



REPUBLIC OF KENYA



KENYA LAW
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**Muli v Maina & another (Civil Appeal E065 of 2022)
[2025] KEHC 10095 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E065 OF 2022**

MA ODERO, J

JULY 11, 2025

BETWEEN

OBADIA K MULI APPELLANT

AND

ALBERT MWANGI MAINA 1ST RESPONDENT

CRISPUS MBIGA MWANGI 2ND RESPONDENT

JUDGMENT

1. Before this Court is the Memorandum of Appeal dated 22nd November 2022 by which the Appellant OBADIA K. MULI seeks the following orders:-

- (a) This Appeal be allowed.
 - (b) The judgment of the Honourable Principal Magistrate be set aside and be judgment entered as follows:-
 - (i) Kshs. 15,000/= being minimum wages.
 - (ii) A multiplier of 32 years and dependency ratio of $2/3 \times 2/3 \times 15,000 \times 32 \times 12 =$ Kshs. 3,840,000 being loss of dependency.
 - (iii) Loss of expectation of life = Kshs. 300,000/=
 - (iv) Pain and suffering = Kshs. 100,000/=
 - (v) Special damages as per receipts = Kshs. 65,000/=
- TOTAL = 4,305,000



2. The Respondents Albert Mwangi Maina and Crispus Mbiga Mwangi opposed the appeal. The matter was canvassed by way of written submissions. The Appellants did not file any written submissions whilst the Respondents relied upon their written submissions dated 26th March 2025.

Background.

3. The Appellant filed in the Karatina Magistrates Court Civil Suit No. 40 of 2021 seeking the following orders:-

- “(a) General and Special damages.
- (b) Costs of the suit.
- (c) Any other relief this Honourable court may deem fit and just to grant.”

4. The suit emanated from a road traffic accident which occurred on 26th March 2019 along the Nairobi-Naivasha Road at Kimende stage. It was alleged that the 1st defendant was driving a motor vehicle Registration No. KCF 774 A Toyota Crown. That the said vehicle was driven managed and/or controlled negligently as a result of which it lost control and hit the victim Joshua Muli Kivuva (now Deceased) who was walking on the edge of the road. The victim lost his life as a result of the accident.

5. The Appellant who is the father of the Deceased filed the suit seeking compensation as a result of the demise of his son.

6. By way of a consent the parties agreed on liability at 70:30 in favour of the plaintiff and against the Defendant.

7. After a hearing the trial court delivered its judgment on 25th October 2022 and made the following orders in favour of the Appellant:-

- “(a) Liability - 70%
- (b) Pain and suffering - Kshs. 10,000/=
- (c) Loss of Expectation of Life - Kshs. 85,000/=
- (d) Damages under the *Fatal Accidents Act*
Kshs. 926,720/=
- (e) Special Damages - Kshs. 65,000/=
- TOTAL Kshs. 1,086,820 (less 30% contribution)
- = Kshs. 760,704

- (f) Costs of the suit and interest from the time of this judgement to full settlement at court rates”

8. Being aggrieved by this decision the Appellant filed this Memorandum of Appeal which was premised upon the following grounds:-

- “1. The learned Trial Magistrate erred in law and fact by not applying a multiplier of 32 years and the dependency ration of 2/3
2. The learned Trial Magistrate erred in law and fact by not applying the minimum wages of Kshs. 15,000/=



3. The trial magistrate erred in law and fact in that he failed to give an award using the applicable law.
4. The judgment of the trial magistrate is bad in law, unjust, unfair and offered no justice in the matter.”

9. As stated earlier the appeal was opposed.

Analysis And Determination.

10. I have carefully considered this memorandum of appeal, the record of Appeal filed on 20th September 2024 as well as the submissions on record.

11. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see Peters -vs- Sunday Post Limited[1958] E.A 424]

12. In *Selleand Another -vs- Associated Motor Boat Company Ltd& Others* [1968] 1 E.A 123 it was stated as follows:-

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] 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 that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”

13. Likewise in *Gitobu Imanyara& 2 Others -vs- Attorney General*[2016], eKLR the court of Appeal stated thus:-

“An appeal to this court is by way of a 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 allowance in this respect.”

