



**Ngure & 2 others v Gitau (Suing as the Legal Administrator of the Estate of Joseph Ngigi Wangari)
(Civil Appeal E036 of 2024) [2025] KEHC 12683 (KLR) (10 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E036 OF 2024
FN MUCHEMI, J
SEPTEMBER 10, 2025**

BETWEEN

**MICHAEL NG'ANG'A NGURE 1ST APPELLANT
KK SECURITY LIMITED 2ND APPELLANT
KENYA KAZI SERVICES LIMITED 3RD APPELLANT**

AND

**KAMAU GITAU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE
OF JOSEPH NGIGI WANGARI) RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. W. Ngumi (SPM)
delivered on 1st February 2024 in Gatundu SPMCC No. E122 of 2022)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Gatundu Senior Principal Magistrate in SPMCC No. E122 of 2022 a claim arising from a motor vehicle accident whereby the trial court apportioned liability at 50%:50% and awarded the respondent general damages of pain and suffering at Kshs. 50,000/-, loss of expectation of life at Kshs. 100,000/-, loss of dependency at Ksh. 2,000,000/- and special damages at Kshs. 38,850/-.
2. Dissatisfied with the court's decision, the appellants lodged this appeal citing 3 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact in awarding general damages under loss of dependency and adopting a global sum approach.



- b. The learned trial magistrate erred in law and in fact by awarding the respondent both under the *Law Reform Act* and the *Fatal Accidents Act*.
3. Parties disposed of the appeal by way of written submissions.

The Appellants' Submissions

4. The appellants submit that there is no proof that the deceased worked as a businessman as alleged by the respondent or that he earned Kshs. 20,000/- per month. Relying on the case of Waweru [Suing as the legal representative and administrator of the Estate of Brian Waweru Mwaura [Deceased] v Bonafide Clearing and Forwarding Company Limited & Another [2025] KECA 620 [KLR], the appellants argue that he who alleges must prove and the respondent did not prove the deceased's earnings per month. The appellants propose that the court ought to adopt a multiplicand under the minimum wage of a general labourer in all other areas as the deceased lived in Juja as per his death certificate of Kshs. 7,240.95/- as per the Regulation of Wages [General] [Amendment] Order 2018.
5. The appellants submit that the deceased died at the age of 45 years and therefore a multiplier of 10 years is reasonable considering the vicissitudes of life. To support their contentions, the appellants rely on the cases of Sarah Naitore M'ikunyua v Geoffrey Mwangi Bor & Another [2021] eKLR and Patricia Mona & Another v Samuel Opott Omondi & Another [2014] eKLR.
6. Relying on the case of Joshua Muriungi Ng'anatha v Benson Kataka Lemureiyani [Suing as the legal representative of the Estate of Lokushuk John [Deceased] [2016] KEHC 2367 [KLR], the appellants submit that the deceased's dependants were his father and brother and therefore the court ought to adopt a dependency ratio of 1/3. In the event the court is inclined to use the global sum approach in determining loss of dependency, the appellants submit that a sum of Kshs. 600,000/- would be reasonable. To support their contentions, the appellants rely on the cases of Gilbert Kimatare Nairi & Another [Suing as personal representatives of the Estate of Lemaiyan Richard Kimatare [Deceased] v Civiscope Limited [2021] eKLR; Dora Mwawandu Samuel [Suing on her behalf and on behalf of the Estate of Samuel Muweliani Jumamosi [Deceased] v Shabir M. Hassan [2021] KEHC 8665 [KLR] and Moses Wetangula & Another v Eunice Titika Rengetiang [2018] KEHC 1038[KLR].

The Respondent's Submissions

7. The respondent relies on the cases of Ainus Shamsi Hauliers Limited v Moses Sakwa & Another [Suing as personal representatives of the Estate of Ben Siguda Okach [Deceased] Mombasa HCCA No. 10 of 2020; MNM & Another v Solomon Karanja Githinji [2015] eKLR; Chen Wembo & 2 Others v IKK & Another [Suing as the legal representatives and administrators of the Estate of CRK [Deceased] [2017] eKLR and Silvanos Kizito v Hassan Abdi [Suing as administrator and legal representatives of Mohammed Hassan Noor [Deceased] Meru HCCA No. E055 of 2022 and submits that the amount of Kshs. 2 million awarded by the trial court was not exaggerated or excessive but fair in the circumstances and thus should not be disturbed.
8. The respondent further relies on Order 42 Rule 13[4] of the Civil Procedure Rules and the cases of Kakamega Election Petition Appeal No. 3 of 2018 Elvis Anyimbo Sichenga v ODM & Others [2016] eKLR; Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 Others [2015] eKLR; Chege v Suleiman [1988] eKLR and Lucas Otieno Masaye v Lucia Olewe Kidi, Kisumu ELC No. 27 of 2020 and submits that the failure by the appellants to attach a decree to the record of appeal filed on 6th December 2024 rendered the instant appeal incompetent.



