



REPUBLIC OF KENYA



**Asfaha v Munialo & another (Civil Appeal E104 of 2023)
[2024] KEHC 11639 (KLR) (16 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E104 OF 2023
REA OUGO, J
SEPTEMBER 16, 2024**

BETWEEN

ABEBE GEBREYOHANNES ASFAHA APPELLANT

AND

MORRIS SIKUKU MUNIALO 1ST RESPONDENT

ERIC NYONGESA SIKUKU 2ND RESPONDENT

*(An appeal from the judgment and decree of Hon. C. Maundu (PM)
in Bungoma CMCC No 91 of 2022 delivered on 20th June 2023.)*

JUDGMENT

1. In this case, Mary Nasimiyu (deceased) died in an accident along Bungoma-Webuye road when travelling as a pillion passenger. The respondents blamed the appellant for the accident but liability was settled in the ratio of 80:20 in favour of the respondents. The respondents claimed to have suffered loss and damage under the *Law Reform Act* and the *Fatal Accidents Act* and claimed for general and special damages.
2. The trial court after hearing and considering the submissions and evidence before him made the following award:
 - i. Pain and suffering Kshs 50,000/-
 - ii. Loss of expectation of life Kshs 100,000/-
 - iii. Loss of dependency Kshs 1,167,825.60/-
 - iv. Special damages Kshs 110,900Total Kshs 1,428,725.60/-



Less 20% contribution Kshs 285,745

Net Total Kshs 1,142,980.50/-

3. The appellant dissatisfied with the finding of the court has lodged his appeal dated 14th September 2023 on the following grounds:
 1. The learned magistrate in assessing damages for loss of dependency failed to apply the correct principles hence arrived at an erroneous estimate of damages which the deceased suffered.
 2. The learned trial magistrate misapprehended the evidence and misapplied, misunderstood and overlooked the correct legal principles and judicial precedent and the submissions by parties that he made an award for loss of dependency that was erroneous and inordinately high.
 3. The Learned magistrate choice of dependency ratio, the multiplicand and the multiplier is wrong and unreasonable.
4. The appellant seeks that the judgment of the lower court be set aside and urges this court to make its own finding on quantum.
5. The appeal was canvassed by way of written submissions. The appellant argues that they fault the trial magistrate for adopting a multiplicand of Kshs 8,109.90/- and a multiplier of 18 years when the deceased was not in any employment and not earning any income. He submits that a global sum award was the proper award since where an unemployed person with no source of income is involved, the multiplier method is speculative. That the court in *Moses Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased))* [2016] eKLR stated:

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but us ab award that will always be subject to the circumstances of each particular case.”
6. The appellant submits that a global award of Kshs 600,000/- would be sufficient compensation under the loss of dependency. In *Moses Wetangula & Another v Eunice Titika Rengetiang* [2018] eKLR the court awarded a global sum of Kshs 500,000/- for a 42-year-old retired officer in the Kenya Defence Forces. In *Rishi Hauliers Limited v Josiah Boundi Onyancha* [2015] eKLR the court awarded a global sum of Kshs 500,000 to a 50-year-old.
7. The appeal was opposed and the respondent in their submissions argued that the trial court used the multiplier approach by applying the minimum wage was without any error. That the court correctly exercised its discretion while awarding the general damages as required in law. The trial magistrate acted within the ambit of the law and awarded a fair and reasonable amount. The respondent has urged the court to find no merit in the appeal

Analysis And Determination

8. This appeal only challenges the award made under loss of dependency. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/*



a “Meru Express Services (1976)” & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR thus:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

9. In this case, there was evidence that the deceased was a businesswoman. Erick Shikuku Nyongesa Pw1 testified that the deceased was his mother and she had 8 children, 4 of whom were adults and the other 4 were below the age of 18. Pw1 testified that he was a student and the deceased was paying his school fees. The appellant did not present any evidence to challenge the respondent’s case.
10. The only issue is whether the damages awarded under loss of dependency were reasonable. The trial court had the discretion to use the global award approach or the multiplier/multiplicand approach. In Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased) [2020] eKLR the court stated:

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.”
11. In this case, there was no evidence of the deceased’s nature of business and no clear evidence of how much she made. It was therefore not possible to ascertain her income. However, Pw1 testified that she was paying school fees and taking care of the children. She had 8 children and a husband and given the circumstances of the case, a global award approach is applicable.
12. The authorities by the appellant are old and do not take into account the current economic status of the county. I therefore find that an award of Kshs 1,000,000/- would be sufficient. The appellant did not challenge the award on pain and suffering, loss of expectation of life and special damages. I set aside the award of loss of dependency of Kshs. 1,167,825/60 and substitute it with a sum of Kshs.1,000,000/-. The appellant is awarded costs of the appeal. Orders accordingly.

DATED SIGNED AND DELIVERED AT BUNGOMA ON THIS 16TH SEPTEMBER 2024.

R.E.OUGO

JUDGE

In the presence of:

Miss Nyarango -For the Appellant

Mr. Sichangi h/b for Mr. Kweyu -For the Respondent

Wilkister -C/A

