



**Greenleaf Services Limited & another v Ngugi (Suing as the Administrator  
of the Estate of the Late Moses Kamuri Karanja) (Civil Appeal  
E144 of 2023) [2024] KEHC 5839 (KLR) (Civ) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5839 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E144 OF 2023**

**WM MUSYOKA, J**

**MAY 23, 2024**

**BETWEEN**

**GREENLEAF SERVICES LIMITED ..... 1<sup>ST</sup> APPELLANT**

**PETER KANYAGO NYAGAKI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MARGARET WAITUHA NGUGI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE MOSES KAMURI KARANJA) ..... RESPONDENT**

*(An appeal arising from the judgement of Hon. A. Ogonda, Senior Resident Magistrate,  
SRM, delivered on 29<sup>th</sup> July 2022, in Milimani CMCCC No. E8519 of 2021)*

**JUDGMENT**

1. The suit, at the primary court, was initiated by the respondent, against the appellants, for compensation, arising from the demise of the deceased in a road traffic accident, which allegedly happened on 5<sup>th</sup> February 2021, along Outer Ring Road, Nairobi, involving the said deceased person and motor vehicle registration mark and number KCD 972E, allegedly owned or controlled by the appellants at the material time. The case was that the deceased was a pedestrian, and was knocked down by the said motor vehicle, which was negligently handled or controlled by the appellants. The appellants filed a defence, in which they denied liability, and everything else pleaded in the plaint. In the alternative, they attributed negligence on the deceased.
2. A formal hearing was conducted. 2 witnesses testified for the respondent, and 1 for the appellants. A judgement was delivered, on 29<sup>th</sup> July 2022. Liability was resolved at 50%:50%. The total award was Kshs. 5,465,465.60, broken down into Kshs. 20,000.00 for pain and suffering, Kshs. 150,000.00 for



loss of expectation of life, Kshs. 5,180,805.00 for loss of dependency, Kshs. 114,660.00 special damages; and costs. After applying contribution, the total amount was reduced to 2,732,732.80.

3. The appellants were aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 11<sup>th</sup> December 2022, revolve largely around liability; and the loss of dependency award.
4. Directions were given on 4<sup>th</sup> December 2023, for disposal of the appeal by way of written submissions. There has been compliance, by both sides.
5. The appellants have submitted on only 2 issues: liability and quantum. On liability, it is argued that the trial court should have found the deceased wholly liable, as he was hit while crossing the road, when he should have used a footbridge which was nearby. Patrick Mutie Kimau & another vs. Judy Wambui Ndurumo [1997] eKLR (Gicheru, Tanui JJA & Bosire Ag JA) is cited in support. It is further argued that the respondent did not discharge the burden of proof imposed on her by section 107 of the *Evidence Act*, Cap 80, Laws of Kenya, and Yusuf Abdallah vs. Mombasa Liners Limited [2004] eKLR and Kiema Mutuku vs. Kenya Cargo Hauling Services Limited [1991] 2 KAR 258 are cited in support. On quantum, it is submitted that the award for loss of dependency was excessive, for a person aged 39, a multiplier of 15 was high, and the trial court should have adopted a multiplier of 10. It is submitted the vagaries and vicissitudes of life were not considered. On the loss of expectation of life, it is submitted that the conventional figure is Kshs. 100,000.00, and the award of Kshs. 150,000.00 was not suitable.
6. The respondent also submitted on liability and quantum. On liability, it is submitted that the trial court did not err in assessing liability at 50%:50%, and Isabella Wanjiru Karangu vs. Washington Malala [1983] eKLR (Potter, Kneller JJA, & Chesoni Ag JA), Eastern Produce (K) Limited vs. Christopher Atiado Osiro [2005] eKLR (Gacheche, J), Kiema Mutuku vs. Kenya Cargo Hauling Services Limited [1991] 2 KAR 258 and Valley Bakery Limited & another vs. Musyoki [2005] eKLR (Kimaru, J) are cited. On quantum, the respondent supports the finding and holding of the trial court, and cites Beatrice Wangui Theuri vs. Hon. Ezekiel Bargetuny & another Nairobi HCCC No. 1638 of 1988 (Ringera, J)(unreported) and Victor Warui & another vs. Peter Karimi Gikoro & another [2015] eKLR (N. Mwangi, J) and Yusuf Abdi & another vs. Abihael Yako & another (suing as the legal representative of Moses Gijo Maghere)[2021] eKLR (Nyakundi, J).
7. The appeal turns largely on liability, and quantum of damages.
8. On liability, 2 witnesses testified, PW1 for the respondent, and the 2<sup>nd</sup> appellant himself, as DW1. PW1 was a traffic police officer. He did not investigate the accident, and never visited the scene. He essentially testified based on what was in the police records. He stated that the point of impact was at the middle of the road, as the spot where the deceased was knocked down as he crossed the road. He noted that there was footbridge nearby. The 2<sup>nd</sup> appellant was never charged with a traffic offence, although he testified that he bore greater responsibility for the accident. On his part, the 2<sup>nd</sup> appellant blamed the deceased. He testified that the deceased jumped over a ditch, lost balance, and fell on the path of the vehicle the 2<sup>nd</sup> appellant was driving, and was knocked by the front bumper of the truck. He stated that the road condition was good, the road was not slippery, the brakes were in working order, and he was driving at a speed of 50 to 60 kilometres per hour. He stated that, although he hit the brakes, the vehicle still hit the deceased.
9. So, who was to blame? Of the 2 key actors in that accident scene, only 1 was alive, at the time of trial, to tell what happened. However, the said person, the 2<sup>nd</sup> appellant, was not very inspiring, as a witness. He filed a witness statement, and he testified in open court. The version given in his statement and the narrative in open court were not in tandem. In his witness statement, he stated that he suddenly spotted the deceased attempting to cross the road, and he applied brakes, but it was too late, the 2 of them met



