



**Ngetich & another (Suing as the Legal Administrators of the Estate of the Late David Cheruiyot Ngetich – Deceased) v Oyugi (Civil Appeal E034 of 2024) [2025] KEHC 12752 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12752 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL E034 OF 2024  
CM KARIUKI, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**LOICE NGETICH ..... 1<sup>ST</sup> APPELLANT**

**ARON KIPROTICH CHERUIYOT ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF THE LATE  
DAVID CHERUIYOT NGETICH – DECEASED**

**AND**

**FRED NYAEGA OYUGI ..... RESPONDENT**

*(Being an appeal from the Judgment and/or Decree of Honourable Chief Magistrate,  
Hon. H.M. Nyaberi in Narok CMCC No. E007 of 2024 delivered on 5th November 2024)*

**JUDGMENT**

**Background**

1. Before the Chief Magistrate’s Court at Narok, the appellants, as administrators of the estate of the late David Cheruiyot Ngetich, sued the respondent seeking general damages under the *Fatal Accidents Act* and the *Law Reform Act*, special damages, costs, and other reliefs. The cause of action arose from a fatal road accident that occurred on 28th February 2023 along the Narok–Bomet road involving the respondent’s motor vehicle. The respondent failed to enter appearance, and an interlocutory judgment was entered, thereby fixing liability at 100% against him. The trial court proceeded to assess damages.
2. On quantum, the court awarded Kshs. 20,000/= for pain and suffering, finding that the deceased died on the spot. For loss of expectation of life, the court granted Kshs. 120,000/=. In respect of loss of dependency, the trial magistrate held that the plaintiffs had not proved the deceased’s earnings as a casual labourer. The court therefore adopted a multiplicand of Kshs. 5,000/=: a multiplier of 15 years,



and a dependency ratio of two-thirds, arriving at Kshs. 600,000/=. For special damages, the court awarded Kshs. 50,550/=, being receipts produced in evidence.

3. In total, the trial court entered judgment in the sum of Kshs. 790,550/= together with costs and interest at court rates.
4. The appellants, being dissatisfied with this aspect of the award, lodged the present appeal.

#### Memorandum of Appeal

5. Vide a memorandum of appeal dated 26th November 2024, the appellants, being dissatisfied with the judgment and decree of the Principal Magistrate, Hon. Nyaberi, appealed to this Court against the finding on quantum. They contend that the learned trial magistrate erred in law and in fact by awarding Kshs. 600,000/= for loss of dependency, which they consider to be manifestly low in the circumstances.
6. They further fault the trial court for adopting a multiplicand of Kshs. 5,000/=: disregarding their submissions on the applicable multiplicand, failing to consider their evidence, and generally misapprehending their case, thereby arriving at an erroneous award.
7. Consequently, they urge this Court to set aside, review, or revise the trial court's finding on quantum and substitute it with a higher award, and that the appeal be allowed with costs.

#### **Appellants' Submissions.**

8. The appellants, through their counsel, submitted that the appeal arises from the judgment of Hon. H.M. Nyaberi, Chief Magistrate, delivered on 5th November 2024 in Narok CMCC No. E007 of 2024. Their main contention is that the trial court erred in adopting a multiplicand of Kshs. 5,000/= for loss of dependency, which they argue was unreasonably low and not supported by the evidence.
9. They maintain that the deceased was a casual labourer earning about Kshs. 20,000/= per month, as confirmed by the statements of the widow and son. In the alternative, they urge this Court to adopt the prevailing minimum wage for a general labourer of Kshs. 15,201.65 as provided under the Regulation of Wages (General) (Amendment) Order, 2022. Reliance was placed on *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] KECA 202 (KLR), where the Court held that documentary evidence is not the only means of proving earnings, as well as *Melbrimo Investment Co. Ltd v Dinah Kemunto & Francis Sese* [2022] eKLR.
10. On computation, they propose:  
$$\text{Kshs. } 20,000 \times 15 \times 12 \times \frac{2}{3} = \text{Kshs. } 2,400,000, \text{ or alternatively,}$$
$$\text{Kshs. } 15,201.65 \times 15 \times 12 \times \frac{2}{3} = \text{Kshs. } 1,824,198.$$
11. They submit that the award of Kshs. 600,000/= by the trial court was manifestly low and inordinately erroneous. Citing *Butt v Khan* [1978] eKLR, they argue that this Court has the jurisdiction to interfere with the award as the trial magistrate misapprehended the evidence and proceeded on wrong principles. They therefore urge this Court to enhance the award for loss of dependency in line with their proposals and to allow the appeal with costs.

