



Bismark Carriers Limited v Mukwana & another (Suing as the Administrator and Personal Representative of the Estate of Getray Mukuywa Lumbasi - Deceased) (Civil Appeal E027 of 2024) [2025] KEHC 11086 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E027 OF 2024
REA OUGO, J
JULY 22, 2025**

BETWEEN

BISMARK CARRIERS LIMITED APPELLANT

AND

HEGULI LUMBASI MUKHWANA 1ST RESPONDENT

JACKLINE MUKHWANA 2ND RESPONDENT

**SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF
THE ESTATE OF GETRAY MUKUYWA LUMBASI - DECEASED**

(An Appeal from the judgment and decree in Sirisia Principal Magistrate's Court in Civil Suit No. E089 of 2023 delivered by Hon J.O. Manasses on the 9th February 2024)

JUDGMENT

1. The appellant herein, being dissatisfied with the judgment and decree of the trial magistrate delivered on 9th February 2024, has filed this appeal against quantum on the following grounds;
 - i. That the learned trial magistrate erred in awarding a multiplier of 34 years without taking into consideration the vicissitudes of life.
 - ii. That the learned trial magistrate erred in law and in fact in awarding a multiplicand of Kshs. 14,026/- when there was no basis to do so.
 - iii. That the learned trial magistrate erred in law and in fact in awarding a loss of expectation of Kshs. 300,000/- which was excessive.
 - iv. That the trial magistrate erred in law and fact in awarding pain and suffering of Kshs.100,000/- which was excessive.



- v. That the trial magistrate erred in law and in fact in awarding special damages that were not pleaded and strictly proved.
 - vi. That the trial magistrate erred in law and in fact for failing to appreciate fully or ignoring the submissions put before him by the appellants.
 - vii. That the trial magistrate erred in law and in fact in awarding general damages that was excessive in the circumstances occasioning miscarriages of justice.
 - viii. That the trial magistrate erred in law and in fact in awarding a dependency ratio of 2/3 when the circumstances of the case was such that the dependency ration could have been 1/3.
2. The appellant requests that the judgment and decree be set aside, a proper finding be made, and the appeal be allowed with costs.
3. The plaintiff states that on or about the 3rd of June 2023, the deceased was lawfully travelling as a pillion passenger on a motorcycle along Bungoma-Malaba Road. At Mayanja Bridge, the appellant's agent, servant, or driver negligently drove or managed Truck Reg. No. KBN 136 N, hauling Trailer Reg. No. ZF 5406, which violently knocked the motorcycle carrying the deceased, resulting in serious injuries that led to her death. A consent was entered by the parties on 14 December 2023 regarding liability in the ratio of 80:20 in favour of the respondent against the appellant.
4. The Trial Magistrate entered judgment as follows;
- i. Liability80:20%
 - ii. Pain and sufferingKshs 100,000/-
 - iii. Loss of expectation of life.....Kshs. 300,000/-
 - iv. Loss of dependencyKshs. 3,815,072/-
 - v. Special damages.....Kshs 338,200/-
- Total Kshs. 4,553,272/-
- Subject to 80% Kshs. 3,642,617.60
- The respondent was also awarded costs of the suit and interest on damages at court rates.
5. Parties canvassed the appeal through written submissions. The appellant submitted as follows: regarding the award of a multiplier of 34 years, the birth certificate indicated that the deceased was 26 years old. She was described as a businesswoman; therefore, applying a multiplier of 34 years was incorrect. It was argued that the trial court failed to consider other factors in life that could have shortened the deceased's lifespan and that it was not proven she was in good health. The appellant referred to the case of *Crown Bus Services Ltd & 2 Others v Jamilla Nyongesa and Amida Nyongesa (legal representative of Alvin Nanjala)* [2020] eKLR, where the court held that a multiplicand of 39 years for a deceased aged 21 was incorrect, as it did not account for other life vicissitudes, such as ill health, that could have shortened her working life. The Respondent contended that the deceased was 26 and healthy, working as a businesswoman and farmer, and expected to continue working beyond 60 years, suggesting she had about 34 more years of active life. The appellant failed to provide any evidence contradicting the age of the deceased. Reliance was placed on the cases of *Phoebe Wambui Waweru v Armed Forces Canteen Organisation* [2010] eKLR, where an 8-year multiplier was used for a deceased who died at 62, and *Florence Gathei Miano v Mary Boniface Musyoka & Another (suing as the legal*



representative and administrators of Boniface Musyoka Wambua's estate) [2014] eKLR, where a 10-year multiplier was applied for a deceased aged 57.

