



REPUBLIC OF KENYA



Njembuna Company Limited & another v Mukoma (Civil Appeal E048 of 2023) [2024] KEHC 9710 (KLR) (22 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E048 OF 2023**

BM MUSYOKI, J

JULY 22, 2024

BETWEEN

NJEMBUNA COMPANY LIMITED 1ST APPELLANT

PETER THARAU KURIA 2ND APPELLANT

AND

KEVIN MUKOMA RESPONDENT

(An appeal from judgment and decree in the Senior Principal Magistrates Court at Limuru (Hon. Mr. I.F. Koome SRM) dated 18-01-2023 in his civil case number 239 of 2016)

JUDGMENT

1. The appellants brought this appeal challenging part of the judgement and decree of the Senior Principal Magistrate's Court at Limuru dated 18-01-2023. The memorandum of appeal has set out 3 grounds. The appellants claim that the Honourable Magistrate failed to properly evaluate evidence on record thus reaching an erroneous decision on quantum and that he based his decision on extraneous matters instead of facts, evidence and principle of stare decisis.
2. The matter before the lower court sought damages under the Law Reform Act and the Fatal Accidents Act as a result of an accident which occurred on 19-06-2015. The respondents had sued the appellants for compensation on behalf of the estate of Rodrick Gachanja Irungu who passed on following the said accident which involved motor vehicle registration number KBU 243Z which was owned by the appellants. The lower court found for the respondent and awarded damages as follows;
 - a. Pain and suffering Kshs 80,000.00
 - b. Loss of dependency Kshs 2,871,120.00
 - c. Loss of expectation of life Kshs 100,000.00



- d. Special damages Kshs 484,200.00.
3. I have stated that the appeal was against part of the judgment because the appellant has not challenged the Magistrate's finding on liability, damages for pain and suffering, loss of expectation of life and special damages. The only issue the appellants have with the lower court's judgment is its finding on damages under the *Fatal Accidents Act*. Although the memorandum of appeal pleads that the Magistrate failed to properly evaluate the evidence produced and adduced before him, I have not seen anything in the submissions that turns on this ground. In my view, the Magistrate's judgment is clear and detailed. It contains good analysis of the evidence before the court. I hereby dismiss this line of argument.
 4. I have gone through the appellants' submissions and from the same, I pick only two issues which calls for my consideration which are; the multiplier and the multiplicand adopted by the court. The lower court applied a multiplier of 21 years and a multiplicand of 17,090.00. The respondents submit that a multiplier of 10 years and a multiplicand of 15,000.00 were appropriate in the circumstances of the case.
 5. I will start with the issue of the multiplicand. I have carefully gone through the proceedings and the judgement of the lower court. There was no proof of earning of the deceased. It is an established principle of law that where there is no proof of earnings, the court must resort to the statutory minimum wage as at the time of the deceased's demise. This however, is subject to the plaintiff or claimant establishing the occupation of the deceased. Where the occupation of the deceased cannot be established, the court should resort to the least of the minimum wages.
 6. It was not disputed that the deceased in this matter was a driver employed by the 1st appellant. According to the postmortem report produced as exhibit 10 and the death certificate produced as exhibit 1, the deceased died on 22-06-2015. The lower court chose to apply the statutory minimum wage which came into force in May 2015. I have looked at legal notice number 117 of 2015 which is what the Honourable Magistrate used to determine the multiplier. Having done so, I hold that the Magistrate was right in applying a multiplicand of Kshs 17,090.00. That is what was provided for a driver working in Limuru. This part of the appeal must therefore fail.
 7. The other limb of the challenge to the judgment, is the multiplier of 21 years applied by the Honourable Magistrate. In doing so, he stated that the deceased would have worked up to the age of 60 years. There is nothing on record to show the retirement age at the deceased's place of work. The deceased was not working in a government institution where the retirement age is easily ascertainable and, in the circumstances, we can only relate.
 8. In life, there are bound to be vagaries and vicissitudes which we must agree will one day visit each one of us. It is not possible for a judge or judicial officer or any human being for that matter to say with certainty or what the future holds in terms of our working life or life in general. For that reason, the law leaves the issue of multiplier to the discretion of the judicial officer handling matters of this nature. Since the decretal sum herein will be paid in lumpsum and taking into consideration the said vagaries of life, I am minded to reduce the multiplier to 16 years.
 9. In summary, this appeal succeeds partially on the part of the multiplier as indicated above. This means that the lower court's finding on loss of dependency is hereby disturbed and is reduced to be Kshs 2,187,520.00. All the other findings of the lower court are upheld.
 10. I have considered the circumstances of the case and hold that each party shall bear their own costs of this appeal. The appellants shall however bear the costs of the proceedings in the lower court as decreed by the Honourable learned Magistrate.



DATED SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

