



**Munuhe & another (Suing as the Legal Representative of the  
Estate of Peter Maina Ndegwa) v Mutua (Civil Appeal 78 of 2023)  
[2024] KEHC 10944 (KLR) (Civ) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10944 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL**

**CIVIL APPEAL 78 OF 2023**

**CM KARIUKI, J**

**SEPTEMBER 19, 2024**

**BETWEEN**

**JOSEPH NDEGWA MUNUHE ..... 1<sup>ST</sup> APPELLANT**

**JOSEPH NDEGWA MAINA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER  
MAINA NDEGWA**

**AND**

**DAVID KIRIMI MUTUA ..... RESPONDENT**

*(Being an Appeal against the Judgment/Decree of Hon V. Kiplagat of  
Senior Resident Magistrate, delivered on 2nd December 2022 in the  
Chief Magistrate Court at Nyabururu Civil Case No. 38 of 2019)*

**JUDGMENT**

1. The appeal arose from the Nyabururu Chief Magistrate Civil Case No 38/2019, in which the deceased died in a fatal accident, thus a fatal accident claim. The accident involved the motor vehicle KBG 087F and the deceased.
2. Upon hearing the matter, the trial court made the verdict liability 100% against the respondent, and on the award, he made the orders as follows: Pain and suffering Kshs. 50,000/=Loss of expectation of life Kshs 100,000/=Loss dependency(13,431x12x9x 1/2) Kshs 725,290.20/=Special damages Kshs 75,750/=Total Kshs.951,040.20/=
3. The appellant instant appeal is on quantum, where he challenges trial court verdict issues;



- I. Award on damages was inordinately Low.
  - II. The trial court failed to apply legal principles on the assessment of multiplier, multiplicand, and dependency ratio in that the above elements were arrived at without evidence from the court.
  - III. That loss of dependency was inordinately low.
4. The parties opted to canvass an appeal via written submission, which they filed and exchanged.

### **Appellant Submissions**

5. He submits that, over and above, the special damages of Kshs. Seventy-five thousand seven hundred fifty that was pleaded and awarded by the Honourable Court, the Appellants pleaded for reasonable funeral expenses under Paragraph 7 (e) of the Plaintiff.
6. The reasonable funeral expenses are different from the pleaded amounts for funeral arrangements. A receipt from Nyahururu Funeral Services of Kshs. 50,000 was produced, and the same covers expenses for the hearse, coffin, tent, lowering gear, and wreath lowers) and the cross. This only covers the burial bit where the Deceased is laid to rest; however, the expenses for the ceremony itself, encompassing the expenses for catering, food and drinks, and other incidental expenses throughout mourning up to the burial stage, have not been taken into account.
7. Courts have been advised to be practical and pragmatic where such a claim for reasonable funeral expenses has been raised, and it is prudent to award a reasonable sum devoid of the requirement for receipts. Reliance is made on the cases of Jacob Ayiga & Anor vs. Simion Obayo (2005) eKLR, and David Kimani Githinji & Grace Mbaile, (suing as the Administrator of the estate of Catherine Njeri Kimani (deceased V Mutai Hardware Sores Limited [2019] e KLR where Court held views that courts to take Judicial notice that the funeral process is a cultural one where expenses are incurred. See also Premier Diary Limited vs. Amarjit Singh Sagoo & another [2013] e KLR that in another [2013] eKLR,
8. Award reasonable funeral expenses under Paragraph 7 (e) of the Plaintiff as the same are vastly different from expenses incurred during burial. To this end, a Kshs award has been submitted. 200,000 is reasonable and commensurate for funeral expenses. As such, the court is urged to award cumulative special damages at Kshs. 275,750.00
9. On pain and suffering, it is submitted that the philosophy and reasons for the award of damages for Pain and suffering are explained in paragraph 883 In Halsbury's Laws Of England 4<sup>th</sup> Ed, Vol. 12(1) Page 348-883.

