



**Kibe & another (Suing as Administrators of the Estate of David Wainaina Kibinge) v
Macharia (Civil Appeal E184 of 2024) [2025] KEHC 11118 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E184 OF 2024
FN MUCHEMI, J
JULY 24, 2025**

BETWEEN

VERONICA WANGECHI KIBE 1ST APPELLANT

PETER MBUGUA KIBE 2ND APPELLANT

**SUING AS ADMINISTRATORS OF THE ESTATE OF DAVID WAINAINA
KIBINGE**

AND

FELIX KABOGO MACHARIA RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. N. M. Kyany'a
(DR) delivered on 26th June 2024 in Ruiru SPMCC No. E399 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment in Ruiru Magistrate in SPMCC No. E399 of 2023 a claim arising from a motor vehicle accident whereby parties recorded a consent on liability at the ratio of 90:10 in favour of appellants as against the respondent. The trial court awarded the appellants general damages for pain and suffering at Kshs. 100,000/-, loss of expectation of life at Kshs. 100,000/-, loss of dependency at Kshs. 600,000/- and special damages at Kshs. 939,550/-
2. Dissatisfied with the court's decision, the appellants lodged this appeal citing 8 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact in failing to find that the deceased was a taxi driver and owned a motor vehicle that he used in ferrying passengers and thus his income ought to have been one payable to taxi drivers under the [Regulation of Wages \[General\] \[Amendment\] Order 2022](#).



- b. The learned trial magistrate erred in law and in fact by awarding Kshs. 600,000/- as loss of dependency which was inordinately low considering the deceased was survived by a wife and three minors.
3. Parties put in written submissions.

The Appellant's Submissions

4. The appellants submit that the deceased was a taxi driver and produced a motor vehicle search, the deceased's driver's licence and certificate of insurance for a passenger's vehicle for motor vehicle registration number KCX 961G which supported the fact that the deceased owned a motor vehicle which was licensed to carry fare paying passengers. The appellants further submit that the wife of the deceased testified that the deceased was a taxi driver driving his own motor vehicle registration number KCX 961G and he used the taxi hailing app popularly known as uber. The witness further testified that the deceased used the earnings from the said business to sustain his family.
5. The appellants submit that although they did not produce any evidence of the earnings of the deceased as a taxi driver, having demonstrated that he was a taxi driver, the learned magistrate ought to have relied upon the minimum wage payable to drivers under the [Regulation of Wages \[General\] \[Amendment\] Order 2022](#) in the sum of Kshs. 23,716.20/-. The appellants refer to the case of [Dickson Simon Nyambori v Justus Omondi Obura](#) [2018] eKLR and submit that courts have used the minimum wage regulations where evidence of earnings has not been produced. The appellants urge the court to adopt a multiplicand of Kshs. 30,000/-.
6. The appellants rely on the cases of [Joan Gacheri v Sabina Mwomburi](#) [2018] eKLR and [Mboya & Another \[Suing as the administrators of the Estate of Peter Onbonyo Mboya\] v Ngaruiya & 2 Others \[Sued as administrators of ad litem of the Estate of John Munywe Kiburuthu\]](#) [Civil Case 1287 of 2006] [2024] KEHC 3990 [KLR] and submit that the deceased died as the age of 42 years and urges the court to adopt a multiplier of 18 years.
7. The appellants submit that the deceased was survived by a wife and three children who fully depended on him as the sole breadwinner and urges the court to adopt a dependency ratio of 3/4 . Thus loss of dependency should work out as follows:- Kshs. 30,000/- x 18 x 12 x ¾ = Kshs. 4,860,000/-.
8. The appellants argue that the trial court erred in relying on the case of [M'rama M'nthieri v Kiumbe Muriithi](#) [2015] eKLR and making a global award of Kshs. 600,000/-. The appellants further argue that in the said case, the deceased's dependants were his parents yet in the instant case the deceased was survived by a wife and three children aged 13 years, 7 years and 4 years. The appellant refers to the cases of [Ainu Shamsi Hauliers Limited v Moses Sakwa & Another \[Suing as the administrators of the Estate of Ben Sigunda Okach \[Deceased\]\]](#) [2021] eKLR and [Barasa v Naliaka & Another \[Suing as the representatives of the Estate of Robert Wangila Barasa \[Deceased\]\]](#) and submits that a global award of Kshs. 3 million is sufficient compensation.

The Respondent's Submissions

9. The respondent submits that the award of Kshs. 600,000/- was reasonable compensation and the trial court did not adopt a wrong approach nor did it misapprehend facts when arriving at the said award and thus the award is not inordinately low to invite interference by this honourable court.
10. Relying on the cases of [Mwanzia v Ngalali Mutua Kenya Bus Ltd](#) [2023] KEHC 2 [KLR] and [Moses Mairua Muchiri v Cyrus Maina Macharia \[Suing as the personal representative of the Estate of Mercy Nzula Maina \[Deceased\]\]](#) [2016] eKLR, the respondent submits that the trial court's assessment of



Kshs. 600,000/- was fair and reasonable considering the speculation pertaining the annual or monthly dependency as well as the length of dependency. The respondent submits that at the trial court, he relied on the decisions in *Gilbert Kimatare Nairi & Another [Suing as personal representatives of the Estate of Lemayian Richard Kimatare [Deceased] v Civiscope Limited* [2021] eKLR where the deceased was 42 years old and the court awarded a lump sum of Kshs. 600,000/- as there was no evidence of earnings. Further in the decision of *Gilbert Kimatare Nairi & Another [Suing as personal representative of the Estate of Jackline Sein Lemayian [Deceased] v Civiscope Limited* [2021] eKLR whereby the court awarded a lumpsum approach as there was no proof of income despite the appellants opting for a multiplier approach.

