



**Omondi & another v Otieno & another (Civil Appeal E103 of 2021)
[2024] KEHC 10134 (KLR) (7 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E103 OF 2021
KW KIARIE, J
AUGUST 7, 2024**

BETWEEN

VINCENT OUMA OMONDI 1ST APPELLANT

MARY AKINYI OTIENO 2ND APPELLANT

AND

DOROTHY ODHIAMBO OTIENO 1ST RESPONDENT

MAURINE ATIENO MBOYA 2ND RESPONDENT

JUDGMENT

1. Vincent Ouma Omondi and Mary Akinyi Otieno, the appellants herein, were the defendants in the case of Oyugis Senior Principal Magistrate's SPMCC No. 56 of 2020. They were sued for general and special damages after a traffic accident on the Sondu-Oyugis road. The accident involved motor vehicle KCG 928Z and the deceased, who was fatally knocked down in the accident. The parties entered consent on liability in the ratio of 80:20 in favour of the respondents. The respondents were awarded Kshs. 4,000,550 in general damages and Kshs.140, 550.00 in special damages before apportioning liability.
2. The appellant was aggrieved by the judgment and filed this appeal through the firm of Ako Advocates LLP. The following grounds of appeal were raised:
3. The Learned trial magistrate erred in fact and law by awarding general damages which were excessive in the circumstance.
4. The learned trial magistrate erred in law and principle by adopting a wrong approach in computing the general damages under various headings, departing from the trends contained in the Authorities cited by the appellants, which were binding on her, adopting a method that was erroneous in the circumstances, and thereby occasioning a miscarriage of justice.



5. The learned trial magistrate erred in law and, in fact, by computing damages under the *Law Reform Act*, loss of expectation of life and fatal accident Act in contravention of the practice and trend laid down by both the superior Court and Court of Appeal in Decision and/or precedents dealing with claims in respect of victims of fatal accidents.
6. The learned trial magistrate erred by awarding an award of kshs.20,000/- for pain and suffering, whereas the deceased died on the spot; hence, he did not suffer any pain and suffering. This was without proof of the pain and suffering occasioned by the deceased.
7. The learned trial magistrate based her judgment on extraneous issues that were never pleaded nor proved before here, picking a multiplier of 16 years to compute for loss of dependency without proof of the same, therefore reaching an erroneous decision.
8. The learned magistrate erred in law and, in fact, by computing damages under the *Fatal Accidents Act* at kshs.3,840,000/-.
9. The learned trial magistrate erred in law and, in fact, in disregarding and/or failing to consider the appellant's written submissions, which had articulated weighty and relevant issues of law and facts, thereby arriving at an erroneous decision in law and principle.
10. The learned trial magistrate erred in law and fact in awarding the respondent special damages in the sum of kshs.140,550/-, without adequate proof.
11. The learned trial magistrate misdirected herself to rely on the receipts, contravening Section 19 of the *Stamp Duty Act*, to assess special damages.
12. The learned trial magistrate erred in law and inf act by failing to dismiss the respondent's suit with costs to the appellant.
13. The respondents opposed the appeal through the firm of Ochoki & Company Advocates. They contended that it lacked merits.
14. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123*, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
15. The parties having entered judgment on liability by consent, the appeal is on quantum in respect of general damages.
16. It was contended by the appellant that the award was inordinately high. 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 vs Khan* [1981] KLR 349 at 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 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.

1. At the time of his death, the deceased was 44 years old. He was a casual labourer, allegedly earning 30,000/= per month, but no supporting document was produced. There was no proof of the deceased's earnings. In *Albert Odawa vs Gichimu Githenji*; Nakuru HCCA No.15 of 2003 (2007), eKLR Justice Ringera expressed himself as follows:



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 the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the 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.

1. The global sum approach ought to have been the best in this case.
2. I have perused the cases relied upon by each party at the trial, and doing the best I could, I found that the award was inordinately high. I set aside the award by the trial magistrate on general damages and substitute it with a global sum of Kshs. 3,000,000.00 general damages.
3. The respondents proved special damages that had been pleaded. The same will not be interfered with.
4. The appeal, therefore, partially succeeds on quantum. The appellant will be entitled to half the costs of this appeal.

DELIVERED AND SIGNED AT HOMA BAY THIS 7TH DAY OF AUGUST 2024

SIGNED BY:

HON JUSTICE W. KIARIE

THE JUDICIARY OF KENYA.

HOMABAY HIGH COURT