“Pain and suffering. Damages are awarded for the physical and mental distress caused to the Plaintiff, both pre-trial and in the future, as a result of the injury. This includes the Pain caused by the injury itself, and the treatment intended to alleviate it, the awareness of and embarrassment at the disability or disfigurement, or suffering caused by anxiety that the Plaintiff's condition may deteriorate.”
10. The Appellants, through the death certificate and the testimony during the hearing, confirm that the accident occurred on 21<sup>st</sup> February 2018. As per the death certificate, the Deceased died on the same day. This is a narration of facts, not disputed by any party. The Deceased underwent Pain and suffering before his demise and thus submitted that a sum of Ksh. 100,000.00 is sufficient under this head.



11. On Loss Of Expectation Of Life, it is submitted that it is not in dispute that the deceased died at the age of 51 years. He was in perfect health and had a bright future working as a farmer and a boda boda operator. The Appellants did, in fact, produce the deceased's Certificate of Death adduced to buttress the fact that the deceased was 51 years old.
12. On damages under the *fatal accidents act*, it is submitted that For consideration under the *Fatal Accidents Act*, there are three issues, namely: Multiplier Dependency ratio
13. This is the actual deceased's earnings per month. In this case, the Appellants pleaded that the deceased was 51 years old, working as a farmer and a boda boda operator earning Kshs—30,000 per month. The Deceased's profession does not have payslips or bank receipts to prove the same. As was stated by the witnesses, this is a profession where one was paid vide cash, and the trial court fell into error by bypassing the nature of Kenyan society vis-a-vis the stated professions and insisted on relying on the minimum wage. Thus, the court urged us to consider Kshs—30,000 as the appropriate multiplier in this case.
14. Further, it was submitted that it is now trite that it is not always that proof of income must be by production of documents. See the cases of David Kimathi Kaburu -vs.- Gerald Mworobia Murungi (Suing as legal representative of the estate of James Mwenda Mworobia (deceased) (2004) e KLR and Muthike Muciimi Nyaga (Suing as Administrator of the Estate of James Githinii Muthike (Deceased)) v Dubai Superhardware [2021] eKLR.
15. Therefore, it submitted that this Honourable Court should adopt a multiplicand of Kshs- 30,000 in determining damages for lost dependency.

### **On Multiplier**

16. This is the number of years the deceased could have gainfully worked. According to the Death Certificate, the Deceased died at the age of 51 years. We take cognizance of the fact that Courts are constantly enjoined to take into account the uncertainties and vicissitudes of life and give due allowance for that.
17. Also, invite this court to take judicial notice that in self-employment business ventures, it is not uncommon that a person may work up to the 70s and even 80s depending on the type of venture as was held in Midland Media Limited & another v Pauline Naukot Aule (Suing as the Legal Representative of the Estate of the late Esinyon Esokon Ekai) [2020] e KLR
18. In the instant case, the Deceased was a farmer and a boda boda operator earning Kshs. 30,000 per month. These were self-employment ventures, and nothing stopped the Deceased from working up to his 80 years, especially farming.
19. The Learned Trial Magistrate adopted a multiplier of 9 years erroneously utilizing one for civil servants who retire at sixty (60) years. This presupposes that the Deceased was a civil servant when, in fact, the Deceased was a farmer and a boda boda rider. The adopted multiplier is, therefore, erroneous.
20. Reliance made on the case of Roger Dainty vs Mwinyi Omar Haji & Another 2004 eKLR, and thus -A multiplier of 15 years is sufficient. Also cited is Midland Media Limited & another V Pauline Naukot Aule (suing as the Legal Representative of the Estate of the late Esinyon Esokon Ekai) (2020) e KLR where the court adopted a multiplier of 10 years for a deceased aged 57 years and In John Wamae & 2 Others vs Jane Kituku Nziva & another [2017] e KLR the deceased was aged sixty-one (61) years at the time of his death. Kariuki J adopted a multiplier of nine (9) years at the time of his death.



