



**Kuria v Michale (Civil Appeal E031 of 2022) [2024] KEHC 4674 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4674 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E031 OF 2022**

**JR KARANJA, J**

**MAY 2, 2024**

**BETWEEN**

**ANN MUTHONI KURIA ..... APPELLANT**

**AND**

**OCHIENG ONYANGO MICHALE ..... RESPONDENT**

**JUDGMENT**

1. This Appeal arises from the decision of the Resident Magistrate at Kericho in CMCC. No.206 of 2018, in which the Plaintiff/Respondent, Ochieng Onyango Michael as the Legal Representative of the Estate of the Late Agnes Atieno Okoth (deceased) instituted this suit against the Defendant/Appellant, Anne Muthoni Kuria, claiming damages under the Law Reform and Fatal Accidents Acts, together with Special Damages and Costs of the suit.
2. The claim was precipitated by a road Traffic Accident which occurred on the 1<sup>st</sup> April, 2018, along the Londiani/Chepseon road involving a Public Service Vehicle (Matatu) Reg. No.KBK 646 F Toyota, in which the deceased was travelling as a lawful passenger.  
  
It was pleaded that the vehicle belonged to the Respondent/Defendant as the beneficial or registered owner and on the material date of the accident, it was driven in a manner which was so negligent that the accident occurred and resulted in the deceased succumbing to the serious injuries occasioned to her.
3. The Plaintiff/Respondent contended that the driver of the vehicle drove in a manner which was improper and failed to apply brakes in good time so as to avoid the accident. That, the vehicle was defective and was at the material time driven at an excessive speed. The Plaintiff contended further that the driver failed to slow down, stop, serve or in any other to avoid the accident. That, the Respondent/Defendant was vicariously liable for the negligent acts of her driver, servant, agent which led to the accident thereby causing loss and damage to the state of the deceased.
4. The Plaintiff/Respondent therefore prayed for Judgment against the Defendant/Appellant as prayed in the Complaint dated 17<sup>th</sup> July, 2018. The Appellant/Defendant denied the claim and filed a statement



of defence in that regard. She denied the allegations made against her by the Respondent/Plaintiff and contended that if the accident indeed occurred as alleged, then it was caused by the reckless negligent/careless acts or omissions on the part of the deceased and owner, driver, agent and/or employee of Motor Vehicle Reg. No. KBK 646 F.

5. The Appellant/Defendant further contended that the deceased failed to take adequate precautions for her safety and to heed to instructions on safety when travelling. That, the deceased failed to heed traffic rules and regulations when travelling and to apply or use the seat belt for her own safety. That the deceased distracted the driver of the vehicle by engaging him in endless banter.
6. The Appellant/Defendant invoked the doctrine of “Violenti non fit injuria” and denied that the doctrine of “Res-ipsa loquitur” applied to the circumstances of this case. The Appellant therefore prayed for the dismissal of the case with costs. After close of pleadings, the matter was set down for hearing which culminated on 4<sup>th</sup> June, 2022 when the Trial Court delivered Judgment in favour of the Respondent/Plaintiff against the Appellant/Defendant in the total sum of Kshs.990,000/= together with costs and interest.
7. The amount was made up of:-
  1. Pain & Suffering -Kshs. 20,000/=
  2. Loss of Expectation of Life -Kshs.100,000/=
  3. Loss of Dependency -Kshs.850,000/=
  4. Special Damages - Kshs. 20,000/=Total - Kshs.990,000/=

The Appellant/Defendant was dissatisfied with the Judgment and preferred the present Appeal on grounds set out in the Memorandum of Appeal dated 24<sup>th</sup> June, 2022.

8. In general, the Appellant complains that the Trial Court erred in the assessment of damages and arrived at an amount which was excessive and unjustified. That, the lump sum award of Kshs.850,000/= for loss of dependency was inordinately high, unjustified and against the evidence on record. That, the award of Kshs.100,000/= for loss of life expectation was excessive and unjustified and that the Trial Court failed to consider conventional awards in cases of similar nature.
9. The Respondent opposed the Appeal which as directed by the Court on 6<sup>th</sup> July, 2023 was to be canvassed by written submissions.

The Respondent’s submissions dated 3<sup>rd</sup> August, 2023 were filed on 17<sup>th</sup> August, 2023 through P. R. Ojala & Co., Advocates. The Appellant did not file her submissions despite several postponements of the hearing to accommodate and allow her to do so through her Advocates on record i.e. Kimondo Gachoka & Co., Advocates.
10. However, on the last hearing date, i.e. the 30<sup>th</sup> April, 2024, the Appellant through the learned Counsel, M/s Moraa Orina, holding brief for Mr. Nyambane, learned Counsel, indicated that the appellant was relying on her Grounds of Appeal in support of the appeal. Learned Counsel, urged this Court to consider the grounds and find merit in them.
11. This Court, having given considerations to the appeal on the basis of its supporting grounds, the submissions by the parties, written or otherwise and the Trial Court’s record, was duly bound to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses (see, *Selle v Associated Motor Boat Co. Ltd* (1968) E.A.123).



