



REPUBLIC OF KENYA



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James (Suing as the Legal Representative of the Estate of James Kayongi King'ori) v M'Mbirithi & another (Sued as the Administrators and/or personal representatives of the Estate of Patrick Mwingirwa - Deceased) (Civil Appeal E033 of 2024) [2025] KEHC 10642 (KLR) (15 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E033 OF 2024**

**SM GITHINJI, J
JULY 15, 2025**

BETWEEN

LYDIA KAGENDO JAMES (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES KAYONGI KING'ORI) APPELLANT

AND

**ALUMBIWA KAIYERA M'MBIRITHI 1ST RESPONDENT
PETER MWITI MBIRITHI 2ND RESPONDENT
SUED AS THE ADMINISTRATORS AND/OR PERSONAL REPRESENTATIVES OF THE ESTATE OF PATRICK MWINGIRWA - DECEASED**

(Being an Appeal from the Judgment of Hon. C. K Obara (SPM) in Maua CMCC No. 8 of 2020 delivered on 12th February, 2024)

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Principal Magistrate Hon. C. K Obara delivered on 12.02.2024 in Maua Civil Suit No. 8 of 2020 wherein judgment was entered in the following terms;
 1. Liability 100%
 2. Pain and Suffering Ksh. 80,000
 3. Special Damages Ksh. 91,410
 4. Loss of Expectation of Life Ksh. 120,000
 5. Loss of Dependency Ksh. 2,700,000



2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 11th March, 2024;
 1. The learned trial magistrate erred in fact and law by awarding inordinately high general damages for loss of dependency in the sum of Kshs. 2,700,000/= to the Respondent constituting a miscarriage of justice in the circumstances of the case.
 2. The Learned trial magistrate erred in legal principles and in fact by adopting a global sum approach in quantifying general damages for loss of dependency in place of the multiplier approach.
 3. The Learned Trial Magistrate erred in fact and law by awarding inordinately high general damages for pain and suffering in the sum of Kshs. 80,000/= by failing to consider that the deceased passed away on the same day of the accident.
 4. The Learned Trial Magistrate erred in fact and law by awarding inordinately high general damages for loss of expectation of life in the sum of Kshs. 120,000/= to the Respondents constituting a miscarriage of justice in the circumstances of the case and departing from precedent.
 5. The Learned Trial Magistrate misdirected himself as to the facts of the suit by awarding 100% liability to the Appellant despite inconsistent and contradictory evidence being presented by the Respondents regarding the circumstances of the accident.
 6. The Learned Trial Magistrate misdirected himself by failing to rely on contemporary, comparative and persuasive decisions and authorities in awarding general damages in the suit.
 7. The learned Trial Magistrate's judgment was wholly not supported in law by evidence tendered in court by the parties and is manifestly a departure from established legal principles.
 8. The Learned Trial Magistrate erred in fact and law by failing to consider the Appellant's submissions and authorities on liability and quantum hence arriving at an erroneous decision.

Evidence at Trial.

3. PW1 Alumbiwa Kaiyera M'Mirithi, the 1st Respondent herein who is the mother to the deceased adopted her statement dated 13/1/2020 as her evidence in chief. She also produced the limited grant together with the receipt, death certificate, police abstract, chief's letter, her Identification Card, copy of records together with the receipt, invoice and bundle of receipts as exhibits. She stated that her son was a boda boda rider who used Ksh. 15,000 of his income to support her, and she blamed the Appellant for the accident.
4. PW2 Alex Kinoti, a miraa business man and an eye witness adopted his statement dated 15/3/2021 as his evidence in chief. He told the court that Motor vehicle registration No. KCQ 879 Z caused the accident and the rider was wearing a helmet and a reflective jacket.
5. The defence closed their case without calling any witnesses.

Appellant's Submissions.

