



Kariuki v Munene (Suing as the Legal Administrator of the Estate of Peris Wanjiru Mugo - Deceased) (Civil Appeal E037 of 2022) [2024] KEHC 6808 (KLR) (11 April 2024) (Judgment)

Neutral citation: [2024] KEHC 6808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E037 OF 2022
GMA DULU, J
APRIL 11, 2024**

BETWEEN

DANIEL NDIRANGU KARIUKI APPELLANT

AND

JOSPHAT MUGO MUNENE (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF PERIS WANJIRU MUGO - DECEASED) RESPONDENT

(From the Judgment and Decree in Civil Case No. E075 of 2022 delivered on 24th August 2022 by Hon. C. K. Kithinji (PM) at Voi Law Courts)

JUDGMENT

1. In a judgment delivered on 24th August 2021 the learned trial Magistrate in Voi Magistrate’s Civil Suit No. E075 of 2021 found for the plaintiff (now respondent) and concluded as follows:-

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

- a. Pain and suffering Kshs. 50,000/=
 - b. Loss of expectation of life Kshs. 100,000/=
 - c. Loss of dependency Kshs. 4,560,000/=
 - d. Special damages Kshs. 30,000/=
- Sub-total Kshs. 4,740,000/=
- Less 15% apportionment of liability Kshs. 711,000/=
- Total judgment sum Kshs. 4,029,000/=



30. The sum awarded will attract interest at court rates from the date of this judgment.
 31. Costs follow the event. The plaintiff is the successful party hence they will have the costs of the suit.”
2. Aggrieved by the decision of the trial court, the appellant who was the defendant in the trial court, has come to this court on appeal through counsel Lenjo Saru & Associates Advocates, on the following grounds:-
 1. That the trial Magistrate erred in law and fact in awarding general damages for loss of dependency where the proof of earnings (multiplicand) had not been proven.
 2. That the learned Magistrate erred in law and in fact by misdirecting herself and failing to consider, appreciate and uphold the appellants defence, evidence and submissions and subsequently enter judgment as prayed by the plaintiff against the defendant.
 3. The trial Magistrate erred in law and fact in making excessive and unproven awards to the respondent’s respectively as stipulated in the judgment.
 4. The learned Magistrate erred in law and in fact by relying on extraneous and irrelevant consideration thereby arriving at erroneous decision contrary to law.
 5. The learned Magistrate erred in law and in fact in coming to the conclusions and the judgment she came to is contrary to the evidence, the law and the submissions urged before her.
 3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Charles Dan & Associates Advocates for the appellant, as well as the submissions filed by Michael Ngure & Company Advocates for the respondents.
 4. I note from the grounds of appeal, and the submissions of counsel for the parties that the contest in this appeal is on the quantum of damages, not liability.
 5. On the said quantum of damages also, the contest is on the figure awarded for loss of dependency under the *Fatal Accidents Act*, and not damages for pain and suffering or the award for loss of expectation of life.
 6. Both in the trial court and in this court, the counsel for the appellant has submitted that the award under this head of loss of dependency be a lumpsum of Kshs. 1,000,000/= and relied on the case of *Anne Njeri Njenga v Kamoja Flour Mills & Another* [2006] eKLR where the court applied Kshs. 10,000/= as the monthly wage in the absence of ascertaining income of the deceased.
 7. The respondents counsel on the other hand contends that the Kshs. 30,000/= per month multiplicand used by the trial court, was within range and not erroneous.
 8. At the trial, the respondent called one witness PW1 Josphat Mugo Munene the father of the deceased a single young woman aged 22 years, and without a child. It was his evidence that the deceased was his last born child and employed in the insurance industry earning Kshs. 20,000/= with a bonus for extra earning. He however did not produce any documents. He stated that she gave him Kshs. 10,000/= but not every month.
 9. The appellant did not call any defence evidence, but a consent on liability 15% against 85% was recorded.



10. The burden was on the respondent as plaintiff to prove the damages to be awarded on the balance of probabilities.

11. I note that under the head of loss of dependency, the trial Magistrate found as follows:-

“The age of the deceased is not in dispute. She was 22 years old at the time of her demise. It is also evident that she worked as a marketer in the insurance industry. She supported her parents and siblings and was unmarried. She did not have her own nuclear family to support in addition to her parents and siblings. She is a first born child. The plaintiff maintains that her income was Kshs. 30,000/= a month. That is the only evidence available. It is not far off from the income of a general labourer under the minimum wages regulations for Mombasa area. This sum most reasonably only 1/3 would have reached her parents and siblings in terms of dependency. There is no evidence that she would not have been able to work up to the retirement age of 60 years. Other period that may be she would have worked after 60 years be discounted with other imponderables and vicissitudes of life. I will thus adopt Kshs. 30,000/= as the multiplicand, a ratio of 1/3 and multiplier of 38. The award thus translates to Kshs. 30,000/= x 38 x 12 x 1/3 = Kshs. 4,560,000/=”

12. In my view, the learned Magistrate erred in her findings on the income proved or even testified to in evidence. PW1 talked of monthly income of 20,000/= and that other amount could be bonus for extra work. No document was relied upon. Thus the proof on balance of probability could only be for 20,000/= if believable and so believed. It could not be 30,000/= per month. Secondly, PW1 clearly stated in cross-examination that the deceased only gave him Kshs. 10,000/= when asked for, not every month. The deceased was also last born child and not first born, and no evidence was tendered by PW1 on dependency by the other siblings. The award of the Magistrate on loss of dependency was thus inordinately high.

13. In those circumstances, with the evidence of PW1 on record which does not specifically claim regular dependency from the deceased, in my view a global award for dependency would be the most appropriate approach.

14. In the circumstances and with the evidence on record in this case therefore, I agree with the submissions of counsel for the appellant that a global award of Kshs. 1,000,000/= for loss of dependency would suffice.

15. I thus allow the appeal, set aside the award of Kshs. 4,560,000/= for loss of dependency and substitute the same with Kshs. 1,000,000/=

16. The award of damages will thus be as follows:-

- a. Pain and suffering Kshs. 50,000/=
 - b. Loss of expectation of life Kshs. 100,000/=
 - c. Loss of dependency Kshs. 1,000,000/=
 - d. Special damages Kshs. 30,000/=
- Sub-Total Kshs. 1,180,000/=
- Less 15% apportionment of liability Kshs. 177,000/=
- Total judgment sum Kshs. 1,003,000/=



17. The other orders of the trial court are hereby upheld, except that parties will bear their respective costs of this appeal. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF APRIL 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Mr. Wanjala for appellant

Ms. Kariuki for respondent holding brief for Mr. Ngare