at the middle of the road, and the deceased was hit by the front bumper. The narrative in open court was that the accident happened when the deceased jumped over a ditch, and fell on the path of the vehicle that the 2<sup>nd</sup> appellant was driving, from where he was hit. He did not define where the ditch was, whether it was off the road, or on the road, and he did not talk about the point of impact, whether it was off the road, or on the edge of the road, or in the middle of the road. The disconnect between those 2 versions would suggest that the 2<sup>nd</sup> appellant was not altogether truthful on what exactly transpired.

10. The deceased died, and so he was not available to tell his side of the events. The respondent called a police officer, to tell it on his behalf. The police officer, no doubt, was not at the scene, and did not investigate the matter, but he had records, supposedly from the officer who did the investigations. He averred to the point of impact having been at the middle of the road, something which tallies with the written witness statement by the 2<sup>nd</sup> appellant, that the point of impact was at the middle of the road. The police officer blamed the 2<sup>nd</sup> appellant for the accident, but he did not give specific reasons why he did so. The 2<sup>nd</sup> appellant was never charged with any traffic offence, despite the police holding him responsible for the crash.
11. Given the muddled explanation of the events by the 2<sup>nd</sup> appellant, between his written and oral statements to the court, as to the facts as he narrated them in both, it would appear that the 2<sup>nd</sup> appellant was to blame. Firstly, drivers are required to keep a proper lookout, at all times, for any unforeseen event could happen, at any time, such as a pedestrian recklessly dashing onto the road, or the vehicle ahead stopping suddenly. In the event of such occurrences, the driver is expected to apply brakes, and, if their vehicle was at a moderate speed, the vehicle would stop, and avoid a crash. Alternatively, the driver is expected to take evasive action. In this case, the 2<sup>nd</sup> appellant testified that he applied brakes, but still hit the deceased. I would agree with the trial court, the fact that he could not stop or control the vehicle to stop the crash, meant that he was speeding in the circumstances. He only spoke about applying brakes, he did not testify as to whether he took evasive action, and, if he did not, he did not explain what prevented him. On the part of the deceased, the fact that he chose to cross the road, instead of using the footbridge, which was said to be nearby, meant that he also put his life in danger, for footbridges are meant to avoid such accidents. If there was a footbridge, it meant there was no designated crossing for pedestrians, at the spot where the deceased was making his crossing, and the deceased did not, therefore, take precautions for his own safety. However, that alone would not absolve the 2<sup>nd</sup> appellant from liability. He was still under an obligation to keep a proper lookout, even for pedestrians who chose to be reckless.
12. Given that scenario, liability was properly shared, and the trial court was right in holding that liability be assessed at 50%:50%, based on the principle that where there is evidence of a clash or collision, but it is unclear on who was entirely to blame, both sides should take equal blame. See *Lakhamshi vs. Attorney General* [1971] EA 118 (Spry VP, Lutta & Mustafa, JJA), *Hussein Omar Farah vs. Lento Agencies* [2006] eKLR (Omolo, Tunoi & Githinji, JJA), *Domitila Wangui Karugu & another vs. Dagu Hidris Haide* [2020] eKLR (Majanja, J), *Amani Kazungu Karema vs. Jackmash Auto Ltd & another* [2021] eKLR (Nyakundi, J) and *Ndatho vs. Chebet* [2022] KEHC 346 (KLR)(Gitari, J).
13. On the argument, by the appellants, that the respondent did not discharge the burden of proof placed upon her by section 107 of the *Evidence Act*, I note that no authority has been cited on that. I believe the same is raised with respect to liability. The accident was not disputed. There was consensus that it occurred, and that the deceased died as a consequence. The dispute was on how it happened. There was the version by the police, for the respondent; and by the 2<sup>nd</sup> appellant. The 2<sup>nd</sup> appellant was the only eyewitness who testified. He did not help the court much, because he gave 2 contrasting versions of



what happened. Such mixed up tales could not dent the version by the police, that, according to their investigations, the collision happened at the middle of the road, which coincides with the version by the 2<sup>nd</sup> appellant, in his written statement. I have cited caselaw above, that in the circumstances where there is evidence of a collision, and there is insufficient evidence on how it happened, and on who was to blame, it would be deemed that the 2 actors involved would be equally to blame. That was what happened here. The issue, therefore, that the respondent did not prove her case, to the required standard, should not arise..