14. On the issue of liability there is no dispute as indeed the parties had reached a consent that liability be entered at 70:30 in favour of the Appellant. The main issue which arises in this appeal is that of quantum.

15. On the issue of quantum this court is guided by the decision in *BASHIR AHMED BUTT -VS- UWAIS AHMED KHAN* [1982] KAR, where the court states as follows:-

“An appellate court will not disturb an award for general 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. It is important to remember that the measure of quantum lies at the discretion of the Judicial Officer. In the case of SOUTHERN ENGINEERING COMPANY LTD -VS- MUTIA [1985] KLR 730 the court of Appeal held that;-

“The measurement of the quantum of damages is a matter for the discretion of the individual judge which has to be exercised judiciously and with regard to the general conditions prevailing in the country generally, and to prior decisions which are relevant to the case in question.”

17. Under the limb of pain and suffering the trial court made an award of Kshs. 10,000. In the case of HYDER NTHENYA MUSILI & Another -vs- CHINA WUYI LIMITED & Another [2017] eKLR the court stated as follows;-

“.....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 Kes. 100,000/= while for pain and suffering the awards range from Kes. 10,000/= to Kes. 100,000/= with higher damages being awarded if the Pain and suffering was prolonged before death.....”

18. In this case the Deceased died on the same day the accident occurred. There is no evidence that the Deceased was first taken to a hospital before he died. In his witness statement the Appellant indicated that the Deceased died on the spot. In the circumstances I find that the award of Kshs. 10,000/- was appropriate and I will not disturb the same.

19. On the limb of Loss of Expectation of life the lower court cited the case of KENYA POWER & LIGHTING COMPANY LIMITED -VS- JAMES MULI KYALO [2020] eKLR in which for a deceased aged 29 years, the court awarded Kshs. 85,000. The Deceased in this matter died at the age of 28 years. I find the award made by the trial court to be appropriate and I will not disturb the same.

20. It is not disputed that the Deceased was a chef at the time of his death. No evidence was adduced to show where the Deceased worked or an amount he earned as a salary. As such the trial court placed him as a general labourer under the Regulation of Wages (General) Amendment) Order 2018 and relied on the minimum wage of Kshs. 7,240.95.

21. However a scrutiny of the 2018 order reveals that though the profession of ‘Chef’ is not listed that of a ‘cook’ appears. This is the profession closest to ‘chef’ as both handle food for immediate consumption. The minimum wage for a chef is listed as Kes. 8,366.35. I find that the trial court erred in assessing Deceased as a general labourer and ought to have utilized the minimum wage for a cook at Kshs. 8366.35.

22. The plaintiff challenged the dependency ratio of 1/3 adopted by the trial court. He suggested instead a ratio of 2/3. Dependency is a matter of fact that must be proved by way of tangible evidence. There was no evidence that the Deceased was married or that he had any children. It appears that the Appellant (father) was the Deceased’s only dependant. In the circumstances the dependency ratio of 1/3 was correct and not the 2/3 ratio suggested by the Appellant.

23. Therefore loss of Dependency should have been calculated as follows;-

$$\text{Kshs } 8366.35 \times 32 \times 12 \times 1/3 = \text{Kes. } 1,070,892.80 \text{ (less liability of 30\% = Kshs } 749,624.96$$



24. It is well settled that Special damages must be specifically pleaded and proved. The Appellant did prove Special damages at Kes. 65,000.
25. Finally this appeal partially succeeds. The judgment of 25th October 2022 is hereby set aside and in its place this court makes the following awards;-
- (a) Liability - 70:30 in favour of the Appellant.
 - (b) Pain and Suffering - Kshs. 10,000/=
 - (c) Loss of expectation of life - Kshs. 85,000/=
 - (d) Loss of Dependancy - Kshs. 749,624.96
 - (e) Special Damages - Kshs. 65,000
- TOTAL - Kshs. 909,624.96
26. Finally I enter judgment in favour of the Appellant against the Respondent in the amount of Kshs. 909,624.96 plus costs and interest at court rates from date of judgment in the lower court until payment in full.

DATED IN NYERI THIS 11TH DAY OF JULY 2025

.....

MAUREEN A. ODERO

JUDGE

