



**Gitau (Suing as Administratrix Ad Litem of the Estate of Samujel
Gitau Muthoni) v Ngaruiya & another (Civil Appeal E057 of 2024)
[2024] KEHC 16993 (KLR) (Civ) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E057 OF 2024

AB MWAMUYE, J

OCTOBER 17, 2024

BETWEEN

**EUNICE WANJIRU GITAU (SUING AS ADMINISTRATRIX AD LITEM OF THE
ESTATE OF SAMUJEL GITAU MUTHONI) APPELLANT**

AND

GEORGE WANGANGA NGARUIYA 1ST RESPONDENT

WILFRED GITAU NGARUIYA 2ND RESPONDENT

*(Being an Appeal against the Judgment and Decree of the Hon. L. Ambasi
(CM) delivered on 8th December, 2023 in Milimani MCCC. 9081 of 2019)*

JUDGMENT

1. The Appellant herein has approached this Court via the Memorandum of Appeal dated 15th January, 2024 together with the Record of Appeal dated 22nd May, 2024. The Appellant is challenging the Trial Court's findings on both liability and quantum; she is aggrieved with the Trial Court for apportioning 50:50 liability and awarding general damages at Kes 650,000. The Appellant is dissatisfied with the Trial Court's finding that the deceased, a minor aged 14 years, is liable to the extent of 50% and appeals to this Court for an assessment of damages upwards.
2. The Appellant filed her Written Submissions dated 5th June, 2024. There were no appearances by the Respondents. The issues raised in the Memorandum of Appeal dated 15th January, 2024 are whether the Trial Court erred in apportioning 50:50 between the parties, Whether the Trial Court erred in its findings on general damages; and, who should bear the costs of the Appeal?



3. In civil matters, liability is only considered for children who are a little older, at least old enough to have the requisite intellectual capacity to take precautions for their own safety. The general principle is that a child can only be found guilty of negligence if he is old enough to be expected to take precautions. The deceased was aged 14 years, an age where he is expected to take precautions.
4. PW2, the Appellant's eyewitness testified that when the deceased was hit by motor vehicle registration number KAT 845L, he was thrown on the side of motor vehicle registration number KBY 595Z where he was run over, sustaining fatal injuries. The nature of the accident, being hit by one vehicle and tossed in the way of another, is in such a way that the deceased minor cannot be blamed for the accident. He was never in control of his fate.
5. DW1 testified that he was driving at 60 km/hr and found two victims on the road. On re-examination, he testified that the two victims had jumped onto the mini bus.
6. It is clear that DW1 was driving at a speed higher than 60km/hr, such that the impact of the collision tossed 2 minors onto the path of KBY 595Z, causing their demise. In *Masembe VS. Sugar Corporation & Another* (2002) Eklr EN 434, the court held as follows;

“When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his car at any time to avoid anything he sees after he has seen it... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object.”

DW1 ought to have taken reasonable care while driving the mini bus. I find that the Respondents are fully liable for the accident.

7. On quantum, the Appellant submits that the award for Ksh. 650,000 as general damages was inordinately low and seeks that this Court assess the award to a higher amount.
8. The general method of approach in assessment of damages is that comparable injuries /claiming should as far as possible be compensated by comparable awards. The Court of Appeal stated in *Mbaka Nguru and Another v James George Rakwar* [1998] eKLR that:

“The award must however reflect the trend of previous, recent, and comparable awards. Considering the authorities cited and also considering all other relevant factors this court has to take into account, and keeping in mind that the award should fairly compensate the injured within Kenyan conditions”

9. In *Albert Odawa v. Gichimu Githenji* [2007] eKLR, Koome J (as she then was) quoted Ringera J in *Mwanzia v. Ngalali Mutua v Kenya Bus Services (Msa) Ltd & Another*, where he stated that;

“The multiplier approach is just a method of assessing damages. It is not a principle of law or 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 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.



However, in resorting to the lump sum principle, a Trial Court should be guided by the age of a deceased, the expected length of dependency and the estimated income. The award should not be so inordinately high or low as to be a wrong estimate of damages”.

10. The factors to be considered in determining an award for loss of dependency for a deceased person leaving behind dependents, is the number of dependents, the age of the dependents and the level of dependency. The age at which the deceased died is also a relevant factor in my view. In this case, the deceased was 14 years old and was survived by her grandmother. I therefore find an award of Kes 2,000,000 to be sufficient. Special damages were pleaded and proved at Kes 70,500.
11. The apportionment of liability at 50:50 is set aside and liability is apportioned at 100% in favour of the Appellant. A global sum of Kes 2,000,000.00 with interest on the same running from the date of filing the suit in the lower Court is awarded to the Appellant against the Respondents, as well the cost of the suit at the lower court are awarded to the Appellant. The Appellant shall also have the costs of this Appeal.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER, 2024.

BAHATI MWAMUYE

JUDGE