6. Regarding a multiplicand of Kshs. 14026/-, the appellant argues that there is no clear evidence of the deceased's earnings as a businesswoman. The respondent only stated she earned Kshs. 30,000/- without providing any proof. It was contended that income is a special damage claim that must be pleaded and proven. Reliance was placed on the case of Auren v Director of Police and Another (Civil case 274 of 2016) [2023] KEHC 2931 (KLR). The appellant suggested that, in the absence of proof of earnings, the court should adopt the amount specified in the Regulation of Wages (General) (Amendment) Order 2022, being Kshs. 8109.90, as the deceased was classified as an unskilled worker. The respondent submitted that the trial court used the minimum wage of Kshs. 14,026/- in accordance with the Kenya Gazette legal Notice no. 125 dated 1st July 2022, which was the relevant minimum wage for an unskilled labourer at the time of the deceased's death.
7. Regarding the award on dependency, it is submitted that the trial magistrate erred in using the ratio of 2/3 when the circumstances of the case were such that the dependency ratio could only be 1/3. It was argued that the deceased was not married but had one child, and therefore, the dependency ratio should have been 1/3, not 2/3. The appellant relied on the case of General Cargo (Transport) Limited v Ndeme (suing as administrator of the Mwadingo Makama estate of the deceased) (Civil Appeal 174 of 2022) [2023] KEHC 27244 (KLR). The respondent submitted that, as per the pleadings and submissions in the trial court, the deceased used to financially support her parents and her minor daughter. This was reflected in the chief's letter, and due to the burden of providing for her child and parents simultaneously, a dependency ratio of 2/3 was fair and reasonable. Reliance was placed on the case of Mildred Aori Odunga (suing as the personal representative of Gilbert Silvano Morumbasi (deceased)) v Hussein Dairy Limited, Kisii HCC No. 24 of 2009 eKLR, where the court applied the ratio of 2/3 for a deceased who supported his wife, children, and parents.
8. On the award for loss of expectation of life, the appellants argued that the sum of Kshs. 300,000/- was excessive without any legal basis, and that the deceased died immediately after the accident; therefore, the award should be a minimum sum. They relied on the cases of West Kenya Sugar Co. Limited v Philip Sumba Julaya (suing as the administrator and personal representative of the estate of James Julaya) [2019] eKLR and Hyder Nthenya Musili & Another v China Wu Yi Limited & Another [2017] eKLR, where the court held that very nominal damages are awarded under loss of expectation of life if the death follows immediately after the accident. The respondent submitted that they relied on the case of Daniel Kuria v Nairobi City Council [2013] eKLR, where the court awarded Kshs. 300,000/- to the deceased's estate for loss of expectation of life. Further reliance was placed on the case of Susan Letayoro & Another v JK (suing as the legal representative of the estate of CK (deceased)), Kabarnet HCCA No. 13 of 2020, where the court upheld a sum of Kshs. 300,000/- for loss of expectation of life. Therefore, the award was not excessively high.
9. Regarding the award for pain and suffering, it was submitted that the sum of Kshs. 100,000/- was excessive as the deceased died on the spot on the same day; there was no evidence that the pain was prolonged. The respondent submitted that the award was fair and reasonable.
10. Lastly, on the issue of special damages, the appellant argued that the trial magistrate awarded damages which were not substantiated. The respondent claimed special damages totalling Kshs. 317650/-, comprised of Kshs. 45000/- for special damages, Kshs. 8,100/- for a mortuary bill at Bungoma Referral Hospital, Kshs. 6,000/- for mortuary fees at Lugulu Mission Hospital, Kshs. 550/- for copies of motor vehicle records, Kshs. 55,000/- for transportation, Kshs. 53,000/- for a coffin, Kshs. 90,000/- for catering services, and Kshs. 60,000/- for tents and chairs. The court awarded Kshs. 338,200/-. The respondent maintained that the special damages of Kshs. 338,200/- were pleaded and proved.



