



REPUBLIC OF KENYA



**Muchanga v Mwangi (Civil Appeal 19 of 2019)
[2023] KEHC 623 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 19 OF 2019
J WAKIAGA, J
FEBRUARY 9, 2023**

BETWEEN

JOHN MUCHORI MUCHANGA APPELLANT

AND

JULIUS IRUNGU MWANGI RESPONDENT

*(Being an appeal from the judgement of Hon. S. K
NYAGA (RM) in MURANGA CMCC NO 26 of 2018)*

JUDGMENT

1. This appeal arises out of the judgement of the trial court dated May 20, 2019 in which the court found the appellant liable at 80%:20% in favour of the respondent and awarded general damages for loss of dependency at the sum of Kshs 1,776,636.80, Kshs 100,000 pain and suffering and special damages of Kshs 68, 600, in respect of a road traffic accident which occurred on January 19, 2015, while the deceased who was walking as a pedestrian was knocked by motor vehicle registration number XXXX, owned by the appellant.
2. Being dissatisfied by the said judgment, the appellant filed this appeal and raised the following summarized grounds of appeal:
 - (a) The award was excessive and not supported by the evidence on record
 - (b) The court erred in adopting a multiplier without taking into account the vagaries and uncertainties of life and the relevant law in respect thereof.

Submissions

3. Directions were issued that the appeal be determined by way of written submissions, which were duly filed. On behalf of the appellant, it was submitted that the appeal was on the award of general damages



- for [an and suffering and loss of dependency based on the fact that there was no evidence on how long the deceased took before he died to support the finding that he took seven hours and therefore the ward of Kenya shillings fifty thousand (Kshs 50,000) was excessive.
4. On loss of dependency, it was submitted that the court failed to take into account the laid down principles in determining multiplier while adopting the 38 years and that the deceased other dependants were not dependent on the same degree as her minor son, with the mother in law not being qualified as a dependant under section 2 of the *Fatal Accidents Act*. It was contended that the deceased's minor son will stop being dependant when he gets into the job market and therefore his age should have been deducted from loss of dependency.
 5. It was contended that the court should have applied the multiplier of 20 years in support of which the case of *Achana Chombeiyi & 2 Others vs Moses Shivachi [2019 eKLR]* was submitted in which the court approved a multiplier of twenty years in respect of a twenty-two-year-old deceased.
 6. The court was therefore urged to disturb the award by the trial court based on the principles set out in *Kemfor Africa Ltd vs AM Lubia and Another*.
 7. On behalf of the respondent, it was submitted that the record of appeal was incomplete and should therefore be struck out. It contended that an award for pain and suffering ranges from between Kshs 10,000 to Kshs 100,000 and since the deceased died immediately after the accident, the award of Kshs 50,000 was justifiable as supported by the following cases: *David Kaburuku Gitau and Another vs Nancy Ann Wathiti Gitau [2016] eKLR* where the court awarded Kshs 100,000 in favour of the deceased who died thirty minutes after the accident, and *Alice O Alukwa vs Akamba Public Road Services Limited [2013] eKLR* where Kshs 50,000 was awarded in respect of the deceased who died on the spot.
 8. On loss of dependency, it was submitted that the deceased was aged 22 years old and engaged in informal business who would have continued as such up to the age of 70 years as was stated in the case of *Chania shuttle vs Mary Mumbi [2017] Eklr*.
 9. It was submitted that the multiplier adopted by the court was justified based on the cases of: *Francis Wainaina Kiragu vs Elijah Oketch Adellah* where the court applied 35 year in respect to a 28 year old, *Mildred Odunga vs Hussein Dairy [2010] eKLR* where the court adopted a multiplier of 32 years in respect of a 28 years and *Gitobu Imanyara & 2 Others vs AG [2016] eKLR* where it was stated the appellate court will only disturb the ward if it is shown that the court acted on wrong principles of law or the award is so extremely high.
 10. It was contended that the trial court exercised its discretion judiciously and therefore the appeal should be dismissed.

Determination

11. This being a first appeal, the court is required to re-evaluate the proceedings before the trial court and to come to its determination thereon, while giving allowance that unlike the trial court, it did not have the benefit of seeing and hearing the witnesses.
12. In this cause, Pw1 Julius Irungu Mwangi testified that he was a conductor and that the deceased was his wife. On the January 19, 2015, he was informed that she had hit by a motor vehicle leading to her death and that the appellant was charged and convicted. It was his evidence that she was a business woman earning Kshs 7,000 per month. In cross examination, he stated that she was crossing the road to prevent her child from crossing and was hit in the middle of the road.



13. Pw2 Pc Peter Kinyua stated that the appellant was charged with careless driving which he pleaded guilty to and paid the fine. In cross examination, he stated that the deceased was crossing from left to right in an effort to prevent her child who was opposite side of the road.
14. The appellant Dw 1 John Gichaga, stated that the deceased jumped on the road on the left side, she was anxious to help the child cross.
15. Based on the said evidence the court found the appellant liable at 80%: 20% on the basis that both owed each other duty of care and that the appellant would have slowed down and adopted the minimum wage in assessing the loss of dependency.
16. From the submissions herein, the only issue for determination is whether the trial court was justified in using a multiplier of 38 years? and whether the award of Kshs 50,000 was supported by evidence?
17. It is not disputed that the deceased was aged 22 years and having adopted the minimum wage the same would have worked up to the age of 60 but the court should have given an allowance for the vagrancies of life and having re-evaluated the evidence tendered before the trial court and the submissions therein together with the authorities, I have come to the irresistible conclusion that the court did not take into account all the relevant matters when reaching its award and therefore the award under the heading of loss of dependency was erroneous.
18. I would therefore allow the appeal under this heading and re-assess the same to a multiplier of 32 years, thus loss of dependency is re-assessed to $5,844.20 \times 32 \text{ years} \times 12 \text{ month} \times \frac{2}{3} = 1,496,115.20$.
19. On the assessment of pain and suffering based on the authorities tendered before the trial court, I find no fault with the award as the same is within the range of the authorities tendered and therefore shall not interfere with the award.
20. The appellant did not appeal on liability, special damages and loss of expectation of life and neither did the respondent cross appeal on the assessment of loss of dependency and shall therefore not comment on these headings.
21. In the final analysis I will allow the appeal on the heading of loss of dependency which I set aside and substitute with a multiplier of 32 years and affirm the final award as follows:
 - (a) Liability 80%; 20%
 - (b) Loss of expectation of life Kshs 100,000
 - (c) Pain and suffering Kshs 50,000
 - (d) Loss of dependency Kshs 1,496,115.20
 - (e) Special damages Kshs 68,600
Total Kshs 1,714,715.20
Less 20% Kshs 342,943.04
 - (f) Subtotal Kshs 1,371,772.16
22. The appellant shall be entitled to half the cost of the appeal while the respondent is entitled to the cost at the lower court together with interest thereon from the date herein.

And it is ordered.

DATED SIGNED AND DELIVERED AT MURANGA THIS 9th DAY OF FEBRUARY 2023



J. WAKIAGA

JUDGE

In the presence of:

Kibiku for Mr. Mege for Applicant

Mr. Mulungo for P.N. Morigori for the Respondent

Carol Mutahi – Court Assistant

