appellant filed a Statement of Defence dated 27/11/2010 denied the allegations by the Plaintiff/ Respondent and put them to strict proof thereof. The Respondent blamed the deceased for the accident for being negligent in failing to take proper control of the vehicle to avoid the accident.



The deceased was also said to have failed to ensure the container was securely fastened onto the said vehicle. The Defendant/ Appellant prayed that the suit be dismissed with costs.

5. After the hearing of the matter, Judgment was entered in favour of the Plaintiff/ Respondent for;
  - a. Liability 100% against the defendant
  - b. Pain and suffering, 50,000/=
  - c. Loss of expectation of life, 120,000/=
  - d. Loss of Dependency, 2,520,000/=
  - e. Funeral expenses, 50,000/=
  - f. Costs
  - g. Interest at court rates
6. The Defendant/ Appellant being dissatisfied with the judgment of the court filed the Memorandum of Appeal dated 28/04/2022. The appeal was on quantum only. The General Damages awarded at Kshs. 2,740,000/= was said to be inordinately high.
7. It was directed that the appeal be disposed of by way of written submissions. Only the Appellant complied by filing its written submissions in support of the appeal.

### **Analysis**

8. I have considered the pleadings and the evidence on record. I have also perused through the submissions on record. The issue for determination is;
  - a. Whether the appeal has merits
  - b. Who bears the costs
9. This being a first Appeal, the Court should with judicious alertness re-evaluate the evidence, and consider arguments by parties and apply the law thereto, and, make its own determination of the issues in controversy. Except however, that it should give allowance to the fact that it neither saw nor heard the witnesses' testimonies. (See the case of *Selle & Another v Associated Motor Board Company Ltd.* [1968] EA 123).
10. In the case of *Mbogo and Another v Shah* [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
11. The appeal was on quantum only, specifically, the loss of dependency. I note that the Appellant in the submissions dated 24/07/2024 submitted on liability, General damages under the *Fatal Accidents Act* and the *Law Reform Act*, and on Special Damages. However, the Memorandum of Appeal filed limited the appeal to quantum, specifically the award of Kshs. 2,520,000/=. This appeal shall therefore be limited to the said award.



12. The issue is whether the award on General Damages ought to be disturbed. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd v Meru Express Service v A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.”

13. It is thus settled that for the Appellate court, to interfere with the award it is not enough to show that the award is high or had if I handled the case in the subordinate court, I would have awarded a different figure.

14. The limb of General Damages that was appealed against is on Loss of Dependency. It is not dispute that the deceased was 38 years at the time of his demise. His wife stated that the deceased worked as a driver earning Kshs. 21,000/= per month. The same was not controverted. The deceased would have actively worked till the age of 60 years, being the normal retirement age.

15. The trial court used a multiplicand of 15 years, giving active working years until attaining the age of 53 years. Hence;  $Kshs. 21,000 \times 15 \times 12 \times 2/3 = 2,520,000$ . I do agree with the trail court and find the award reasonable considering that the deceased left behind a wife and 3 minors who totally depended on him. I find no reason to disturb the award.

#### **Determination**

16. In the upshot, I make the following Orders:

- i. The Appeal lacks merits and is hereby dismissed.
- ii. Costs to the Respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 16<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of: -

N/A by the Appellant

Ms. Wambua Advocate h/b for Mr. Opiyo Advocate for the Respondent

Ms Getrude, Court Assistant

