



**Kariuki v King’ola ((Suing as the Legal Representative and/or Administrator of the Estate of David King’ola Muthiani)) (Civil Appeal E004 of 2022) [2024] KEHC 1447 (KLR) (13 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1447 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E004 OF 2022  
GMA DULU, J  
FEBRUARY 13, 2024**

**BETWEEN**

**JOSEPH NJEGA KARIUKI ..... APPELLANT**

**AND**

**PAUL KISUI KING’OLA ..... RESPONDENT**

**(SUING AS THE LEGAL REPRESENTATIVE AND/OR ADMINISTRATOR OF THE ESTATE OF DAVID KING’OLA MUTHIANI)**

*(From the judgment delivered by Hon. C. K. Kithinji (PM) at Voi Law Courts on 2nd February 2022 in CMCC Case No. 48 of 2021)*

**JUDGMENT**

1. In a judgment delivered on 2<sup>nd</sup> February 2022, the learned Magistrate ordered as follows:-

“In the end I enter judgment for the plaintiff against the defendant as follows:-

- a. Pain and suffering Kshs. 300,000.00
- b. Loss of expectation of life Kshs. 150,000.00
- c. Loss of life dependency Kshs. 1,470,117.60
- d. Special damages Kshs. 119,780.00

Total Kshs. 2,039,897.60

The sums awarded will attract interest at court rates from the date of judgment. Costs to follow the event. The plaintiff is the successful party, hence they have the costs of the suit.”



2. Aggrieved by the judgment of the trial court, the appellant who was the defendant in the trial court, has come to this court on appeal through counsel Mbuya & Company Advocates on the following grounds:-
  1. That the learned trial Magistrate misdirected herself by awarding a figure that is inordinately too high in the circumstances of the case and deviating from existing and established judicial principals on accident claims.
  2. The learned Magistrate failed to properly or at all evaluate the evidence on record cumulatively and hence reached a wrong decision on quantum in view of the evidence on record.
  3. The learned trial Magistrate erred in failing to consider and applying the cogent facts raised by the appellant's defence and submissions as against the evidence of the respondent's witnesses that testified and reached a wrong decision on quantum.
  4. The learned Magistrate erred in law and in fact in failing to consider the defendant's submissions and authorities in making a finding on quantum.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by IRB Mbuya & Company Advocates for the appellant, as well as the submissions filed by Rotich, Langat & Partners for the respondent.
4. This is a first appeal, and I am bound to evaluate all the evidence on record afresh and draw my own independent conclusions but bear in mind that I did not have the opportunity to see or hear witnesses testify to determine their demeanour and make due allowance for that – see *Selle & Another =Versus= Associated Motor Boat Company Ltd & Another* (1968) EA 123.
5. This appeal being on quantum of damages, I have also to be guided by the principle restated in many cases, including *Catholic Diocese of Kisumu =Versus= Tete* (2004) eKLR that assessment of damages is at the discretion of the trial court, and that an appellate court can justifiably interfere with the quantum so awarded only if it is satisfied that the trial court applied wrong principles as by taking into account some irrelevant factor or leaving out of account some relevant one or misapprehending the evidence and so arrived at an inordinately high or inordinately low figure which presents an entirely erroneous estimate of the damage.
6. At the trial, the evidence of a police officer who had testified in Civil Case No. 193 of 2019 *Robert Sila Mutbini =Versus= Joseph Njenga Kariuki* was by consent admitted in this case. The plaintiff, now respondent then called two other witnesses PW2 Paul Kisui Kingola (plaintiff) and PW3 James Githui Ndungu. On their part, the defendants (now appellants) opted not to tender any witness testimony.
7. Having perused the trial court record, the judgment of the trial court and the submissions of counsel on both sides, I am of the view that liability has not been contested on appeal. Also not contested is the award for pain and suffering, and the award for loss of life expectancy.
8. What is contested is the award for loss of dependency and the award for special damages.
9. I note that for loss of dependency, the appellant's counsel at the trial had proposed a global figure of Kshs. 400,000/=, relying on the case of *John Wamae & 2 Others =Versus= Jane Katuku Nziva & Another* (2017) eKLR.
10. The trial Magistrate however went by the evidence of PW2 that the deceased was a long distance lorry driver, 73 years of age, who earned Kshs. 36,000/= per month.



11. In my view, with the evidence on record wherein no documentary evidence was tendered in court by the plaintiff to support the occupation of the deceased, and where there was no mention of at least one of the alleged employers of the deceased, it cannot be said that the respondent proved on the balance of probabilities that the deceased was so employed as a lorry driver and that he earned the alleged amount of Kshs. 36,000/= per month.
12. In those circumstances therefore, though in my view, it was quite reasonable for the trial Magistrate to adopt the minimum Wages Guidelines LN2-2019, the minimum wages applicable should have been that of unskilled labourer, and not that of a long distance driver. I will thus reduce the figure of Kshs. 30,627.45 used by the trial Magistrate to Kshs. 15,000/= per month for unskilled labourer. The other findings and decisions of the trial Magistrate on loss of dependency remain as determined by the trial court. The award under this head will thus be as follows – Kshs. 15,000 x 8 x 12 x ½ = Kshs. 720,000/=.
13. With regard to the award for special damages relating to funeral expenses, I hold that in this country it has been accepted that reasonable funeral expenses are awardable by courts even where there are no detailed receipts or records tendered in evidence – see Wesley Kipkoech Kandogo =Versus= Unistar Transporters Limited (2007) eKLR. I also find that though the appellant’s counsel has submitted on appeal that funeral expenses were not pleaded, such were actually pleaded under the heading “Particulars of Special Damages” in the plaint wherein it was stated as follows:-
 

“(e) Transportation costs and funeral expenses (to be stated at the hearing).”
14. In my view therefore, the above averment is a sufficient or adequate pleading for funeral expenses, thus the trial court was justified in assessing and awarding the amount it considered proved as special damages for funeral expenses.
15. I thus allow the appeal in part, and vary the award for loss of dependency and order that the quantum of damages will now be as follows:-
  - a. Pain and suffering Kshs. 300,000
  - b. Loss of Expectation of Life Kshs. 150,000
  - c. Loss of dependency Kshs. 720,000
  - d. Special damages Kshs. 119,780

Kshs.1,289,780
16. I order that each party will bear their respective costs of the appeal.

**DATED, SIGNED AND DELIVERED THIS 13<sup>TH</sup> DAY OF FEBRUARY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred/Trizah – Court Assistants

Ms. Wanyama for appellant

Ms. Langat for respondent

