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Gachie v Muiruri & 2 others (Civil Appeal 74 of 2022) [2025] KEHC 10492 (KLR) (16 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10492 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CIVIL APPEAL 74 OF 2022

TW OUYA, J

JULY 16, 2025

BETWEEN

SAMUEL CHEGE GACHIE .... APPELLANT

AND

PETER MUCHEKE MUIRURI .... 1ST RESPONDENT

CHARLES IRUNGU MUIRURI (SUING ON THEIR OWN BEHALF AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF JOYCE WAMBUI NDONGA - DECEASED) .... 2ND RESPONDENT

FRANCIS KAGONDA GIKORE .... 3RD RESPONDENT

(Being an appeal from the judgement and decree of Hon. S. N Mwangi (SRM), in Murang'a civil suit no. E191 of 2021, delivered on 16th November, 2022)

JUDGMENT

1. The present appeal emanates from the judgment and decree of the Lower Court, in which the 1st and 2nd respondents were awarded general damages under the *Law Reforms Act* and *Fatal Accidents Act* damages for pain and suffering in the sum of Kshs. 20,000, Kshs. 100,000 for loss of expectation life and Kshs. 2,500,000 for loss of dependency. The 1st and 2nd respondents were also awarded Kshs. 278, 680 as special damages together with cost of the suit plus interest.

2. The above damages were awarded by the Lower court in a suit which was instituted by the 1st and 2nd respondents against the appellant and the 3rd respondent, in their capacity as the legal representatives of the estate of the late Joyce Wambui Ndonga (the deceased).

3. As per the plaint dated 5th August, 2021, the cause of action arose from a fatal accident that occurred on 28th February, 2021, along the Kenol-Murang'a Road, at Choma Zone area involving motor vehicle registration number KAY 197 A (the suit vehicle) owned by the Appellant, in which the deceased was

knocked down by the said vehicle and as a result she sustained fatal injuries. The 1st and 2nd respondents averred that the accident was caused by the carelessness and negligence of the 3rd respondent in the manner in which he drove the suit motor vehicle, belonging to the appellant.

4. The particulars of the appellant's and 3rd respondent's alleged negligence was pleaded at paragraph 6 of the plaint.

5. In his statement of defence dated 21st December, 2021, the appellant denied the occurrence of the road traffic accident or any liability for its occurrence. He also denied being vicariously liable for the acts and omissions of the 3rd respondent, as according to him, there was no principal-agent relationship between himself and the 3rd respondent. He contended that should it be found that the accident occurred, then the same was caused wholly or substantially by the negligence of the deceased.

6. The trial court record shows that after considering the evidence adduced before it, the learned trial magistrate found the appellant, as the owner of the suit vehicle, and the 3rd respondent, as the driver of the said vehicle, 100% liable for the occurrence of the accident. Thereafter, the trial court proceeded to assess damages payable to the 1st and 2nd respondents. The appellant was dissatisfied with the award for general damages under the head loss of dependency hence the present appeal.

7. In his Memorandum of Appeal dated 14th December, 2022, the appellant advanced a total of four (4) grounds of appeal, in which he faulted the learned trial magistrate for finding that the 1st and 2nd respondents were entitled to general damages that were too high in view of the circumstances of the case, for finding that the 1st and 2nd defendants were jointly and severally liable for the accident, for failing to consider his submissions on liability and quantum and for failing to consider conventional awards for general damages in cases of fatal accidents.

8. On the above grounds, the appellant urged this court to allow his appeal, set aside the award of general damages by the trial court and that this court awards the 1st and 2nd respondents quantum of general damages that is commensurate with the circumstances of the case.

9. This appeal was canvassed by way of written submissions, following the directions issued by this court on 25th of June 2024. The appellant's appeal dated 12th August 2024 was filed on his behalf by his learned counsel MW & Company Advocates; while that by the 1st and 2nd respondent dated 24th September 2024 was filed on their behalf by their learned counsel Daniel Henry & Co. Advocates.

10. In his written submissions, the appellant contended that the learned trial magistrate was wrong in applying the global sum approach instead of the multiplier approach, as the deceased was a business woman, operating a salon, and whose earnings could be ascertained pursuant to the *Regulation of Wages (General) (Amendment) Order 2022.*

11. The appellant further contended that the multiplicand approach was the most appropriate measure to be relied on instead of the global sum approach, considering that in this situation, it had been established that the deceased was earning income although there was no evidence of the income she was earning. The appellant urged this court to apply the multiplier approach as follows: Kshs. 8, 109.90 X 12 X 27 X 1/3 = 875, 869.20.

12. The 1st and 2nd respondents on the other hand submitted that the multiplier approach, being a method of assessing damages, must be abandoned where the facts does not facilitate its application. They submitted that the multiplier approach is a practical method of assessing damages, where factors such as age of the deceased, the amount of annual or monthly dependency and the expected length of dependency are known without undue speculation.

13. The 1st and 2nd respondents submitted that the decision whether to adopt a multiplier approach or global sum approach where the income of the deceased cannot be ascertained, is at the discretion of the court, as such, the learned trial magistrate did not misdirect herself, as the global sum approach was the best method of assessing an award for loss of dependency in this case.

14. The 1st and 2nd respondents contended that the submissions of all parties were considered by the learned trial magistrate, and the fact that the trial court failed to agree with the appellant's submissions does not mean that the court failed to consider them. The 1st and 2nd respondent urged this court to dismiss the appellant's appeal with costs. The 3rd respondent did not file any submissions in this appeal.