21. The deceased was survived by his father and two children, a son and a daughter, thus submitted that it was a loss as to why the Learned Trial Magistrate would opt for the dependency ratio, which is usually applicable for single, unmarried individuals without dependants when it was clearly proved that the Deceased was a working man in charge of and taking of his family, reliance made on the case of Gordon Ouma Sunda & Another v Adan Abdikadir Omar the Court stated as follows:

“Appreciably, it is reasonable to expect that as an African man, the deceased financially supported his wife and three children. This court finds and holds that it was also reasonable to have expected that the deceased would have to spend a large chunk of his income on his dependents. From the foregoing, I am persuaded that a dependency ratio of 2/3 is warranted.”

### **Respondent Submissions**

22. It is submitted that the appellant complains about the sum of Kshs. 725,290 awarded as damages under the *Fatal Accidents Act* was too low in the circumstances. However, the respondent reiterates that the Pleadings filed together with the documents filed therein, the deceased is said to have been aged 51 years and worked as a farmer and a boda boda rider prior to her demise, earning kshs. 30,000/- per month.
23. The Trial Magistrate rightly observed that no documents had been provided by the appellant to prove income and relying on the authority of Grace Wairimu Mwangi V Joseph Mwangi Gitundu in Nairobi HCC No. 162 of 1994 adopted the minimum wage of kshs 13,431.30. Thus, it was submitted that the multiplicand/income used to calculate the loss of dependency was in order.
24. No document was brought before the Trial Court to prove that the deceased owned a farm and the nature of farming activities undertaken; no evidence was also adduced to prove that the deceased owned a boda boda nor that he was a licensed
25. rider. No documents in the form of Mpesa statements, bank statements, audited accounts, or tax returns were filed to prove income earned from Plaintiff's activities; thus, I pray that the Appellants' claim be dismissed in this regard. The multiplier adopted by the trial Court of 9 years should be upheld. This is because the Deceased was 51 years old at the time of death, and taking the government retirement age of 60 years, he had nine years to work.
26. The vicissitudes of life, however, do potentially curtail such a working period; any vicissitudes that afflict the daily lives of humans may shorten the working life prescribed under private contract or statute regulations.
27. That it is Courts have developed guidelines on multiplier and multiplicand. The multiplier is the number of years the deceased would have been in gainful employment. In the case of Kenya Wildlife Services vs. Geoffrey Gichuru Mwaura [2018] eKLR, the court relied on the Ezekiel Barngetuny case where Ringera J had stated:

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must, in the first instance, determine the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years of purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life for the deceased, the expectation of life and dependency of the dependents, and the chances of life for the deceased and dependents. The sum thus arrived at must then



be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested, yield returns of an income nature."

28. In arriving at the multiplier, the court takes into consideration the vagaries of life. However, there is no clear-cut approach. See *Wachira Joseph & 2 others v Hannah Wangui Mukami & another* (2021) eKLR where the multiplier of 9 years was used where deceased was 51 years *Techard Steam & Power Limited v Mutio Muli & Mutua Ngao* [2019] eKLR, the Appellate Court reduced the multiplier from 13 years to 10 years for
29. Dependency Ratio: The Appellant asserts that his father and two children survived the deceased. The Appellants did not provide any evidence of the deceased's children. Who are adults, depended on him. In *Gerald Mbale Mwea vs. Kariko Kihara, another Civil Appeal No. 112 of 1995*, the Court of Appeal stated that dependency is a question of fact to be proved by the person who asserts it.
30. Furthermore, the Appellants have failed to prove before the court the extent to which the deceased supported his father and children. Their assertion that a 2/3 ratio should be used has no basis in *Beatrice Wangui Thairu vs. Hon. Ezekiel Barngetuny Another - Nairobi HCCC. No.1638 of 1988* (unreported), as quoted in *Richard Steam & Power Limited v Mutio Muli & Mutua Ngao* (supra), the use of the 2/3 ratio is not a holding on points of Law but rather a finding of fact.
31. Pray that the Honourable Court upholds the award of Kshs. 725,290.20/= by the Magistrate Court calculated by the following dimensions.
  - i. Kshs.  $13,431.30 \times 9 \text{ years} \times 12 \times \frac{1}{2} = 725,290.20$
32. It is submitted that, on Pain and suffering, according to the evidence tendered in court, the deceased died on the spot and did not, therefore, suffer incredible Pain before his demise. The deceased died on the spot. It reasonably follows that an award of Kshs.20,000.00 is reasonable under this header. As was the case in *Guyo Jillo and another v Lilian Kanyua* [2019], eKLR
33. On Loss of Expectation of Life, the respondent submits the amount of Kshs. 100,000 as compensation for Loss of Expectation of Life d by the Lower Court was adequate and within the range of awards vide cases of *Hyder Nthenya Musili & Another V China Wu Yi Limited & Another* (2017) eKLR, and *Ndeti & another* (Suing on their behalf and as administrators of the estate of *Gerald Ndeti Mutua (Deceased)) v Mwangangi & another (Civil Appeal E282 of 2021)* [2022] KEHC 15732 (KLR), the Appellate Court stated that Kshs. 100,000 is the conventional award for loss of expectation of life, and the Magistrate Court's award was upheld.
34. Special Damages- Claim for Reasonable Funeral Expenses, the Appellants submits that an award of Kshs is required. 200,000/= is reasonable funeral expenses. The respondent submits that Kshs. 200,000/= is inordinately high, and the award of Kshs is high. 50,000/= awarded by the lower court is sufficient under this head. Reliance is made on the case of *Nairobi Bottlers Ltd another v MW* (Suing as the legal/ representative of the estate of KM W) [2021] eKLR, where the Appellate Court upheld the Lower Court's award of Kshs—50,000/= for funeral expenses.