Analysis And Determination

11. The duty of an appellate court is to reconsider the evidence, evaluate it independently and draw its own conclusions, although it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. (See *Gitobu Imanyara & 2 others V Attorney General* (2016) eKLR).
12. The Court of Appeal outlined the principles for challenging the award of damages in *Kemfro Africa Ltd v Meru Express Service. 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. I have considered the submissions and the evidence presented before the trial court. It is not disputed that the deceased was 26 years old at the time of her death; the death certificate confirms her age. The appellant argues that a multiplier of 34 years is excessive. In the case of *General Cargo (Transport) Limited v Ndeme (Suing as administrator of the estate of Mwadingo Mkama Beja - Deceased)* [2023] KEHC 27244 (KLR), the court applied a multiplier of 30 years for a deceased who was 27 years old. In the case of *Clinton Nyadieka Mose & another v Susan Nelima* (Civil Appeal No. 33 of 2022) [2025] KEHC eKLR for a deceased who was 27 years old, the court applied a multiplier of 33 years. The deceased was a businesswoman; considering the nature of her work and the uncertainties of life, I find that a multiplier of 34 years is not unreasonable.
14. Regarding her earnings before her death, the respondent testified that the deceased earned Kshs. 30,000 and had completed a certificate in building technology from the Department of Building and Civil Engineering at Shamberere Technical Training Institute, and was close to graduating. However, there was no evidence to support this claim. The parties agreed that the deceased was an unskilled worker. The appellant argued that the applicable sum is Kshs. 8109.90, as specified in the Regulations of Wages (General) (Amendment) Order 2022. The respondent also referenced the same regulation but provided a figure of Kshs. 14026, which applies to all former municipalities and town councils of Mavoko, Ruiru, and Limuru. Since the deceased resided in Bungoma, no evidence was presented to show that she worked outside Bungoma in areas listed under Column 4 of the Regulation. Therefore, the applicable wage is Kshs. 14025.40.
15. Regarding the dependency ratio, the appellant suggests a ratio of 1/3, while the respondent proposes 2/3. There is no dispute that the deceased had one child, and her parents are still alive. I doubt she would have allocated 2/3 of her earnings to look after her dependents. Dependency is a factual matter that must be supported by evidence. I find that the ratio of 1/3 is appropriate in this circumstance. The amount under this head is reduced as follows: $14025.40 \times 12 \times 34 \times 1/3 = 1907,454.40$.
16. On pain and suffering, the appellant has contended that the amount awarded was excessive. The respondent maintains that the award is sufficient. The fact that the deceased died instantly was not disputed. It is likely that the deceased experienced some pain before his death. In the case of *Sukari*



Industries Limited v Clyde Machimbo Juma Homa Bay HCCA No 68 of 2015 [2016] eKLR, the award of Kshs 50,000/- was upheld for a deceased who died immediately after the accident. The court stated:

“On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased’s estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs. 10,000 to Kshs. 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable.”

In this case, I find that the award of Kshs. 50,000/- fair and appropriate.

17. On the loss of expectation of life, the trial court awarded a sum of Kshs 300,000/-. The circumstances in the case of Daniel Kuria Nganga (supra) were different; the plaintiff in that case provided detailed evidence to justify the sum of Kshs 300,000/-. Each case must be considered based on the evidence presented. In my view, this sum of Kshs 300,000/- is excessive; a sum of Kshs 100,000/- is adequate.
18. Special damages must be pleaded and proved, as is the well-known principle in law. The appellant claimed special damages of Kshs. 338,200/- as detailed in paragraph 5 of the plaint. The respondent proved the following: Kshs. 45000/- paid to Mukusu Advocates for processing a grant ad litem; Kshs. 8100/- paid to Bungoma County Referral Hospital; Kshs. 6000/- paid to Lugulu Mission Hospital; Kshs. 53000/- for the casket; Kshs. 60,000 for catering services; Kshs. 25,000/- paid to Bakosi Funeral Services on 5/6/2023; Kshs. 50000/- paid to Bakosi Funeral Services on 10/8/2023; Kshs. 90000/- for general catering; and Kshs. 1100/- for a motor vehicle copy of records dated 9/6/2023, totalling Kshs. 338200/-. All payment receipts were submitted in court.
19. The appeal partly succeeds, the lower court judgment on quantum is set aside, and an award is made to the Respondent as hereunder:
 - a. Pain and Suffering Kshs. 50,000/-
 - b. Loss of expectation of life Kshs. 100,000/-
 - c. Loss of dependency Kshs. 1,907,454.40/-Total Kshs 2,057,454.40
Less than 20% Kshs. Kshs. 411490.88
Total Kshs. 1,645,963.52
Special damages Kshs. 338,200/-
Total award is
Kshs 1,984,163.52

20. Orders accordingly

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 22ND DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:



Mr. Wanjala For the Appellant

Miss Masakhalia h/b Mr. Mukisu For the Respondent

Wilkister - C/A