6. The Appellant through the firm of Kiruki & Kayika Advocates filed submissions dated 15th January, 2025, faulting the trial court for finding the Appellant 100% liable for the accident, yet the investigation report fully blamed the 3rd party motor vehicle registration number KCB 315 P for recklessly and carelessly overtaking thereby causing the accident. Counsel also faulted the trial court for disregarding



the documentation and the discrepancies in the Respondents' evidence in the apportionment of liability, and cited *D.T Dobie & Company (K) Ltd v Wanyonyi Wafula Chebukati* (2014) eKLR and *Alfred Kioko Muteti v Timothy Miheso & Another* (2015) eKLR. The court was urged to apportion liability at 50:50 in favour of the Appellant against the 3rd party, and the case of *Hussein Omar Farah v Lento Agencies* (2006) eKLR, was cited to support that proposition. Counsel contended that the receipts the trial court relied on to award Ksh. 91,410 did not match the amount claimed in each expense, and cited *David Bagine v Martin Bundi* (1997) eKLR. Counsel proposed an award of Ksh. 10,000 for pain and suffering and Ksh. 100,000 for loss of expectation of life, and cited *Stephen Mwallyo Mbondo v County Government of Kilifi* (2021) eKLR and *Hyder Nthenya Musili & another v China Wu Yi Limited & another* (2017) eKLR. Counsel beseeched the court to award Ksh. 810,990 for loss of dependency in adopting a multiplicand of Ksh. 8,109.90, a multiplier of 25 years and a dependency ratio of $\frac{1}{3}$, and cited *Simeon Kiplimo Murey & 3 others v Kenya Bus Management Services Limited & 4 others* (2014) eKLR, *Edner Gesare Ogega v Aiko Kebiba (Suing as Father and Legal Representative of the Estate of Alice Bochere Aiko - Deceased)* [2015] eKLR, *Festus Akolo & Another v Dickson Taabu Ogutu* (2016) eKLR, *Tobias Odonyo Oburu v Jane Kerubo Miruka & another (suing as the Legal representatives of John Onywoki Sanganyi – Deceased) & another* [2018] eKLR, *Gilbert Kimatare Nairi & another (Suing as personal representative of the Estate of Jackline Sein Lemayian – Deceased) v Civiscope Limited* [2021] eKLR and *Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi)* [2019] eKLR.

7. The Respondents through the firm of Nkunja & Company Advocates filed submissions dated 30th June 2025 citing *Muganda v Oceanic Oil Limited & Another* [2022] KECA 858 (KLR) and *Gitobu Imanyara & 2 others v Attorney General* (2016) eKLR on the duty of the first appellate court. Counsel asserted that whether to apply the multiplier or global sum approach is at the discretion of the trial court, and cited *Francis Odhiambo Nyunja & 2 others v Josephine Malala Owinyi (suing as the legal administrator of the estate of Kevin Osoro Rapando (deceased))* [2020] eKLR, *Joseph Gatonye Karanja v John Okumu Soita* [2022] KEHC 2839 (KLR), *Moses Mairura Muchiri v Maina Macharia* (2016) eKLR and *Isaac Muriira Mwaine & Another v Misheck Mutuma M'kuchina* (2020) eKLR. Counsel submitted that the deceased, who was a youth aged 30 years underwent a lot of pain before he died at the hospital, and cited *David Kaburuka Gitau & Another v Nancy Ann Wathithi Gitau* (2016) eKLR and *Joseph Gatonye Karanja v John Okumu Soita* [2023] KEHC 2839 (KLR). On liability, counsel submitted that the trial court was justified to find the Appellant fully liable because the Respondents' evidence was not rebutted.

Analysis and Determination.

8. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions on the same.
9. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this 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."
10. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsel.