11. The respondent further relies on the case of *John Wamae & 2 Others v Jane Kituku Nziva & Another* [2017] eKLR where the court awarded a global sum of Kshs. 400,000/- to a deceased farmer and guard aged 61 years. The respondent further submits that the authorities relied upon by the appellants exhibit extravagance using the multiplier approach and are intended to mislead the court into making an award which does not reflect the circumstances presented in the instant case.

Issue for determination

12. The main issue for determination is whether the award on loss of dependency was inordinately low.

The Law

13. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....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. In particular,, this 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 into account of particular circumstances or probabilities materially to estimate the evidence.”

14. In *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR the Court of Appeal stated that:-
An appeal to this court from a trial by the High 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.
15. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-
 - a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
 - c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.



Whether the award on loss of dependency is inordinately low.

16. The Court of Appeal in *Chunibhai J. Patel & Another v P. F. Hayes & Others* [1957] EA 748, 749 stated the law on assessment of damages under the *Fatal Accidents Act* and held:-

“The Court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependents, the net earning power of the deceased [i.e his income less tax] and the proportion of his net income which he would have made available for his dependents. From this it should be possible to arrive at the annual value of dependency, which must then be capitalized by multiplying by a figure representing so many years’ purchase.”

17. The appellants argued that the learned magistrate erred in adopting a global sum approach and awarding them Kshs. 600,000/- for loss of dependency which sum is inordinately low.

18. In *Frankline Kimathi Maariu & Another v Philip Akungu Mitu Mborothi [Suing as administrator and personal representative of Antony Mwiti Gakungu [Deceased]]* [2020] eKLR where the court was dealing with a similar issue stated:-

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency. The global sum would be an estimate informed by the special circumstances of each case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

19. In the same breadth, the court in *Moses Mairua Muchiri v Cyrus Maina Macharia [Suing as the personal representative of the Estate of Mercy Nzula Maina [Deceased]]* [2016] eKLR held as follows:-

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears 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.”

20. From the foregoing, it is evident that there are two schools of thought on this issue, with one school advocating for an award under the heading calculating loss of dependency in terms of the number of years and anticipated income of the deceased, whereas the other school advocates for a global award. All this depends on whether evidence of earnings of the deceased has been adduced.

21. I have perused the trial court’s judgment and noted that the learned magistrate in arriving at the decision to award a global sum of Kshs. 600,000/- considered that the appellants did not avail any evidence that the deceased was a driver and that he earned his living as such. The court considered the case of *M’rarama M’nthieri v Luke Kiumbe Murithi* [2015] eKLR where the court awarded a lump sum of Kshs. 500,000/- for loss of dependency where the deceased’s income could not be proven. I therefore find that the magistrate did not err in adopting the method of a global sum award in the circumstances. The appellant even conceded that they did not produce any documentary evidence to show the deceased’s earnings. That being the position, the appellant has no basis of asking the court



to consider that the deceased was a driver. It is noted that the court failed to consider comparatively awards made in similar cases. The appellants submitted that the deceased was survived by a widow and three children aged between 4 and 13 years. In the case of *Moses Wetangula & Another v Eunice Titika Rengetiang* [2018] eKLR, the court adopted a global sum of Kshs. 500,000/- for a 42 year old retired officer of the Kenya Defense Force. Further in *Joseph Maina Kimura v Ann Nkirote Mwaniki [Sued as the legal representative and administrator of the Estate of Silvan Mwaniki Nyamburano [Deceased]* [2020] eKLR the deceased was a 61 year old retired administration police officer who had a wife and children. The court awarded a sum of Kshs. 800,000/- for loss of expectation of life and loss of dependency. In *United Millers Limited & Another v Jumah [Suing as the personal representative of the Estate of Susan Mbula Mutiso [Deceased]; Ndirangu [Third party]* [Civil Appeal 33 of 202] [2022] KEHC 17109 [KLR] [15 December 2022] [Judgment] the deceased was 42 years old survived with a husband and 5 children and the court set aside the amount of Kshs. 1,600,000/- as loss of dependency and substituted it with Kshs. 1,000,000/-. In this appeal children of the deceased were of tender age and thus their dependence on their father would have been heavy. Upon his death the widow was to bear that responsibility. The cases cited by the respondent namely *John Wamae & Others v Jane Kituku Nziva & Another* [2017] eKLR, is not distinguishable in this case as the deceased was 61 years old and had children aged between 13 and 17 years. The two other cases cited by the respondent are also not applicable as the deceased therein was aged 42 years and had no children. In the circumstances, it is my considered view the global award of Kshs.600,000/- was inordinately low and that the amount ought to have been enhanced bearing in mind that the deceased's three [3] children were young and lost dependency at a very needy age.

Conclusion

22. Although the respondent did not file a cross appeal to ask for enhanced damages, I am of the considered view that this court has power to enhance the award for loss of dependency. I hereby set aside the global award of KSh.600,000/= and substitute it with Ksh.1,300,000/= which I hereby award.
23. This appeal is not successful on part of the appellant. However, I take into consideration that the respondent has benefited from the appeal. As such, I hereby order that each party meets their own costs.
24. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

