



**China Wu Yi Company Limited v Maina & another - Suing as the Legal Administrator of the Estate of Teresia Wamuyu/Teresia Wamuyu Maina - Deceased) (As the Legal Representatives of the Estate of Tarsisio Kimathi Karimba - Deceased) (Civil Appeal E081 of 2022) [2025] KEHC 9558 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E081 OF 2022**

**JK NG'ARNG'AR, J**

**JULY 3, 2025**

**BETWEEN**

**CHINA WU YI COMPANY LIMITED ..... APPELLANT**

**AND**

**PENINAH WAMBUI MAINA & MUGO MWARITHA - SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF TERESIA WAMUYU/TERESIA WAMUYU MAINA - DECEASED) ..... RESPONDENT  
AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF TARSISIO KIMATHI KARIMBA - DECEASED**

*(Being an appeal against the judgment of the Hon, E. O. Wambo- Principal Magistrate Delivered on 25/8/2022 in Kerugoya CMCC No. E08 of 2020)*

**JUDGMENT**

1. Vide plaint dated 30/9/2020, the respondent filed the suit before the lower court on grounds that on 22/5/2020, the deceased was a pedestrian along Kagio-Kiangwaci Road when the appellant's motor vehicle was negligently driven by one Peter Mwangi Kiama causing it to hit and ran over the deceased from behind and she sustained serious fatal injuries and died on 24/3/2020.
2. The appellant filed a statement of defence dated 19/11/2020 denying all the allegations and attributed negligence to the deceased.
3. The matter proceeded for hearing wherein the respondents called three witnesses whereas the appellant called one witness.



4. Vide judgment delivered on 25/8/2022, the trial court found the appellant to be 70% liable for the accident and awarded the respondents pain and suffering at Kshs. 100,000/=, loss of expectation of life at Kshs. 100,000/=, loss of dependency at Kshs. 1,800,00/= and special damages of Kshs. 15,500/=.
5. The appellant was dissatisfied with that judgment and filed the memorandum of appeal dated 16/9/2022.

### **The Appeal**

6. The appellant filed the memorandum of appeal on five grounds being that: -
  1. The trial magistrate erred in law and fact by failing to find that the respondent did not prove earnings of the deceased.
  2. The trial magistrate erred in fact and law by failing to use the applicable Minimum Wage under The Regulation of Wages (General) (Amendment) Order, 2018.
  3. The trial magistrate erred in law and in fact in awarding pain and suffering of Kshs. 100,000/=.
  4. The trial magistrate erred in law and in fact in awarding an amount in general damages that was manifestly excessive.
  5. The trial magistrate erred in law and in fact in failing to consider the appellant's submissions and authorities attached thereto while assessing damages.
7. The appellant thus prayed that the judgment be set aside and this court accesses the general damages payable to the respondent.
8. The parties were directed to file written submissions and the appellant complied by filing its dated 17/7/2024 whereas the respondent's were dated 5/7/2024.
9. I have seen and considered those submissions as well as the grounds of appeal and I do note that there are only three issues for determination; the finding on quantum on loss of dependence, award on pain and suffering, and whether the award for general damages was excessive. I will proceed to determine the appeal limited to those grounds.

### **Analysis and Determination**

10. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions see Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424.
11. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/a "Meru Express Services [1976]" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984* [1985] eKLR where the court held that: -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, 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 the damage.”



## Whether the trial court erred in its award on loss of dependence

12. In *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 the court held that: -

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived”

13. I do note that PW1 and PW2 both testified that the deceased owned a hotel, sold tomatoes, and worked for an Indian. There was nothing on record to indicate exactly how much she earned though PW1 testified that she would earn Kshs. 450/= daily. The trial court adopted the global approach and awarded Kshs. 1,800,000/= as the deceased was 44 years old. The appellant submitted that the trial court ought to have fallen back on the Minimum Wage and that the global award of Kshs. 1,800,000/= was manifestly excessive.

14. In *Italbuild Imports Limited v Mutinda & another (Legal Representatives of the Estate of John Mwajanji Chinga - Deceased)* (Civil Appeal E084 of 2023) [2023] KEHC 26631 (KLR) the court held that: -

“Where a deceased’s occupation and earnings cannot be ascertained the trial court may at its discretion, adopt the global sum approach as Mabeya, J. did in the case of *Frankline Kimathi Baariu*. The trial court may also adopt a multiplier approach.”

15. In the case of *Dickson Simon Nyambori v Justus Omondi Obura* [2018] eKLR, Mrima, J. stated: -

“I have previously dealt with this issue and held that whenever a court is charged with the duty of assessing general damages for loss of future earnings and the claimant fails to prove the income relied on, the court should be guided by the requisite wages approved by the Ministry of Labour and duly gazetted. I still hold that position. In this case there was no proof of income.”

16. I am also guided by the decision in *Moses Mairua Muchiri v 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.”

17. From the above, the trial court was not necessarily bound to fall back on the Minimum Wages Act and had discretion to make a global award considering that the deceased’s income was not quantifiable.

18. As to whether the award was excessive, I am alive to the principal in *Kemfro Africa Limited t/a “Meru Express Services [1976]” & Another v Lubia & Another (No 2)* Civil Appeal No 21 of 1984 [1985] eKLR on when an appellate court can interfere with an award of damages.



19. I do note that the deceased was a single mother of three children and was able to single handedly provide for them from her earnings in the hotel business, working for an Indian and from sale of tomatoes. She was also 44 years old and there was nothing to signify that she could not work for many years to come. Application of the Minimum Wage would be inordinately low. Noting that the deceased had three dependents who she fully catered for, I find that the award of Kshs. 1,8000,000/= was reasonable and not excessive as submitted by the appellant.

**Whether the trial court erred in its award for pain and suffering.**

20. The appellant submitted that Kshs. 30,000/= was sufficient under this clause. I do note that the accident occurred on 22/5/2020. The deceased died two days later on 24/3/2020, two days after the accident. The post mortem report indicated that the deceased suffered sever head injury and internal bleeding. It is likely that the deceased was in a lot of pain and suffered in between the two days until her demise. I find that the award of Kshs. 100,000/= was reasonable and the same is upheld.

21. I also find that the trial court indeed considered the submissions of both parties and specifically captured each party’s proposal for an award under each head. This ground of the appeal fails.

22. In the end, I find that the trial court’s decision was sound and the same is upheld.

23. The upshot is that the instant appeal is found to lack merit and the same is dismissed.

24. The respondent is awarded costs of the appeal.

25. 30 days stay of execution granted

It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF JULY 2025.**

In the presence of;

Kimechia for the Appellants

Mureithi for the Respondents

Siele /Mark (Court Assistants)

.....

**HON. J. NG’ARNG’AR.**

**JUDGE**

