



**K'Ochieng v Okeyo & another (Suing as the administrators and legal representatives of the Estate of Javan Otieno Okeyo - Deceased) (Civil Appeal E006 of 2023) [2024] KEHC 6730 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6730 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E006 OF 2023**

**KW KIARIE, J**

**JUNE 6, 2024**

**BETWEEN**

**JOHN LENNOX K'OCHIENG ..... APPELLANT**

**AND**

**BENTA AWUOR OKEYO ..... 1<sup>ST</sup> RESPONDENT**

**MESHACK OKEYO ABUOR ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF  
THE ESTATE OF JAVAN OTIENO OKEYO - DECEASED**

*(Being an Appeal from the judgment in Ndhiwa Principal Magistrate's  
PMCC No.103 of 2018 by Hon. B.W. Murangasia–Resident Magistrate)*

**JUDGMENT**

1. John Lennox K'Ochieng, the appellant in this case, was the defendant in Ndhiwa Principal Magistrate's PMCC No. 103 of 2018. This case, which stemmed from a fatal traffic accident, resulted in the judgment delivered by the learned trial magistrate on the 13th day of December 2022. The judgment held the deceased 20% liable and awarded Kshs. After factoring in the contributory negligence, 1,890,000.00 general damages and Kshs.40,000.00 special damages to the respondent.
2. The appellant, deeply dissatisfied with the judgment, filed this appeal. He was represented by Okong'o Wandago & Company Advocates. He raised grounds of appeal as follows:
  - a. The learned magistrate erred in law and fact in failing to find and hold that the respondents' suit before him was statute-barred and further erred in failing to strike it out for being incompetent, having failed to address and/or determine that issue of limitation of actions.



- b. The learned trial magistrate erred in law in proceeding with the suit as before him and in entering judgment for the respondent, as against the appellant, without jurisdiction to do so.
  - c. The learned trial magistrate erred in law and adopting a multiplier of twenty-nine (29) years, when that multiplier was excessive, did not consider vicissitudes of life.
3. The respondents opposed the appeal. They were represented by Staussi, Asunah, and Oluoch advocates. They did not, however, file their submissions.
  4. As the first appellate court, I understand my responsibility to review the evidence presented. However, since I did not have the opportunity to observe the witnesses testify and assess their behaviour, I will be relying on the principles stated in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] E.A. 123. This case establishes that the first appellate court must reassess and evaluate the evidence submitted in the trial court, analyze it, and draw its conclusions.
  5. The appellant did not plead that the suit was statute-barred or raise a preliminary objection for consideration by the trial court. He is estopped from raising the issue on appeal.
  6. It was contended by the appellant that the trial court lacked jurisdiction to hear and determine the case. Paragraph 11 of the statement of defence states:  
The jurisdiction of this court is admitted, but the pleaded cause of action is denied wholly.
  7. In the case of *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR, the Court of Appeal stated: -  
(44) .... a party cannot, through its pleadings, confer jurisdiction to a court when none exists. In this context, a party cannot, through draftsmanship and legal craftsmanship, couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law, not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court...
  8. In *Adero & Another v Ulinzi Sacco Society Limited* [2002] 1 KLR 577, the Court of Appeal stated as follows:
    - 1) .....
    - 2) The jurisdiction either exists or does not ab initio ...
    - 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
    - 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings, even on appeal.
  8. Other than claiming that the trial court lacked jurisdiction, the appellant has not demonstrated the same. The appeal will not turn on this issue.
  9. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt v Khan* [1981] KLR 349 on page 356, Law JA stated:  
...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge



proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.

10. The deceased died aged 21. The appellant contended that a multiplier of 29 adopting years was excessive because it did not consider the vicissitudes of life. It has not been demonstrated how this multiplier can be described as excessive. Though the appellant's advocate informed the court that they filed their submissions, I found none upon checking the e-platform. I was not privileged to know their argument on this point.
11. The upshot of the preceding is that the appeal lacks merit. It is dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 6<sup>TH</sup> DAY OF JUNE 2024**

**KIARIE WAWERU KIARIE**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