#### **Respondent's Position**

12. The respondent did not enter an appearance in the lower court, leading to an interlocutory judgment being entered against him. Similarly, he has not participated in these appellate proceedings despite being duly served, as confirmed by an affidavit of service sworn on 10th February 2025 by counsel for the appellants. The appeal, therefore, proceeded unopposed.



## Analysis And Determination

### Issues for Determination

13. The duty of a first appellate court is well settled. It is required to re-evaluate, reassess, and re-analyze the evidence on record and reach its own independent conclusion, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify (*Selle v Associated Motor Boat Co.* [1968] EA 123).
14. The central complaint in this appeal is that the learned trial magistrate erred in adopting a multiplicand of Kshs. 5,000/= for purposes of computing loss of dependency, which the appellants contend was inordinately low and not supported by the evidence or the law.
15. It is trite that an appellate court will only interfere with an award of damages if the trial court acted on a wrong principle of law, misapprehended the evidence, or if the award is so inordinately high or low that it represents an entirely erroneous estimate of damages (*Butt v Khan* [1978] eKLR).
16. Section 4(1) of the *Fatal Accidents Act*, Cap 32, provides that every action brought under the Act shall be for the benefit of the wife, husband, parent, and child of the deceased. In assessing damages, the guiding principle is the reasonable expectation of pecuniary benefit from the deceased had he lived. Similarly, under Section 2(5) of the *Law Reform Act*, Cap 26, the estate of a deceased person is entitled to damages for loss of expectation of life and pain and suffering.
17. In the present case, the deceased was described as a casual labourer. His widow testified that he earned about Kshs. 20,000/= per month, a fact corroborated by his son. The trial court disregarded this evidence entirely and instead adopted a multiplicand of Kshs. 5,000/=.
18. The Court of Appeal in *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR held that it would be a misdirection to insist on documentary proof of income in all cases, since a large proportion of Kenyans work in the informal sector without pay slips or records. Oral testimony, if credible, is sufficient proof of income. Likewise, in *Mwanzia v Ngalali Mutua & Kenya Bus Ltd* [2004] eKLR, the court emphasized that in the absence of documentary evidence, the court should adopt a reasonable approach, including reliance on minimum wages.
19. The trial court failed to consider the Regulation of Wages (General) (Amendment) Order, 2022, made pursuant to the Regulation of Wages and Conditions of *Employment Act*, Cap 229. Under that Order, the prescribed minimum wage for a general labourer was Kshs. 15,201.65 per month. Courts have consistently applied the minimum wage as a fallback where proof of actual income is lacking (*Melbrimo Investment Co. Ltd v Dinah Kemunto & Francis Sese* [2022] eKLR; *Albert Odawa v Gichimu Githenji* [2007] eKLR).
20. I am persuaded that the learned trial magistrate misapprehended the evidence and erred in principle by adopting Kshs. 5,000/=, which is arbitrary and unjust. A proper basis for assessment ought to have been the applicable statutory minimum wage.
21. Accordingly, applying the multiplicand of Kshs. 15,201.65, a multiplier of 15 years (as adopted by the trial court), and a dependency ratio of two-thirds (which was not contested), the computation is as follows:  
$$\text{Kshs. } 15,201.65 \times 12 \times 15 \times \frac{2}{3} = \text{Kshs. } 1,824,198.00$$
22. I therefore find that the award under loss of dependency has to be set aside and substituted with Kshs. 1,824,198.00.



23. The awards under pain and suffering (Kshs. 20,000/=), loss of expectation of life (Kshs. 120,000/=), and special damages (Kshs. 50,550/=) were sound in law and are upheld.

### **Final Orders**

24. In the result, and for the reasons set out above, this Court makes the following orders:

- i. The appeal succeeds on the issue of quantum.
- ii. The award of Kshs. 600,000/= for loss of dependency made by the trial court is hereby set aside and substituted with an award of Kshs. 1,824,198.00.
- iii. The other awards made by the trial court remain undisturbed, namely:
  - a. Pain and suffering – Kshs. 20,000/=
  - b. Loss of expectation of life – Kshs. 120,000/=
  - c. Special damages – Kshs. 50,550/=

25. The total award in favour of the appellants is therefore Kshs. 2,014,748.00, subject to apportionment of liability as determined by the trial court.

26. Interest shall accrue on the above sums at court rates from the date of the judgment of the trial court until payment in full.

27. The appellants shall have the costs of this appeal.

28. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**CHARLESMKARIUKI.**

**JUDGE.**