12. In that regard, the evidence by the Plaintiff/Respondent, Ochieng Michael Onyango (PW.1) was duly considered along with that of a Traffic Police Officer, P.C. Michael Maloba (PW.2). The Defendant/Appellant did not testify in Court nor avail any witness in support of her defence, yet she purported to close the defence without first opening it by calling witnesses. This was dangerous as it implied that the Defendant/Appellant did not have any evidence in support of her pleadings in defence of the claim or that she conceded the claim without much ado.
13. Be that as it may, the Plaintiff's evidence as a whole was undisputed and it did establish on a balance of probabilities that the material accident was caused by the negligent, careless or reckless manner in which the Appellant's ill-fated vehicle was driven. Indeed, the occurrence of the accident and the Appellant's ownership of the vehicle were clearly undisputed factors. The traffic police officer (PW.2) indicated that the accident was self-involving. This meant that no other person could be blamed for the accident save. The Appellant through her driver, agent and/or employee.
14. It was therefore ironic for the Appellant to blame the deceased for the accident in her statement of defence. The deceased was merely a passenger in the vehicle. She had no control over it and trusted that the driver of the vehicle would "deliver" her and fellow passengers to their destination safely. However, the trust was shattered by the drivers negligent or reckless manner of driving thereby causing the accident and prematurely ending the life of the deceased.
15. Basically, the Appellant's culpability in causing the accident was not disputed and was indeed conceded going by the wordings of paragraph 9 (nine) of the statement of defence dated 11<sup>th</sup> September, 2018. In essence, this appeal is on the quantum of damages rather than on both quantum of damages and liability as may be deciphered from all the seven (7) grounds of Appeal. In any event, liability was fully established against the Appellant on the basis of the Plaintiff's evidence which was in fact not disputed at all.
16. It would therefore follow that the Trial Court's conclusion and finding that the appellant/Defendant was fully or 100% liable for the accident was proper and correct in as much as it was based on sound and credible evidence from the Respondent.  
The Appellant/Defendant having been found fully liable for the accident was also fully liable to the plaintiff in damages under both the [Law Reform Act](#) and the [Fatal Accidents Act](#).
17. It was pleaded and confirmed in evidence that at the time of her death, the deceased was aged Fifty Five (55) years and of good health. She earned Kshs.15,000/= per month as a business lady and would expend Kshs.10,000/= out of the amount for her family upkeep. She was survived by three sons and five daughters. The Plaintiff/Respondent was the eldest of all the eight children. His brothers were OO and CO, both minors at the time. His sisters included Caren Auma Atieno, an adult and Caroline Awuor, Teresia Akinyi, Lavenda Akinyi and Nicole Adhiambo, all minors at the time.
18. The Death Certificate (P. Exh.3) confirmed the age of the deceased as Fifty Five (55) years. The statement from Skyline Sacco Society Ltd (P. Exh.5) gave a glimpse of the deceased's probable earnings and savings.

In his final submissions in the trial court, the Plaintiff/Respondent asked for damages in the total sum of Kshs.2,820,500/= made of Kshs.100,000/=, pain and suffering, Kshs.300,000/=, loss of expectation of life, Kshs.2.4 Million, loss of dependency at 15,000/= x 20 x 12 x 2/3<sup>rd</sup> and special damages, Kshs.20,500/=.



19. The Appellant/Defendant suggested a sum of Kshs.10,000/= for pain and suffering, Kshs.80,000/= for loss of expectation of life and Kshs.173,760/= for loss of dependency at Kshs.7,240/= x 6 x 12 x 1/3<sup>rd</sup>.

The trial court considered all the evidence placed before it and the submissions by the parties and made a total award of Kshs.990,000/= as indicated hereinabove.

20. With regard to loss of dependency, the trial court opted for the global figure or lumpsum approach rather than the multiplier approach for reasons that the deceased had already retired from her formal employment and was no longer earning from it. And, with regard to the alleged income of Kshs.500/= per day, the trial court found no evidence to prove the earning said to arise from the deceased's business activities.
21. In view of the existing circumstances, the global approach method rather than the multiplier approach was most suitable in the assessment of the damages for loss of dependency under the *Fatal Accident Act*. In that regard, this court agrees fully with the trial court and so does the Respondent/Plaintiff in this Appeal.
22. In as much as the Appeal was basically on quantum of damages, it was incumbent upon this court to consider the principles applicable in such circumstances as set out by the Court of Appeal in the case of *Kemfro Africa Ltd t/a New Express Services Ltd & Another v Lubia & Another* (1985) eKLR, where it was stated that:-

“The Principles to be observed by an Appellate Court in deciding whether it is justified in disturbing the quantum of damages awarded by a Trial Judge were held by the Former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account, an irrelevant factor, or left out of account a relevant one, or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages”.

23. Applying the aforementioned principles to this case and with regard to the general damages under the *Law Reform Act* and the *Fatal Accidents Act*, this court see no factual or legal reason to interfere with the awards made by the trial court.

As per the Special Damages of Kshs.20,000/=, the amount was specifically pleaded and established by necessary documentary evidence (P. Exh.6).

24. In such, this Appeal is unmerited and is hereby dismissed with costs to the Respondent.

Ordered accordingly.

**DATED, DELIVERED AT KERICHO THIS 2<sup>ND</sup> DAY OF MAY, 2024.**

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**J. R. KARANJA**

**JUDGE**

