



**Mroso (Suing as the Legal Representative of the Late Mroso Margaret) v  
Ndoos & another (Sued on behalf of the Late Daniel Musyoka) (Civil Appeal  
E070 of 2024) [2025] KEHC 11159 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11159 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E070 OF 2024  
FN MUCHEMI, J  
JULY 24, 2025**

**BETWEEN**

**JULIUS WAGURA MROSO (SUING AS THE LEGAL REPRESENTATIVE OF  
THE LATE MROSO MARGARET) ..... APPELLANT**

**AND**

**JENIFFER MBETE NDOO & JAMES KIOKO NDOO (SUED ON BEHALF OF  
THE LATE DANIEL MUSYOKA) ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. D. Milimu  
(SRM) delivered on 11th March 2024 in Thika CMCC No. 324 of 2017)*

**JUDGMENT**

1. This appeal arises from the judgment of Thika Senior Resident Magistrate in CMCC No. 324 of 2017 a claim based on a road traffic accident whereby the trial court found that appellant fully liable. The trial court awarded the respondents general damages for pain and suffering at Kshs. 70,000/-, loss of expectation of life at Kshs. 100,000/-, loss of dependency at Kshs. 950,000/- and special damages at Kshs. 250,000/-
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 10 grounds of appeal summarized as follows:-
  - a. The learned trial magistrate misdirected herself in law by assessing general damages for loss of dependency at Kshs. 950,000/- which was manifestly excessive.
  - b. The learned trial magistrate erred in law and in fact by awarding Kshs. 70,000/- for pain and suffering, Kshs. 100,000/- for loss of expectation of life and Kshs. 250,000/- as special damages.
3. The respondents filed their cross appeal citing 9 grounds of appeal summarized as follows:-



- a. The learned trial magistrate erred in law and in fact in finding that the appellants are only entitled to Kshs. 70,000/- in pain and suffering and Kshs. 100,000/- in loss of expectation of life.
  - b. The learned trial magistrate erred in law and in fact by awarding Kshs. 950,000/- for loss of dependency.
  - c. The learned magistrate erred in law and in fact in awarding a global sum in loss of dependency and ought to have adopted the multiplier approach.
  - d. The learned magistrate erred in law and in fact in failing to hold that the appellants were entitled to Kshs. 9,600,000/- in loss of dependency.
  - e. The learned magistrate erred in law and in fact by failing to appreciate that the deceased's elderly mother was a dependent of the deceased.
4. Parties put in written submissions.

### **The Appellant's Submissions**

5. The appellant relies on the case of *Joseph Muthuri vs Nicholas Kinoti Kibera* [2022] eKLR and submits that the award of Kshs. 70,000/- for pain and suffering and Kshs. 100,000/- for loss of expectation of life is unjust and unreasonable as the deceased died on the same day of the accident. Thus, the appellant submits that an award of Kshs. 40,000/- is sufficient compensation. Relying on the case of *Makario Makonye Monyancha vs Hellen Nyangena* [2014] eKLR, the appellant argues that the sum of Kshs. 100,000/- for loss of expectation of life was fair and reasonable.
6. The appellant argues that the deceased died at the age of 38 years. His death certificate indicates that he worked as a driver. However, the appellant argues that the respondents' pleadings are silent on the deceased's earnings and further, the respondents did not provide any documentary evidence to show the deceased's earnings. Additionally, the respondents did not produce any evidence to show the amount the deceased used to support them with. Thus, the appellant argues that an award under this head would be speculative and therefore a global sum approach would be more appropriate. Relying on the cases of *Bash Hauliers Limited vs Judith Nabwire Wamalwa & Another* [2020] eKLR and *Gilbert Kimatare Nairi & Another (Suing as personal representatives of the Estate of Lemayian Richard Kimatare (Deceased) vs Civiscope Limited* [2021] eKLR, the appellant submits that an award of Kshs. 500,000/- for loss of dependency is sufficient.
7. The appellant refers to the cases of *National Social Security Fund Board of Trustees vs Sifa International Limited* (2016) eKLR; *Macharia Waiguru vs Muranga Municipal Council & Another* [2014] eKLR and *Christine Mwigina Akonya vs Samuel Kairu Chege* [2017] eKLR and submits that special damages must be both pleaded and proved by way of receipts. The respondents pleaded for a sum of Kshs. 400,500/- and produced an assessment report from Regent Automobile Valuers & Assessors Ltd indicating the pre-accident value of the motor vehicle as Kshs. 400,000/- and the salvage value as Kshs. 150,000/-. The said report recommended that the subject motor vehicle be written off. Thus the trial court's award of Kshs. 250,000/- being the pre-accident value less the salvage value was sufficient and justified.

### **The Respondent/Cross Appellant's Submissions**

8. The respondent/cross appellant refer to the cases of *Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another (Suing as the legal administrator of the Estate of the late Robert Mwangi)* [2019]



eKLR and *Hyder Nthenya Musili & Another vs China Wu Yi Limited & Another* [2017] eKLR and submit that an award of damages under the head pain and suffering and loss of expectation of life varies between Kshs. 10,000/- and Kshs. 100,000/-. The respondents argue that following inflationary trends, the sum of Kshs. 100,000/- is too low and argues that an award of Kshs. 200,000/- would be adequate compensation. To support their contentions, the respondents rely on the cases of *Moses Akumba & Another vs Hellen Karisa Thoya* (2017) eKLR; *Patrick Kariuki Muiruri & 3 Others vs Attorney General* [2018] eKLR; *Vincent Kipkorir Tanui (Suing as the administrator or personal representative of the Estate of Samuel Kiprotich Tanui (Deceased) vs Mogogosiek Tea Factory Co. Ltd & Another* [2018] eKLR and *Acceler Global Logistics vs Gladys Nasambu Waswa & Another* (2020) eKLR.

