



**Mugambi v Chebet & Cheruiyot (Suing as the Legal Representatives
of the Estate of Hillary Kipkirui Rono – Deceased) (Civil Appeal
E003 of 2023) [2024] KEHC 5206 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E003 OF 2023**

JR KARANJA, J

MAY 2, 2024

BETWEEN

WINNIE WAMBUI MUGAMBI APPELLANT

AND

**MERCY CHEBET & CHEBET CHERUIYOT (SUING AS THE LEGAL
REPRESENTATIVES OF THE ESTATE OF HILLARY KIPKIRUI RONO –
DECEASED) RESPONDENT**

JUDGMENT

1. The appeal arises from the decision and Judgment of the Principal Magistrate at Kericho in CMCC No. E153 of 2021 delivered on the 31st August 2022.

The appellant, Winnie Wambui Mugambi, was therein sued by the respondent, Mercy Chebet and Chebet Cheruiyot, in their capacity as the legal representatives of the estate of Hillary Kipkurui Rono (deceased), for damages under the *Fatal Accidents Act* and the *Law Reform Act* arising from a road traffic accident which occurred along the Kericho-Nakuru road on the 10th March 2020 involving the deceased's motor cycle registration No. KMEL 4441 and the appellant's motor vehicle registration No. KBH 184 J.

2. It was pleaded that on the material date the deceased was riding his motor cycle along the said road when he was hit and run over by the appellant's motor vehicle which was at the time being driven, managed and/or controlled in a manner which was negligent. As a result, the deceased suffered fatal injuries.
3. The plaintiff/respondents blamed the appellant for the accident and instituted this suit in which they prayed for general damages together with interest and costs of the suit against the defendant/appellant.



The appellant denied the claim and contended that if at all the alleged accident occurred, then it was wholly or substantially contributed to by the deceased's careless or negligent manner of riding his motorcycle. The appellant therefore prayed for the dismissal of the suit with costs.

4. After trial, the appellant/defendant was found liable to the respondents/plaintiffs in damages. Judgment was therefore entered in favour of the plaintiffs against the defendant in the total sum of 2,401,520/=, made of:-
 - a. Pain & Suffering Kshs.30,000/=.
 - b. Loss of expectation of life Kshs.200,000/=
 - c. Loss of dependency Kshs.2,171,520Total Kshs.2,401,520/=.

The plaintiffs were also awarded costs of the suit and interest.

5. Being dissatisfied with the decision, the appellant preferred the twelve (12) grounds of appeal set out in the memorandum of appeal dated 18th January 2023 in which she generally complains that the trial court erred in both facts and law by awarding damages which were manifestly excessive and by finding the appellant fully liable for the accident which finding was against the weight of the evidence.
6. The respondents opposed the appeal which was canvassed by way of written submissions with both parties filing their respective submissions through Matiri Mburu & Chepkemboi Advocates and Kadet & Co. Advocates respectively.

The rival submissions were considered by the court as against the grounds of appeal. Before drawing its own conclusion, it was incumbent upon this court to reconsider the evidence bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (see, *Selle vs Associated Motor Boat Co. Ltd* [1968]EA 123).

7. Accordingly, the first plaintiff, Mercy Chebet (PW2) testified that the deceased was her husband and produced several documents (P.Ex 1 to 8) in support of her claim.

PC Alfred Cherutich (PW1), testified on the occurrence of the accident and confirmed that it involved the defendants motor vehicle No. KBM 1843 Toyota Premio driven at the time by the defendant and motor cycle registration No KMEL 444 Boxer under the control of the deceased and was caused by the defendant's failure to keep distance and ramming onto the motor cycle thereby causing the death of the deceased.

8. The police officer (PW1) indicated that the defendant/appellant was charged with the traffic offence of causing death by dangerous driving and was convicted and sentenced to a fine of Kshs.50,000/= in default three (3) years imprisonment.

The Defendant/Appellant Winnie Mugambi (DW1) testified that she was from Nakuru and on arrival at Chepsir area the deceased motor cyclist made an attempt to overtake her vehicle from the left side when the motorcycle hit her vehicle and fell down with the deceased suffering fatal injuries. He was not at the time wearing a protective helmet. The appellant attributed the accident to the deceased's negligent manner of riding his motor cycle.

9. The foregoing evidence in the opinion of this court raised no dispute with regard to the occurrence of the accident and the appellant's ownership of the ill-fated motor vehicle.

What emerged as the basic issue for determination was whether the accident was caused by the appellant's negligent manner of driving her motor vehicle thereby causing fatal injuries to the deceased



and if so, whether she was liable to the respondents for damages and to what extent in terms of monetary compensation.