Issues for determination

9. The main issues for determination are:-
 - a. Whether the appeal is defective for failure to attach a decree.
 - b. Whether the trial court erred in adopting a global sum approach and awarding an inordinately high award for loss of dependency.

The Law

10. 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.”

11. 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.

12. 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 appeal is fatally defective for failure to attach a decree

13. The respondent submits that the appeal is fatally defective for failure by the appellants to attach a decree in the Record of Appeal which renders the appeal incurably defective. I have perused the record of appeal and noted that the appellants attached a certified copy of the judgment and therefore the failure to attach the decree is a technicality which in the court’s view ought not to invalidate the appeal. Furthermore, the appeal was already admitted and the lower court record is before this court. It is my considered view that no prejudice was occasioned to the respondent by the said omission. This court is



guided by the decision in *South Nyanza Sugar Co. Ltd v Daniel Obara Nyandoro* [2010] eKLR where the court stated:-

“In my view, it will amount to miscarriage of justice for this court to strike out the appeal for the reason as advanced by Mr. Ogweno when the appeal had already been admitted and directions taken in the presence of counsel for both parties. In any event, the lower court record is before this court and no prejudice will be occasioned to the respondent by reference to the same. In addition, it will be against the spirit of the overriding objectives of the *Civil Procedure Act* as stated under Section 1A and 1B for this court to summarily reject the appeal for want of decree.”

14. Further in the Court of Appeal in the case of *Emmanuel Ngade Nyoka v Kitheka Mutisya Ngata* [2017] eKLR held that:-

“According to the Judge, the record of appeal. Before him had a certified copy of judgment of the trial court. Consequently, he reasoned, the record of appeal was competent notwithstanding the fact that a formal decree had not been included in the record.

We entirely agree with the reasoning of the learned Judge on this aspect. In any event, this was a mere technicality that could not have sat well with the current constitutional dispensation that calls upon courts to go for substantive justice as opposed to technicalities. Further holding otherwise would have run counter to the overriding objective as captured in Section 1A and 1B of the *Civil Procedure Act*. Finally, one would ask what prejudice did the appellant suffer with the omission of the certified copy of the decree in the record of appeal. We do not discern any.”

15. Therefore it is my considered view that the appeal herein is not fatally defective for failure to attach a decree.

Whether the trial court erred in adopting a global sum approach and awarding an inordinately high award for loss of dependency.

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 deceased died at the age of 45 years and the appellant faults the trial court for adopting the global sum approach and awarding a sum of Kshs. 2 million which is inordinately high. The respondent on the other hand argues that the sum of Kshs. 2 million is sufficient and should not be disturbed.



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.

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. 2,000,000/- considered that the respondent did not avail evidence of the deceased’s earnings. The trial magistrate further relied on the case of *Mary Khayesi Awalo & Another v Mwilu Malungu & Another* ELD HCCC 19 of 1997 [1999] eKLR and noted that the deceased was 47 years old and the court awarded the plaintiff Kshs. 1,300,000/- for loss of dependency and thus considering the age of the deceased and the inflation trends, proceeded to award a sum of Kshs. 2 million. It is my considered view that the sum of Kshs. 2 million is on the high side and the decision the trial court relied on is a bit old. It is my view that a sum of 1 million is sufficient compensation considering the deceased was not survived by his own nuclear family but his father and brother. I hereby award Ksh.1,000,000 for loss of dependency. The award of Ksh.2,000,000 by the magistrate is hereby set aside.

22. In view of the foregoing, I find the appeal partly merited and it is hereby allowed to the extent of the award for loss of dependency award.

23. The parties shall meet their own costs of this appeal.

24. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

