



China City Construction Company Limited & another v Karis (Suing as the Administrator and Legal Representative of the Estate of the Late Didlora Mwaka Mwangala) (Civil Appeal 105 of 2023) [2024] KEHC 12071 (KLR) (8 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12071 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 105 OF 2023
SM GITHINJI, J
OCTOBER 8, 2024**

BETWEEN

CHINA CITY CONSTRUCTION COMPANY LIMITED 1ST APPELLANT

KENNEDY SETE KIPROTICH 2ND APPELLANT

AND

MBURA HERBERT KARIS RESPONDENT

**SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE
ESTATE OF THE LATE DIDLORA MWAKA MWANGALA**

(Being an Appeal from the Judgment of Honourable R. Amwayi – SRM delivered in the Chief Magistrate’s Civil Suit No.E046 of 2021 Kaloleni on 14th day of July, 2023)

JUDGMENT

1 This Appeal arises from the judgment of the learned Senior Magistrate Hon. R.M Amwayi delivered on 14.06.2023 in Civil Suit No. E046 of 2021 in Kaloleni wherein judgment was entered in the following terms;

- a. Pain and suffering Kshs. 50,000
 - b. Loss of expectation of life Kshs. 100,000
 - c. Loss of dependency Kshs. 13,572x2/3x25 Kshs. 2,714,400
 - d. Special damages Kshs. 75,000
- Total Kshs. 2,939,400

2 The appeal is raised on the following grounds;



1. The learned magistrate erred in fact by holding that the deceased was earning Kshs. 13,572.00 per month without any evidence in support thereof.
2. The learned magistrate erred in law and in fact by applying a multiplicand of 2/3 and a multiplier of 25 years where the deceased was aged 30 years at the time of death.
3. The learned magistrate erred in law and in fact in the manner she awarded the damages.
4. The learned magistrate erred in law and in fact in the manner she analyzed the evidence and arrived at her finding.

Disposition

3 While analyzing the evidence at trial, I noted that the evidence of the trial court and the evidence in the Record of Appeal do not tally. The evidence in the record of appeal, refers to the deceased being Baya Kalama who was 24 years old at the time of his demise. From the trial court record, the suit was in respect of the estate of Didlora Mwaka Mwangala who was 30 years old at the time of her demise. Given the discrepancies in the Record of Appeal and the trial court record, I am unable to make a determination on the Appeal due to want of a proper record of Appeal. Consequently, the appeal herein fails and is dismissed with costs to the Respondent.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 8TH DAY OF OCTOBER, 2024.

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S.M. GITHINJI

JUDGE

In the Absence of; -

1. Mr Wachira for the Appellant.
2. Mr Ngure for the Respondent

Parties be notified.

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S.M. GITHINJI

JUDGE

8/10/2024

