



Kasila & 2 others v Onyango (Suing as the legal representative of the Estate of Elisha Onyango Nyangoro aka Elisha Ochieng Nyangoro- deceased) (Civil Appeal E008 of 2022) [2023] KEHC 2253 (KLR) (22 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E008 OF 2022
KW KIARIE, J
MARCH 22, 2023**

BETWEEN

**GODFREY BINAISA KASILA 1ST APPELLANT
JENNIFER CYNTHIA ACHIENG OMULLO 2ND APPELLANT
CFC LIFE ASSURANCE LTD 3RD APPELLANT**

AND

JOYCE AKINYI ONYANGO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELISHA ONYANGO NYANGORO AKA ELISHA OCHIENG NYANGORO- DECEASED) RESPONDENT

(Being an Appeal from the judgment in Oyugis Senior Principal Magistrate's SPMCC No. 155 of 2019 by Hon. B. Omwansa–Senior Principal Magistrate)

JUDGMENT

1. The appellants herein, were defendants in Oyugis Senior Principal Magistrate's SPMCC No 155 of 2019. This was a claim that arose from a road traffic accident where the deceased was fatally injured. The accident involved motor vehicles registration number KCQ 009F and motor cycle registration number KCMK 347F on which the deceased was a pillion passenger.
2. The learned trial magistrate delivered judgment dated February 2, 2022 and held the appellants 100% liable. He made an award of Kshs 2,500,000.00 in general damages and special damages Kshs 79,000.00 in favour of the respondents.
3. The appellants were aggrieved by the said judgment and filed this appeal through the firm of Kibichiy & Company Advocates. The following grounds of appeal were raised:



- a. The learned trial magistrate erred by arriving at a finding on liability, which was not supported by evidence.
 - b. The learned trial magistrate erred in law and fact in basing findings on irrelevant matters.
 - c. The respondent's case was not proved on balance of probability as is required by law.
 - d. The trial magistrate should have found that there was no basis on which the appellant could be blamed for the incident alleged and injuries sustained.
 - e. The learned trial magistrate's assessment of compensation was inappropriate and irregular vis-à-vis the circumstances of the case.
 - f. The learned trial magistrate erred on all points of fact and law in as far as both liability and assessment of quantum is concerned.
 - g. That the quantum awarded by the trial magistrate was inordinately too high in the light of the circumstances.
4. The appeal was opposed by the respondent through the firm of Nyatundo & Company Advocates. It was contended that liability was properly arrived at and that the award was not high in the circumstances of the case.
 5. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co Ltd* [1965] EA 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
 6. The evidence of PC Kiplangat Cheboi (PW1) was that following the road traffic accident of July 30, 2019 involving motor vehicles registration number KCQ 009F and motor cycle registration number KCMK 347F, the driver of the motor vehicle was charged for the offence causing death by dangerous driving. He was convicted and fined Kshs 20, 000.00. He went on to testify that the driver of the motor vehicle was charge for he failed to keep a safe distance.
 7. When the respondent closed her case, the appellants opted to close without calling any evidence. The learned trial magistrate had only the explanation by the respondent of how the accident occurred. He was therefore justified from the evidence on record to find the appellants 100% liable.
 8. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs Khan* [1981] KLR 349 at page 356 Law JA stated:

"...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low."
 9. The appellant complained that the award of kshs 2, 500,000/- general damages was inordinately high.
 10. At the hearing, nothing was produced to prove the claim on earnings. In *Albert Odawa vs Gichimu Gitbenji*; Nakuru HCCA No 15 of 2003 (2007), eKLR Justice Ringera expressed himself as follows;

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

The learned trial magistrate's global sum approach was the appropriate one in the circumstances of the instant case.

11. In their submissions, the appellants had proposed a global award of Kshs 300,000. The case they relied on involved a man in his retirement whereas in the instant case the deceased at the time of death was 38 years old. The respondent had proposed an award of Kshs 3,000,000.00
12. In the case of *David Mbuba & another v Victoria Mwongeli Kimwalu & another* [2018] eKLR an award Kshs 2,500,000.00 was given under the he *Fatal Accidents Act*. I therefore find that the award of kshs 2, 500,000/- award cannot be said to be inordinately high.
13. The appeal is therefore dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