14. Next I consider the matter of loss of dependency, where the key argument turns around the multiplier adopted by the court. On the multiplier, the court takes into account the age of the deceased at the time of his death, and assesses the period that he would have continued working, up to retirement, having regard to the nature of his engagement. For government employees, the age of retirement is 60. In the private sector, it may depend on the contract of employment. For those employed in their own personal pursuits, it may depend on various factors. Although 60 years, the age of retirement for most government employees, is used as a standard, in most cases, it is not mandatory in all cases, and the court has discretion, depending on the circumstances of each case, to consider an age of retirement higher than that. Whatever is considered to be the age when the deceased would have slowed down, or retired, the so-called vagaries and vicissitudes of life would have to be factored, whose effect is usually to reduce the multiplier. If the age of retirement is taken to be 60, it would mean, for example, that a 50 year-old would have another 10 years to go, consideration of the vagaries and vicissitudes of life may work to reduce the figure 10 to 5, or so, for such a person.
15. In this case, the deceased was 39 years of age. If he was to retire at age 60, he would have continued to work for another 21 years. There was evidence that he was in employment, for a payslip was produced. There is and was no dispute on the multiplicand. No documents were produced from his employer on retirement age. In view of that, adopting the retirement age in the public sector could be useful and helpful. The vagaries and vicissitudes of life ought to have been factored, for, in life, there was no guarantee that he would have remained in employment till retirement at 60. Anything could happen at any time, just the way it happened that he died at age 39. The trial court adopted a multiplier of 15, the appellants argue that that was high, and proposes 10.
16. I believe that the multiplier adopted by the trial court was appropriate. I have reviewed a number of decisions, on adoption of an appropriate multiplier. In *Kenya Power & Lighting Company Limited vs. James Muli Kyalo & another* [2020] eKLR (Mwita, J), the appellate court reduced the multiplier adopted, of 25, to 20, for a 29 year-old. *Sidi Kazungu Gohu & another (legal representative of the estate of George Yonggo Katana (Deceased)) vs. Fatuma Abdi Mohamed & another* [2021] eKLR (Nyakundi, J), the court adopted a multiplier of 24 for a 34 year-old. In *Melbrimo Investment Company Limited vs. Dinah Kemunto & Francis Sese (suing as personal representative of the estate of Stephen Sinange alias Reuben Sinange (Deceased))* [2022] eKLR (J. Kamau, J), the court adopted 20 years as a multiplier, where the deceased died at 35 years. In *Agnes Mutinda Ndolo & another vs. Mboya Wambua & 2 others* [2017] eKLR (Sergon, J), the multiplier adopted was 21, for a person who died at 39 years. In *Paul Ouma vs. Rosemary Atieno Onyango & Peter Juma Amolo (suing as the legal representative in the estate of Joseph Onyango Amolo (deceased))* [2018] eKLR (JA Makau, J), a multiplier of 20 was applied for a 38 year old. In *Nancy Marigu Gabriel (suing as legal representative of the estate of Linus Njeru Marigu (Deceased)) vs. David Kimani* [2015] eKLR (Muchemi, J), a multiplier of 15, adopted by the trial court, was increased to 22, on appeal, for a person aged 33. See also *Joseph Njuguna Njoroge Mwaura (suing in his capacity as the personal representative of Ann Nduta) vs. Builders Den Limited & another* [2014] eKLR (Wendoh, J), *Elizabeth Chelagat Tanui & another vs. Arthur Mwangi Kanyua*



[2013] eKLR (Waweru, J) and Purity Karimi Njoroge & 2 others vs. Alice Wangui Ndungu & 3 others [2016] eKLR (Janet Mulwa, J).

17. In their written submissions, the appellants have raised the issue of the award of loss of expectation of life being excessive, for being above the conventional Kshs. 100,000.00. The grounds of appeal on quantum are limited to loss of dependency. None of them allude to loss of expectation of life. Parties are bound by their pleadings. As the relevant pleadings, the memorandum of appeal herein, dated 11<sup>th</sup> December 2022, do not dwell on the award on loss of expectation of life, I would have no basis for addressing my mind to it, and making any findings and conclusions on it. In any case, Kshs. 100,000.00 is just a conventional figure, nothing stops the court from considering a higher figure. See Commercial Transporters Limited vs. Dorcas Adoyo Owiti & another [2017] eKLR (PJ Otieno, J).
18. In the end, I find no merit in the appeal herein, and I hereby dismiss it with costs. Orders accordingly.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 23<sup>RD</sup> DAY OF MAY 2024**

**W MUSYOKA**

**JUDGE**

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Mahugu, instructed by Wangai Nyuthe & Company, Advocates for the appellants.

Mr. Ogowe, instructed by Ogowe & Company, Advocates for the respondent.