10. On liability, the evidence by the respondent and her witness was credible and sufficient enough to show that the appellant was largely to blame for the accident. As indicated by the traffic police officer (PW1) both the vehicle and motor cycle were headed to Kericho direction from Nakuru direction when the vehicle hit the motor cycle after its driver (appellant) failed to keep a safe distance between the two vessels.
11. It was implied that the appellant was at the rear of the deceased when her vehicle rammed onto the motorcycle. Other than failing to keep safe distance, the appellant did not exercise proper look out for other road users including the deceased. This was a clear demonstration that she was negligent, hence the sole contributor of the accident as confirmed by the fact that she was charged with traffic offence of causing death by dangerous driving and was accordingly convicted.
12. The finding by the trial court that the appellant was fully or 100% culpable for the accident was correct as borne by the evidence. Consequently, grounds eight (8) to twelve (12) of the grounds of appeal and the submissions in respect thereof are wanting on merit and are hereby overruled and dismissed.

The remainder of the grounds i.e grounds one (1) to seven (7) relate to quantum of damages.

13. Indeed, the appellant having been responsible for the accident was liable to the respondents in damages under both the Law Reform Act for loss of life expectation and the Fatal Accidents Act for loss of dependency.

It was pleaded that the deceased was aged thirty (30) years old at the material time of accident and was married to the first respondent/petitioner, Mercy Chebet. Apart from the 1st respondent, the deceased was survived by a son Ryan Kipchumba, his father Samuel Cheruiyot and his mother, Sarah Chebet Cheruiyot, the second plaintiff/respondent

14. It was further pleaded that the deceased was a healthy hardworking person who engaged in his business to fend for his defendant. That, the loss of his life due to the appellant's negligence brought loss and damage to his estate and dependants. This was confirmed by his widow (PW2).
15. The death certificate (P. Ex2) confirmed that the deceased's was aged 30 years old at the time of his demise from fatal injuries resulting from the material accident. He suffered severe head injuries and died on the spot. The trial court awarded damages under the Law Reform Act in the sum of Kshs.200,000/= for loss of expectation of life.
16. It was herein submitted by the appellant that both awards made under the Law Reform Act were inordinately high and the circumstances of this case were suitable for an award of Kshs.10,000/= for pain and suffering and Kshs.100,000 for loss of expectation of life.

The respondent on the other hand submitted that the award of Kshs.30,000/= for pain and suffering ought to be increased to Kshs.100,000/= due to the current trend of inflation and the award of Kshs.200,000/= for loss of life expectation ought to be maintained as reasonable compensation for the beneficiaries of the estate of the deceased.

17. Whereas the awards made by the trial court under the Law Report Act were lawful, this court would find that the amounts were rather excessive consideration being given to the fact that the deceased died on the spot meaning that he did not live even for a minute or an hour to endure any pain. He was thirty (30) years old when he died. His life was prematurely cut shortly the appellant's negligent act when it was expected that he would have lived for additional years upto the age of sixty (60) years or



thereabout if it is taken that the life expectancy for men in Kenya is sixty (60) years or thereabout, but with improved access to health facilities it could rise upto seventy (70) years or thereabout.

18. For the reasons foregoing this court finds it just and reasonable to reduce the awards made by the trial court to Kshs.20,000/= and Kshs.100,000/= for pain and suffering and for loss of life expectation respectively. With regard to damages for loss of dependency under the Fatal Accident Act, the trial court awarded a sum of Kshs.2,171,520/= from a multiplicand of Kshs.13,572, a multiplier of twenty (20) years and a dependency ratio of $2/3^{\text{rd}}$.

19. The appellant's submission in that regard shows that she raises no issue with the multiplicand of Kshs.13,572/= but does raise issue with the multiplier of twenty (20) years and the dependency ratio of $2/3^{\text{rd}}$.

The appellant holds the view that a multiplier of sixteen (16) years and a dependency ratio of $1/3^{\text{rd}}$ would reasonably suffice in the circumstances of the case.

20. On the other hand, the respondents see no problem with the multiplicand and the dependency ratio arrived at by the trial court, but they are of the view that the multiplier of twenty (20) years was too low and ought to be enhanced to thirty (30) years for the award under the head to rise to Kshs.3,257,280/=.

21. Having considered the evidence and the submissions by both sides together with the cited case law, the opinion of the court is that the trial's court application of twenty (20) years as the multiplier and $2/3^{\text{rd}}$ as the dependency ratio was in the circumstances of the case proper and reasonable such that reducing the multiplier and dependency ratio as suggested by the appellant would render the award for loss of dependency inordinately low and raising the multiplier as suggested by the respondent would render the award inordinately high under the head.

22. In sum, other than the reduction of the award for pain and suffering to Kshs.20,000/= and for loss of life expectation to Kshs.100,000/= the appeal is largely devoid of merit. Subsequently total award made by the trial court of Kshs.2,401,520/= is hereby reduced to Kshs.2,281,520/= to factor in the aforementioned reduction respecting general damages for pain, suffering and loss of life expectation.

The Judgment of the trial court for the total award of Kshs. 2,401, 520/= is thus set aside and substituted for a judgment for the total award of Kshs. 2,281,520/= together with costs and interest.

Each party shall bear own costs of appeal.

Ordered accordingly

DELIVERED, DATED AND SIGNED AT KERICHO THIS 2ND DAY OF MAY, 2024.

J. R KARANJAH

JUDGE

