



REPUBLIC OF KENYA



KENYA LAW
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**Onserio v Munyotu (Civil Appeal E001 of 2023)
[2024] KEHC 5655 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E001 OF 2023**

F GIKONYO, J

MAY 21, 2024

BETWEEN

EDWIN ONSERIO APPELLANT

AND

DANSON NGEMU MUNYOTU RESPONDENT

JUDGMENT

Appeal on quantum

1. This appeal is on quantum only. Liability was agreed upon by consent of the parties in the ratio of 90:10 in favour of the respondent.
2. Ordinarily, the appellate court, will not interfere with the discretion of the trial court in the assessment of damages except where there is an error in principle or the assessment was a completely erroneous estimation of damages (*Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR.)
3. The major objection by the appellant is on damages on loss of dependency. He has argued that there was no proof of income as the bank statements produced by the respondent had no nexus with the deceased. They belonged to a totally different entity whose relationship with the deceased was not established. They proposed the use of minimum wage as the income. The appellant relied on the *Isaac Kimani & Another v Hellen Wanjiru Rukanga* [2014] eKLR, *Martin Maitima M'Amathi v Simon Njoroge Njuguna & Another suing as the legal representative and administrator of the Estate of Francis Njuguna Njoroge (Deceased)* [2018] eKLR, *Moses Mairua Muchirir v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased))*[2016] eKLR, *Christine Kalama v Jane Wanja Njeru & Another* [2021] eKLR, *Emmanuel Kaningu Karisa & Another v National Land Commission & Another; county government of Lamu & another(interested parties)* [2021]eKLR, *Oyugi Judith & another v Fredrick Odhiambo Ongong & 3 others* [2014] eKLR and Regulation of Wages (General) (Amendment) order, 2018.



4. The respondent stated that the bank statements were produced by consent and were not questioned by the appellant. The respondent was of the view that income was proved. But, in the event, the court is inclined to use minimum wage, then the appropriate notice is the one for 2015 setting the minimum wage at Kshs 10,954.00 They further proposed a global sum award of Kshs 5,000,000 in case the court is not persuaded to uphold the decision of the trial court. The respondent *William Mbugua Ng'ang'a Vs Mohammed Salim & Another* [2020] eKLR and *Mary Khayesi Awalo & Another v Mwilu Malungu & Another* [1999] eKLR

Analysis And Determination

5. Before delving into the substantive issues, it is worthy of the court's determination of the argument by the respondent that, because documents were produced by consent the court should blindly attach probative value to the documents without taking them through the admissibility test.
6. This is an erroneous proposition because documents produced must be subjected to the admissibility test or analysis for purposes of attaching probative value or evidentiary weight to prove or disprove a fact (*Kenneth Nyaga Mwigie v Austin Kiguta & 2 Others* [2015] eKLR).

Loss of Dependency

7. The question of multiplier has emerged as a contested issue. A multiplier method is not to be insisted upon where the facts of the case do not support its application.
8. See Ringera J (as he then was) in the case of *Kwanzia v Ngalali Mutua & another* that:

“The Multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation, where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”
9. The bank statements produced relate to some entity called Vilhub Printing Solutions; there was no evidence showing the nexus between the entity and the deceased, and that the entries in the bank statements were entries of money derived from the business of the deceased.
10. There is also no justification of the use of the minimum wage.
11. Accordingly, global sum award is most appropriate for a young person as the deceased and who was a business of not meagre earnings. Judicial authorities show that an award between 1.5million and 2. million is appropriate. An award of Kshs 2,000,000 is hereby made for loss of dependency. It is so awarded. The award of Kshs 8.9million by the trial court is set aside.
12. Any other awards not specifically set aside remain as was granted by the trial court.
13. Costs on the awards go to the judgment-holder.
14. Interest on the awards shall be from the date of this judgment.



Of special damages

- 15. On special damages, the degree of strict proof depends on the circumstances of the case and the acts complained of. Funeral expenses are normally awarded upon best judgment values based on the circumstances of the case. Therefore, the award of special damages in the circumstances of this case was properly made.
- 16. Given the result of the appeal, no orders as to costs.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION, THIS 21ST DAY OF MAY, 2024.

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HON. F. GIKONYO M.

In the Presence of:
Kasimo for the Respondent – Present
Oremo for the Appellant – Absent
C/A - Otolo

