



Wanyoike & another v Wambui & another (Suing as the Administrators of the Estate of Nicholas Kanyi Wambui) (Civil Appeal E324 of 2024) [2025] KEHC 10087 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E324 OF 2024
FN MUCHEMI, J
JULY 10, 2025**

BETWEEN

JUSTUS NJUGUNA WANYOIKE 1ST APPELLANT

DANIEL GACHAU KINYANJUI 2ND APPELLANT

AND

GRACE NJERI WAMBUI 1ST RESPONDENT

DORCAS WAMBUI KAGUMU 2ND RESPONDENT

SUING AS THE ADMINISTRATORS OF THE ESTATE OF NICHOLAS KANYI WAMBUI

(Being an Appeal from the Judgment and Decree of Hon. C. K. Kisiangani (PM) delivered on 15th August 2024 in Ruiru SPMCC No. 507 of 2023)

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Ruiru Principal Magistrate in SPMCC No. E507 of 2023 arising from a motor vehicle accident whereby parties entered a consent on liability in the ratio of 85 : 15 in favour of the respondents as against the appellants whereas the trial court awarded the respondents general damages for pain and suffering at Kshs. 15,000/-, loss of expectation of life at Kshs. 150,000/-, loss of dependency at Kshs. 5,060,640/- and special damages at Kshs. 260,550/-.
2. Dissatisfied with the court's decision, the appellants lodged this appeal citing 4 grounds summarized as follows:-



The learned trial magistrate erred in law and in fact in awarding the respondents Kshs. 4,602,262/- which award was excessive in the circumstances.

3. Parties put in written submissions.

The Appellants' Submissions

4. The appellants submit that the award of Kshs. 5,060,640/- on loss of dependency was too high and the trial court failed to apply statutory deductions on the multiplicand. The appellants refers to the cases of Hellen Waruguru (Suing as the legal representative of Peter Waweru Mwenja) vs Kiarie Shoe Stores Limited [2015] eKLR; Hyder Nthenya Musili & Another vs China Wu Yi Limited & Another [2017] KEHC 3063 (KLR); Mary Osano (Personal Representative of the Estate of Charles Otworu Ogechi (Deceased) vs Simon Kimutai [2020] eKLR and Rosemary Mwasya vs Steve Tito Mwasya & Another [2018] KECA 822 (KLR) and submit that the trial court erred by adopting the deceased's gross income as the multiplicand without factoring in statutory deductions. Thus the appellants submit that the appropriate multiplicand is Kshs. 35,392.75/-.

The Respondents' Submissions.

5. The respondents rely on the cases of Patrick Kiruja Kithinji vs Victor Mugira Marete [2015] eKLR; John Mutai Mwangi & 26 Others vs Mwenja Ngure & 4 Others [2016] eKLR and MAE Properties Limited vs Joseph Kibe & Another [2017] eKLR and submit that the appeal lodged is inaccurately defective for failing to comply with the mandatory timelines set and even after the court granted leave to the appellants to file their Record of Appeal by 12th March 2025.
6. The respondents submit that the trial court correctly applied Kshs. 42,172/- as the multiplicand. In the event the court otherwise applies a multiplicand of Kshs. 35,092.75/- the respondent prays that the court apply a multiplier of 20 years. The respondent submits that the deceased passed away at the age of 36 years and he left 2 children and one unborn child who was born six months after his death. To support their arguments, the respondents refer to the cases of Pleasant View School Limited vs Rose Mutheu Kithoi & Another (no citation given) and Bash Hauliers vs Dama Kalume Karisa & Another [2020] eKLR.

Issue for determination

7. The main issue for determination is whether the trial court erred in adopting a multiplicand of Kshs. 42,172/-.

The Law

8. 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.”

9. 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.

10. 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 trial court erred in adopting a multiplicand of Kshs. 42,172/-.

11. 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.

12. The appellants argue that the trial court erred by applying the wrong multiplicand of Kshs. 42,172/- as it did not factor in statutory deductions. In assessing damages for loss of dependency, the trial court applied a multiplicand of Kshs. 42,172/- as the deceased's net pay based on the pay slips produced from his place of work Junction Timber Center Limited. I have perused the record of appeal and noted that the respondents attached two pay slips for the deceased for the months of April and May 2023. A perusal of the said pay slips reveal that the deceased's basic salary was Kshs. 42,172/-. The deductions as contained in the pay slip are PAYE at Kshs. 5,419.25/-, NSSF at Kshs. 360/-, NHIF at Kshs. 1,000/-, TDS Shares at Kshs. 300/- which amount to Kshs. 7,079.25/- and a further allowable deductions at Kshs. 360/-. In this regard, the statutory deductions are PAYE, NSSF and NHIF which total to Kshs. 6,779.25/-. The deductions of TDS Shares and allowable deductions do not amount to compulsory statutory deductions as they are either in the form of savings which ought not to be factored in when determining a multiplicand. This was enunciated by the Court of Appeal in the case of *Mary Osano* (personal representative of *Charles Otworu Ogechi (Deceased) vs Simon Kimutai* [2020] eKLR where the Court of Appeal stated:-

This Court is therefore tasked to consider whether the learned Judge erred by using the figure of Kshs. 40,000/- as the multiplicand instead of the Kshs. 70,000/-. We appreciate the principle behind this finding is that courts must factor in statutory deductibles prior to arriving at the appropriate figure to use as a multiplicand. The same was held by this Court in *Rosemary Mwasya vs Steve Tito Mwasya & Another* [2018] eKLR:-



The figure chosen of Kshs. 118,546/- took into consideration yearly increments had the deceased followed her career. The only error we note the trial Judge committed in arriving at the final figure was the failure to factor in the element of taxation and other compulsory statutory deductions which in our view would have amounted to one third of the figure chosen as the multiplicand which would work out as Kshs. 118,546/- X 1/3 = 39,512/-.

Counsel for the appellant submitted that the deceased's net pays as evidenced by a copy of his pay slip was Kshs. 53,550/- per month, with house allowance of Kshs. 45,000/- per month which totals to Kshs. 98,550/-. The statutory deduction as contained in the pay slip are: P.A.Y.E at Kshs. 23,947/-, NHIF at Kshs. 320 and NSSF at Kshs. 3,748/- which totals to Kshs. 28,015/-. The rest do not amount to statutory deductions as the learned Judge erroneously held. In our assessment, the rest of the deductions were either in the form of savings or payment of loans, none of which are to be factored in when determining a multiplicand.

13. As outlined, the total statutory deductions amount to Kshs. 6,779.25/-. Should be deducted from the gross pay and amounts to Kshs.35,392.75/-. Accordingly, the correct multiplicand is Kshs.35,392.75/-. Therefore the award under loss of dependency will work out as follows:-

$$\text{Kshs. } 35,392.75/- \times 2/3 \times 12 \times 15 = \text{Kshs. } 4,247,130/-.$$

14. Thus the award by the trial court under the head of loss of dependency of Kshs. 5,060,640/- is hereby set aside and is substituted with an award for Kshs. 4,247,130/- subject to the contribution on liability.
15. In view of the foregoing, I find that the appeal has merit and is hereby allowed.
16. Each party shall meet their own costs of this appeal.
17. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF JULY 2025.

F. MUCHEMI
JUDGE