### Issues, Analysis And Determination

35. After going through the proceedings, judgment of the trial court, and parties' submissions, I found the issue to be whether the trial court erred on the multiplicand/income element to calculate the loss of dependency. Whether the multiplier adopted by the trial court was unfair and erroneous in the circumstances of the case? The dependency ratio applied was erroneous? And costs.



36. On multiplicand, the deceased is said to have been aged 51 years and worked as a farmer and a boda boda rider prior to her demise, earning kshs. 30,000/- per month. The Trial Magistrate rightly observed that the appellant had provided no documents to prove income. The trial court thus relied on the case of *Grace Wairimu Mwangi V Joseph Mwangi Gitundu* in Nairobi HCC No. 162 of 1994, which adopted the minimum wage of kshs 13,431.30.
37. I find no reason to disagree with the trial court. Thus, the court upholds the multiplicand applied to calculate loss of dependency. This is because no document was brought before the Trial Court to prove that the deceased owned a farm and the nature of farming activities undertaken; no evidence was also adduced to prove that the deceased owned a boda boda, nor that he was a licensed rider. No documents in the form of Mpesa statements, bank statements, audited accounts, or tax returns were filed to prove income earned from the Plaintiff's activities.
38. On multiplier adopted by the trial court of 9 years, The Deceased was aged 51 years at the time of death. The Courts have developed guidelines on multiplier and multiplicand. The multiplier is the number of years the deceased would have been in gainful employment. In the case of *Kenya Wildlife Services vs. Geoffrey Gichuru Mwaura* [2018] eKLR, the court held;
- “The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must, in the first instance, determine the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years of purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life for the deceased, the expectation of life and dependency of the dependents, and the chances of life for the deceased and dependents. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested, yield returns of an income nature.”
39. In arriving at the multiplier, the court takes into consideration the vagaries of life. However, there is no clear-cut approach. See *West Kenya Sugar Co. Ltd v. Falantina Adungosi Odionyi* (Suing as the legal representative of Patrick Igwala Odionyi deceased) [2020] eKLR.
40. In *Wachira Joseph & 2 others v Hannah Wangui Makumi & another* [2021] eKLR, the court used a multiplier of 9 years for a 51year deceased, while in *Techard Steam &*
41. *Power Limited v Mutio Muli & Mutua Ngao* [2019] eKLR, the Appellate Court reduced the multiplier from 13 years to 10 years for a 50 year old deceased who was in the boda boda business. In the instant case, I will enhance the multiplier to 10 years instead of 9 years, relying on the above court of appeal case where the deceased was a motorcyclist (boda boda) operator.
42. On Dependency Ratio: The Appellant's submission is that his father and two children survived the deceased. The Appellants did not provide any evidence of the deceased's children. Who are adults, depended on him. In *Gerald Mbale Mwea vs. Kariko Kihara*,
43. Another Civil Appeal No. 112 of 1995, the Court of Appeal stated that dependency is a question of fact to be proved by the person who asserts it.
44. The Appellants have failed to prove before the court the extent to which the deceased supported his father and children. Their assertion that a 2/3 ratio should be used has no basis in *Beatrice Wangui Thairu vs. Hon. Ezekiel Barngetuny Another - Nairobi*



