



REPUBLIC OF KENYA



KENYA LAW
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**Mwaganu v Kamau & another (Civil Appeal 48 of 2022)
[2023] KEHC 773 (KLR) (7 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 48 OF 2022
J WAKIAGA, J
FEBRUARY 7, 2023**

BETWEEN

LAWRENCE MBUGUA MWAGANU APPELLANT

AND

PURITY WANJIRU WANGUI 1ST RESPONDENT

BEATRICE MUTHONI KAMAU 2ND RESPONDENT

(Being an appeal from the Judgement of the chief Magistrate Court at Muranga before Hon. Ms Ochanda delivered on 22nd October 2021 in Muranga CMCC NO 201 of 2017)

JUDGMENT

1. By a plaint dated May 12, 2017, the respondent sued the appellant in respect of a road traffic accident which occurred on the August 6, 2017 involving motor cycle registration number KMDE 918L which was being ridden by Joseph Mwangi Muthoni and motor vehicle registration number KCD 246Q owned by the appellant
2. It was pleaded that the said accident was caused by the negligence of the appellant and or his servants and agents particulars whereon where pleaded in paragraph 4 of the plaint. The respondent claimed general damages and special damages of Kshs 145,600, together with costs.
3. By a defence dated August 30, 2018, the appellant denied the particulars of negligence, and contended that the said accident was wholly caused and or substantially contributed by the negligence of the deceased.
4. By a judgement dated 22nd September 2021, the trial court entered judgement for the respondents as follows:

A. Liability 80: 20 by consent



- B. Pain and suffering Kshs 10,000
 - C. Loss of expectation of life Kshs 100,000
 - D. Loss of dependency Kshs 6,000,000
 - E. Special damages Kshs 145,000
5. Being dissatisfied with the said determination, the appellant filed this appeal and raised the following grounds of appeal:
1. The learned magistrate erred in law and in fact in awarding a global sum of Kshs 6,000,000 for loss of dependency which was not supported by any evidence.
 2. The learned trial magistrate erred in law and in fact in failing to assign any reason for adopting a global sum for loss of dependency.
 3. The learned magistrate's award was erroneous in law and in fact.

Submissions

6. 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 trial court erred in awarding a global without applying any known principles as the deceased was not known to having any sources of income to justify the award. It was contended that the court did consider the relevant precedents nor attempted to distinguish the same and in support of the submissions, reference was made to the case of *Stanwell Holding Ltd and another v Rachael Haluku Emanuel & another* [2020] eKLR where the court gave an award of Kshs 1,000,000.
7. On behalf of the respondents, it was submitted that the trial court was right in adopting a global sum approach as the respondents did not give the r-exact figure the deceased was earning as was held in the case of *Moses Mairuua Muchiri v Cyrus Maina Macharia* [2016] e KLR where the court held that where a multiplicand cannot be ascertained with precision, court can make a global award, which by no means is a standard or conventional figure but is an award that will, always be subject to the circumstances of each case.
8. It was further submitted that the deceased was a Boda Boda rider and that there was evidenced tendered to prove that he was engaged in gainful business in the informal sector and that lack of any documents that shows proof of income did not dis- approve the same as was stayed in the case of *Jacob Ayiga Marunja & another v Simon Obayo* [2005] eKLR. It was contended that having shown that the deceased was earning Ksh.30,000. And being 28 years old, he would have worked up to the age of 60 years, so the court should adopt a multiplier of 30 years and award the same loss of dependency as follows $30,000 * 2/3 * 12 * 30 = 7,200,000$.
9. It was submitted in the alternative that the court should adopt a global sum of Kshs 3,000,000. As was adopted in the case of *Isaac M'mwania & another v Mishack Mutuma M'Kuchina* [2021] eKLR where the court awarded Kshs 2,500,000 in respect to a 24 year old .

Determination

10. This being a first appeal, the court is under duty to re-evaluate the evidence tendered before the trial court and to draw its own conclusion thereon as was stated in the case of *Sella & another v Associated Motor Boat Co ltd & others* (1968) EA123



11. PW1 Beatrice Muthoni Kamau stated that the deceased was aged 28 years old and was earning Kshs 40000 from cakes, mandazis and boda boda business, from the earnings he supported his wife and two children. She produced no receipts in support thereof. In awarding the respondent on the heading of loss of dependency, the court had this to say “the deceased earned Kshs 40,000 from baking and ridding a boda boda. The plaintiff opined that the court should apply as follows; $40,000 \times 2 / 3P12P32 = 10,2400,000$. The plaintiff cites Benedate Wanjiku Kimani the defence on the other hand opined that a global figure of Kshs 1,000,000 would suffice. They cited Stanwell Holding
- Under this head I make a global award of Kshs 6,000,000”
12. From the above, the issue for determination is whether the trial court was justified in awarding the respondent an award of Kshs 6,000,000 on the heading of loss of dependency? Whereas the trial court was justified as submitted by the respondent, to use the global award, she did not offer any explanation on how she arrived at the sum awarded and or supported the same with relevant authorities, nor did she distinguish those that were submitted by the appellant and therefore would agree with the appellant that the award was in error.
13. It is clear from the submissions by the respondent, that the award was planked from the moon as the same has submitted an authority and conceded that global sum of Kshs 3,000,000 would be appropriate.
14. I will therefore allow the appeal, set aside the global sum of Kshs 6,000,000 and having looked at the two authorities submitted by the appellant and the respondent assess the a award under this head at the sum of Kshs two million which I herein a ward.
15. In the final analysis i will allow the appeal herein and substitute the trial court’s awards as follows;
- A. Liability 20%: 80% by consent
 - B. Pain and suffering Kshs 10,000
 - C. Loss of expectation of life Kshs 100,000
 - D. Loss of dependency Kshs 2,000,000
 - E. Special damages Kshs 145,000
- Total Kshs 2,255,000
- Less 20% Kshs 451,000
- F. Subtotal Kshs 1,804,000
16. The appellant shall be entitled to the cost of this appeal and it is ordered.

SINGED, DATED AND DELIVERED AT MURANG’A THIS 7th DAY OF FEBRUARY 2023

J. WAKIAGA

JUDGE

In the presence of:

Mr. Martin for Ms Githae for appellant

N/A by the respondent

Court Assistant – Carol Mutahi