15. This being a first appeal, this court has a duty to re-analyse, re-consider and re-evaluate the evidence on record and to draw its own independent conclusion on whether the findings of the trial court should stand; although it should bear in mind that unlike the trial court, it neither heard nor saw the witnesses and to make due allowance in that respect.

16. This principle was reiterated in the court of appeal case of *Selle v Associated Motor Boat Co.* [1968] EA 123; as follows: "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal form a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

17. I have duly considered the grounds of appeal and the rival written submissions made on behalf of the parties; having done so, I find that the main issue for determination is whether the trial court's award for loss of dependency was excessive in the circumstances.

18. In this case, the death certificate of the deceased indicated that she was a business woman. The 1st respondent who was a husband to the deceased indicated in his testimony before court that the deceased was at the time of her death employed at a salon. He however did not disclose the income that the deceased used to get at the said salon.

19. He stated that the deceased used to assist in supporting him and their daughter with the income that she got from her employment. The learned trial magistrate in her judgement indicated that the global sum approach would be the best method of assessing the damages for loss of dependency. She then proceeded to rely on the case of *Chen Wembo & 2 others v IKK & Another (Suing as the legal representative of the estate of CRK, (deceased);* 2017 eKLR, in coming to a conclusion that a sum of Kshs. 2,500,000 would be an appropriate award for loss of dependency.

20. The appellant however was of the view that the award of Kshs. 2,500,000 for loss of dependency was excessive and that the learned trial magistrate had misdirected herself by using the global sum approach instead of the multiplier approach. The appellant urged this court to set aside the said award and substitute it instead with an award of Kshs. 875, 869.20.

21. It is a well settled principle of law, that an appellate court will not easily interfere with the damages awarded by the trial court, as such awards are at the discretion of the said court; an appellate court can only interfere with that discretion when it is satisfied that the trial court acted on wrong principles, or

misapprehended the evidence on record in some material respect, and so arrived at a figure that was either inordinately high or low as to represent an entirely erroneous estimate.

22. This principle was restated by the Court of Appeal in the case of *Butt v Khan* (1978) eKLR; as follows:

> "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 at a figure which was either inordinately high or low."

23. Having stated that, it is well settled that Proof of income forms the basis of assessing damages under the head loss of dependency, and where there is absence of proof of any income, the best approach to use in determining the damages due under this head would be the global sum award.

24. This position was restated by the court in *Mwanzia Ngalali Mutua v Kenya Bus Services (Msa) Ltd & Another;* which was cited with approval by the court in *Albert Odawa v Gichimu Gichenji* (2007) eKLR; as follows:

> "The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependancy, and the expected length of the dependancy are known or are knowable without undue speculation where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do."

25. Additionally, the court 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); stated thus:

> "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."

26. In this case, considering that it is not possible for the court to ascertain the monthly earnings of the deceased together with the expected length of dependency, without resorting to speculations, I am of the considered view that the best approach would be to use the global sum approach in determining the damages for loss of dependency to be awarded to the 1st and 2nd respondents. I will therefore proceed to use the global sum approach to determine whether the award of Kshs. 2,500,000 by the trial court was excessive in the circumstance.

27. In the case ofIsaac *Muriira M'mwanie & another v Misheck Mutuma M'kuchina* [2021] KEHC 6194 (KLR), the High Court on appeal set aside a global sum award of Kshs. 5, 400,000 for loss of dependency by the trial court and substituted it with an award of Kshs. 2,500,000, for a 24-year-old man whose income could not be ascertained and was not married at the time of his death but whose parents depended on him.

28. In *Kirimi & Another (Suing as the Administrators and Legal Representatives of the Estate of Agnes Ntinyari Murungi - Deceased) v Kithinji & another* (Civil Appeal E042 of 2021) [2023] KEHC 17732

(KLR) (23 May 2023) (Judgment); the high court set aside the award of Kshs. 900,000 that had been awarded by the trial court as damages for loss of dependency and substituted it instead with a global sum of Kshs. 2,000,000 for a deceased who was 32 years old at the time of her death, and had left behind three school going children and a husband.

29. From the above authorities, it is clear that the global sum award of Kshs. 2,500,000 by the trial court was within the range of awards issued for loss of dependency in cases such as these. However, considering that the deceased was not the primary bread winner at the time of her death since her husband stated that her income used to supplement his income, I am of the view that an award of Kshs. 2,500,000 for loss of dependency was excessive in the circumstances.

30. I am therefore of the view that the award of Kshs. 2,500,000 by the trial court should be set aside and substituted instead with an award of Kshs. 2,000,000. Based on the foregoing, the appellants appeal partially succeeds to the extent that the award of Kshs. 2,500,000 by the trial court is hereby set aside and substituted instead with an award of Kshs. 2,000,000.

31. As regards costs, I am of the view that each party should bear their costs of this appeal.

32. Final Orders:

    i. Appeal partially succeeds. The Trial Court award of Kshs. 2,500,000 is hereby set aside and substituted with an award of Kshs. 2,000,000.

    ii. Each party to bear their own costs for this appeal

    iii. Cost of lower court to remain as awarded.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH JULY 2025.

HON. T. W. OUYA

JUDGE

For Appellant.........Ms Gakure HB Wairoto

For Respondents......Gachau

Court Assistant......Brian