45. HCCC. No.1638 of 1988 (unreported), as quoted in *Richard Steam & Power Limited v Mutio Muli & Mutua Ngao* (supra), the use of the 2/3 ratio is not a holding on points of Law but rather a finding of fact. Thus, the ground fails, and this court upholds the trial court's finding on that element. The award of ksh 725,290.20 is adjusted as follows:  $ksh\ 13,432 \times 10 \times 12 \times 1/2 = 865,920$ .
46. On Pain and suffering, according to the evidence tendered in court, the deceased died on the spot and did not, therefore, suffer a prolonged period of Pain before his demise. The trial court award on that heading was ksh 20,000; however, the appellant sought the figure to be enhanced to ksh 100,000. The appellant concedes the death occurred the same day but not necessarily on the spot.
47. In the case of *Hyder Nthenya Musili & Another V China Wu Yi Limited & Another* (20171 eKLR, the court held that the conventional award for loss of expectation of life is Kshs. 100,000/= while for Pain and suffering, the awards range from Kshs. 10,000/=to Kshs. 100,000/=with higher damages being awarded if the Pain and suffering were prolonged before death. Within that range of ksh 10,000 to ksh 100,000, the court enhanced the award to 70,000 from ksh 50,000, which the trial court awarded as the victim did not die on the spot but on the day.
48. On special damages, the Appellants pray for an award of Kshs:200,000/= as reasonable funeral expenses. Which respondents submit is inordinately high, and the award of Kshs. 50,000/= awarded by the lower court is sufficient under this head. In the case of *Nairobi Bottlers Ltd another v MW* (Suing as the legal/ representative of the estate of KM W) [2021] eKLR, the Appellate Court upheld the Lower Court's award of Kshs—50,000/= for funeral expenses.
49. The appellant on the case of Court of Appeal, *Premier Diary Limited vs. Amarjit Singh Sagoo & another* [2013] e KLR that in another [2013] eKLR, where the court held
- “We do not think that it is a breach of the general rule that special damages must be pleaded and proved to hold that families who expend money to bury or otherwise inter their dead relatives should be compensated. In fact, we do take Judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with issues of record keeping when the primary concern of a bereaved family is that a close relative has died and the body needs to be interred according to the custom of the particular community involved...We are of the respectful opinion that the judge was entitled to award that sum without in any way breaching the general rule we have referred to on the issue of special damages.”
50. The appellant produced a receipt from Nyahururu Funeral Services of Kshs. 50,000 was produced, and the same covers expenses for the hearse, coffin, tent, lowering gear, and wreath lowers) and the cross. However, the expenses for the ceremony itself, encompassing the expenses for catering, food and drinks, and other incidental expenses throughout mourning up to the burial stage, have not been considered.
51. The appellant did not lay a basis on the factual situation and estimates to persuade the court to enhance the amount to ksh 200,000. However, relying on the cited court of appeal authority, I will add the appellant's extra ksh 50,000
1. Thus, the awards will be adjusted as follows;Pain and suffering Kshs. 70,000/=Loss of expectation of life Kshs 100,000/=Loss dependency( $13,432 \times 12 \times 10 \times 1/2$ ) Kshs 865,920. / =Special damages Kshs 125,750/=Total Kshs.1,161,670
  2. Parties to bear their own costs of the appeal.



**JUDGMENT, DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 19<sup>TH</sup> DAY OF  
SEPTEMBER 2024 AND**

**C. KARIUKI**

**JUDGE**