11. From the grounds of appeal, the issues for determination are whether the trial court erred in apportioning liability at 100%, whether the awards on quantum were inordinately high and whether the Appellant's submissions and authorities were considered.
12. On liability, the uncontroverted evidence on the causation of the accident from the eye witness' account (PW2) is as follows; "I do recall the 10th day of August 2019 at about 1.00 pm. I was at Gichanine where I had gone to buy miraa. I was waiting for a matatu on the roadside along the Meru-Maua Road. As I was doing so, I saw a motor vehicle registration number KCB 315 P Toyota Fielder emerging from a feeder road on the left side of the Maua-Meru Road and entering the highway. There was also a motor cycle from the Maua direction heading towards the Meru direction. It had the rider and two pillion passengers. It was registration number KMEE 791 S Tiger. When the rider saw motor vehicle registration number KCB 315 P Toyota Fielder, he slowed down to avoid a collision. When the rider slowed down, motor vehicle registration number KCQ 879 Z Toyota Axio which was coming from the Maua direction at a very high speed rammed into the motor cycle. The rider and his passengers fell on the tarmac on the left side of the Maua-Meru Road and were run over. The vehicle stopped a few metres ahead. I came to learn that the rider was one Muriki while the passengers were Murimi and Patrick Mwingirwa."
13. I find that the Appellant and/or her driver drove the accident motor vehicle at a dangerously high speed, without care and attention that it hit the motor cycle, thereby occasioning the rider and the 2 pillion passengers fatal injuries.
14. Therefore, I find that the trial court's apportionment of liability at 100% against the Appellant was proper and supported by the evidence on record.
15. The principles to be considered by an appellate court in deciding whether to disturb the trial court's assessment of damages were set out by the Court of Appeal for East Africa in the locus classicus case of *Butt v Khan* [1978] eKLR thus; "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."
16. On pain and suffering, I am persuaded by *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR, where the court (D.S Majanja J) espoused 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."
17. The 1st Respondent testified that the deceased died on the same day while receiving treatment at Nyambene Sub-County Hospital. I find that the sum of Ksh. 80,000 was justified in view of the prolonged and agonizing pain the deceased endured before he eventually succumbed to his injuries.
18. On loss of expectation of life, it is trite that the conventional figure awardable under this head is Ksh. 100,000, although the imponderables vary in each case and the trial court is enjoined to consider each case on its own merits. In this case, the trial court took into consideration, and properly so, that the deceased was energetic, healthy and in the prime of his life in awarding Ksh. 120,000 under this head.
19. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were extensively dealt with by Ringera, J (as he then was) in *Marko Mwenda v Bernard Mugambi & another* Nairobi HCCC No 2343 of 1993 that: "In adopting a multiplier the court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of



receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased...The multiplier approach is just a method of assessing damages and not a principle of law or 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 ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown 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. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case.”

20. The 1st Respondent who is the mother to the deceased was candid in her statement dated 13/1/2020, that; “The deceased was only 30 years old at the time of his said demise. He was a boda boda operator and a farmer. He was making an average of Kshs 20,000 per month. Out of this income, he would spend Ksh 15,000 per month on taking care of me.”
21. The 1st Respondent stated that the deceased expended Ksh. 15,000 of his Ksh. 20,000 monthly income to support her. There was no documentary evidence nonetheless, either in form of a driving license or any other form to show that the deceased was indeed a qualified rider, and the alleged monthly income of the deceased of Ksh. 20,000 remained bare devoid of any evidential backing. In those circumstances therefore, there was no basis upon which the multiplier approach could be properly applied, and the trial court was apt in adopting the global award approach.
22. Notably, in *Mary Khayesi Awalo & Another v Mwilu Malungu & Another* [1999] eKLR, the court (R. Nambuye J) expressed that; “As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjuncture. It is better to opt for the principle of a lumpsum award instead of estimating his income in the absence of proper accounting books. See the case of *Sheikh M Hassan versus Kamau Transporters and 10 others* (1982-88) 1 KAR 946.”
23. I find that the sum of Ksh. 2,700,000 was inordinately high in view of the previous judicial decisions in almost similar circumstances.
24. In *Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased))* [2016] eKLR relied on by the trial court to award Ksh. 2,700,000 for loss of dependency, the court (Ngaah Jairus J) reviewed downwards an award of Ksh. 2,000,000 to Ksh. 1,700,000 for loss of dependency for a deceased who was a form 4 leaver aged 30 years.
25. Comparatively in *Stanwel Holdings Limited & another v Racheal Haluku Emanuel & another* [2020] eKLR the court (R. Nyakundi J) reviewed downwards a global award of Ksh. 2,000,000 for loss of dependency to Ksh. 1,000,000 for a 23 year old deceased.
26. I thus find that a sum of Ksh. 1,800,000 for loss of dependency would be commensurate to the loss the estate of the deceased suffered as a result of his untimely death.
27. I further find that the allegation that the trial court failed to consider the Appellant’s submissions and cited authorities is manifestly unfounded, as the trial court duly juxtaposed the Appellant’s submissions and authorities with those of the Respondent, before it reached the impugning decision.
28. In conclusion, I find that the appeal is partially meritorious and it is allowed only to the extent set out hereinbelow:



1. The award of Ksh. 2,700,000 for loss of dependency is hereby set aside and substituted with Ksh. 1,800,000.
2. The other awards remain unchanged.
3. Parties to bear own costs of the appeal.

DATED AND DELIVERED AT MERU THIS 15TH JULY, 2025

S.M. GITHINJI

JUDGE

APPEARANCES:

Ms. Gacheri holding brief for Mr. Nkunja for Respondent.

Mr. Murimi for the Appellant (Absent).

