



Marathi & another v Wangari (Suing as the Personal Representative of the Estate of Hilda Wairimu Nganga - Deceased) (Civil Appeal E017 of 2022) [2024] KEHC 8814 (KLR) (23 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E017 OF 2022
JM NANG'EA, J
JULY 23, 2024**

BETWEEN

FRANCIS MUNDARA MARATHI 1ST APPELLANT

JOHN KARIUKI MUKAMI 2ND APPELLANT

AND

FRANCIS NGANGA WANGARI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF HILDA WAIRIMU NGANGA - DECEASED) RESPONDENT

(Being an appeal from the Judgement of the Senior Principal Magistrate's Court at Kikuyu (Hon. Jacinta A. Owiti- SPM) delivered on 18th January 2022 in Kikuyu CMCC NO. 146 OF 2017)

JUDGMENT

1. The appellant herein is challenging the said learned trial magistrate's judgement in which she granted reliefs for the respondent, the plaintiff in the suit before the lower court, as hereunder:

Judgement on liability- 85% : 15 %.

Damages for pain & suffering- Ksh. 20,000.

Damages for loss of expectation of life- Ksh. 100,000.

Damages for loss of dependency—Ksh, 1,200,000.

Special damages- Ksh 42,0000

Grand Total---- 1,362,000

Less 15% -- 204,300



Net award—Ksh 1,157,700.

2. The respondent was also granted the costs of the suit and interest.
3. The appellant's Grounds of Appeal as stated in the Memorandum of Appeal filed on 8th February 2022 may be condensed as hereunder:
 - a. That the learned trial magistrate erred in law and fact in awarding the respondent exorbitant sums of damages against the weight of evidence adduced.
 - b. That the learned trial magistrate's awards are based on wrong principles of the law and thus occasioned a miscarriage of justice.

And

- c. That the learned trial magistrate erred in law and fact by failing to consider the appellants' submissions on the quantum of damages awardable.
4. The appellant therefore prays for setting aside of the lower court's judgement on quantum of damages and replacing it with this court's own assessment of appropriate damages, as well as the costs of this appeal.
5. The summary of the case before the trial court is that the respondent sued the appellants jointly and severally for general damages, special damages, the costs of the suit and interest following a road traffic accident that occurred on 14th December 2016 in which the above named Hilda Wairimu Nganga ("hereinafter referred to as "the deceased") died. The 1st appellant was accused of negligently driving the 2nd appellant's motor vehicle registration number KCH 186 C as a result of which it lost control and collided with a motorcycle on which the deceased was riding as a pillion passenger thereby occasioning her fatal injuries.
6. The appellants filed a joint defence traversing all the material particulars of the suit putting the respondent, who sued as a legal representative of the deceased's estate, to strict proof of the allegations. In the alternative, they attribute any accident that may be proven to have occurred to negligence on the part of the deceased.
7. The summary of the evidence tendered before the trial court is that the deceased succumbed to her injuries on the same date of the accident. She was 8 years old and a class 2 student at Gatune Primary School. The respondent testified that Kshs. 42,000 was spent in funeral expenses as per receipts exhibited.
8. The appellants didn't offer evidence.
9. The parties filed written submissions vide the court's e filing platform which I have perused against the record of this appeal.
10. It is trite law that the appellate court can only interfere with the findings and /or award of the trial court if the court misdirects itself on matters of fact and /or law by failing to take relevant factors into account or by considering irrelevant factors and thus arrive at a plainly wrong decision (see the case of *Ocean Freight Shipping Co. Ltd V. Oakdale Commodities Ltd (1997) eKLR Civil Appeal No. 198 of 1995*). The appellate court also has the duty of analyzing and re-assessing the evidence on record and reach an independent decision as observed in the case of *Selle V. Associated Motor Boat Co. (1968) EA 123*.
11. I will consider all the Grounds of Appeal together as they all challenge the quantum of general and special damages awarded to the respondent. The deceased was a minor aged 8 years studying in class 2. As stated above, she succumbed to her injuries on the same day of the accident that gave rise to the cause



of action as per the evidence tendered in the lower court. The appellants contend in their submissions regarding the award made for pain & suffering that Ksh. 10,000 should have been sufficient under this head. The court is inter alia referred to judicial determinations in Francis Odhiambo Nyunja & 2 Others V. Josphine Malala Owinyi (suing as the legal Administrator of the estate of Kevin Osore Rapando (deceased) [2020] eKLR in which it was observed that such damages have for a long time ranged from Kshs.10,000 to Kshs. 100,000 according to judicial precedents depending on when the deceased succumbed relative to the time he/she got injured.

12. The appellants do not seem to complain about the award of Kshs. 100,000 for loss of expectation of life. They however, think that Kshs. 400,000 is adequate compensation for loss of dependency under the Fatal Accidents Act placing reliance on case law in Civiscope Limited V. Gilbert Kimatare Nairi & Lilian Napudo Nairi (suing as the legal representatives of the estate of Gilbert Nairi Lemayian (deceased) [2021] eKLR and Kwamboka Grace V. Mary Kimuma (2017) eKLR in which global sums of Ksh. 600, 000 and Ksh. 300,000 were assessed respectively in favour of the estates of deceased persons aged 31 years and 4 years respectively whose evidence of earnings could not be provided. The deceased in the former case was carrying on a business while in the latter the deceased was a primary school pupil.
13. The respondent's submissions are to the effect that the lower court was properly guided and judicially exercised its discretion in assessing the quantum damages.
14. The trial court was guided by the decisions in China National Aerotechnology International Engineering Corporation (2020) eKLR and Anthony Angwenyi Onkoba V. Thomas Kipkurui Langat & Another (2021) eKLR in which global sums of Ksh 1,000,000 and Kshs. 1,400,000 respectively were granted for loss of dependency in similar circumstances where the deceased persons were minors with no proven income. The appellants had submitted before the trial court for a lump sum of Ksh 280,000 citing the case of MN (suing on behalf of LK , a deceased minor) V. Paul Kiptoo (2016) eKLR involving a minor aged 6. In that case, the court assessed a lump sum of Ksh 280,000 in loss of dependency. The trial court mentioned this case its judgement but does not seem to have considered it. The deceased therein, as here, was a child of tender years whose future prospects could not gauged. It should, however, be noted that this case is much older than the decisions relied upon by the learned trial magistrate.
15. The appellants do not seem to challenge the award made under the head of special damages.
16. Having considered the record and the appellant's submissions as above, I am satisfied that the general damages awards given by the trial court under both the Law Reform Act and the Fatal Accidents Act are within the range of awards by superior courts in similar cases even though the case law cited by the appellants was not considered. It is not shown that the court invoked wrong principles of law or otherwise misdirected itself. There is no basis upon which to disturb the awards.
17. In the result, the appeal fails in its entirety. The respondent will have the costs of the appeal.

JUDGEMENT DELIVERED VIRTUALLY THIS 23RD DAY OF JULY 2024 IN THE PRESENCE OF :

J. M NANG'EA

JUDGE.

The Appellants' Advocate,

The Respondents' Advocate,

The Court Assistant,