9. On the award of loss of dependency, the respondents submit that the trial magistrate erred by adopting a global sum approach and ought to have adopted the multiplier approach by using the minimum wage in the absence of the deceased's earnings thus making an inordinately low award. To support their contentions, the respondents rely on the case of *David Kimathi Kaburu vs Gerald Mwobobia Murungi (Suing as the legal representative of the Estate of James Mwenda Mwobobia (Deceased))* [2014] eKLR. The respondents further argue that the trial court did not justify its departure from using the multiplier approach to compute damages. Furthermore, the respondents submit that they proved dependency and in the absence of documentary proof of the deceased's income, the trial court ought to have used the *Regulation of Wages (General) (Amendment) Order, 2015* which provided the minimum monthly wage of a driver in Nairobi to be Kshs. 18,595.20/-.
10. The respondents submit that the deceased was 38 years old at the time of his death and was survived by his wife and his elderly mother. Further, there was no evidence on record that the deceased suffered from any ill health before his demise thus he would have worked until the retirement age of 60 years. Relying on the cases of *Mercy Wanjiru Muiruri (Suing as the administrators of the Estate of Loise Njeri Mbugua) vs Robert Barasa & Another* [2015] eKLR; *Easy Coach Bus Services & Another vs Henry Charles Tsuma & Another (Suing as the administrators and personal representatives of the Estate of Josephine Weyanga Tsuma (Deceased))* [2019] eKLR and *Orion Investments vs Kung'u (Suing for and behalf of the Estate of Jane Gathoni Kung'u (Deceased))* (no citation given), the respondents urge the court to adopt a multiplier of 22 years and dependency ratio of 2/3. Thus loss of dependency will work out as follows:-

Kshs. 15,201.65/- x 12 x 22 x 2/3 = Kshs. 2,675,490/-.

### Issues for determination

11. The main issues for determination are:-
  - a. Whether the awards under the *Law Reform Act* were manifestly excessive.
  - b. Whether the award on loss of dependency was manifestly excessive.

### The Law

12. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs 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.”

13. In *Gitobu Imanyara & 2 Others vs 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.

14. 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 under the *Law Reform Act* was manifestly excessive.**

15. The Court of Appeal in *Catholic Diocese of Kisumu vs Sophia Achieng Tele* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:-

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

16. Similarly in *Sheikh Mustaq Hassan vs Nathan Mwangi Kamau Transporters & 5 Others* [1986] KLR 457 that:-

“The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own.”



17. In the instant case, the appellant is faulting the trial court for awarding excessive damages for pain and suffering whereas the respondents argue that the said sums are inordinately low.
18. In the case of *Hyder Nthenya Musili & Another vs China Wu Yi Limited & Another* [2017] eKLR the court stated:-

As regards damages awarded under the *Law Reform Act*, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death...The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/- while for pain and suffering the awards range from Kshs. 10,000/- to Kshs. 100,000/- with the higher damages being awarded if the pain and suffering was prolonged before death.

19. In the instant case, it is not disputed that the deceased died on the spot. Given that the sums awardable under this head range from Kshs. 10,000/- to Kshs. 100,000/- from past authorities, it is my considered the sum of Kshs. 50,000/- would be reasonable compensation for pain and suffering which I hereby award. The award of Ksh.70,000 by the magistrate is hereby set aside.
20. As for the award of Kshs. 100,000/- for loss of expectation of life proposed by the cross-appellant, it is in my view, reasonable based on comparable authorities. Consequently, the award of Ksh.70,000 awarded by the magistrate is hereby set aside and substituted with Ksh.100,000.

#### **Whether the award on loss of dependency is manifestly excessive.**

21. The Court of Appeal in *Chunibhai J. Patel & Another vs 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.

22. The deceased died at the age of 38 years and the appellant upheld the decision by the trial court to adopt a global sum approach but argues that a sum of Kshs. 950,000/- is excessive and the same ought to be reviewed to Kshs. 500,000/-. The respondents on the other hand fault the trial court for adopting a global sum approach and submit that a multiplier approach is more suitable as the sum of Kshs. 950,000/- is inordinately low.
23. In *Frankline Kimathi Maariu & Another vs 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.

24. In the same breadth, the court in *Moses Mairua Muchiri vs 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.

25. 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.
26. 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. 950,000/- considered that the respondents did not avail evidence of the deceased's earnings and although they provided the deceased's wife and his mother as dependents of the deceased, they did not indicate the age of the deceased's mother which could have assisted the court to denote the number of years which she could have relied on the deceased for financial support. The trial magistrate further noted that the deceased's wife was 41 years old and considered the case of *Jacob Ayiga Maruja & Another vs Simeon Obayo* (2005) eKLR and noted that the respondents did not provide any documentation to prove the earnings of the deceased thus the same remained unknown. Taking into consideration all the above, the trial court came to a conclusion that awarding a global award was best in the circumstance and awarded a global sum of Kshs. 950,000/-. In my view, the global award of a global sum of Ksh.950,000/= was reasonable and is hereby upheld.
27. In view of the foregoing, I find that the cross-appeal is partly successful and is hereby allowed to the extent of the award for pain and suffering from Ksh.70,000/= to Ksh.100,000/= .
28. The appellant shall bear the costs of the suit.
29. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

