



REPUBLIC OF KENYA



Kizito v Abdi (Suing as administrator and legal representative of Mohamed Hassan Noor (Deceased) (Civil Appeal E055 of 2022) [2023] KEHC 1997 (KLR) (9 March 2023) (Judgment)

Neutral citation: [2023] KEHC 1997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E055 OF 2022
TW CHERERE, J
MARCH 9, 2023**

BETWEEN

SILVANOS KIZITO APPELLANT

AND

**HASSAN ABDI (SUING AS ADMINISTRATOR AND LEGAL
REPRESENTATIVE OF MOHAMED HASSAN NOOR
(DECEASED) RESPONDENT**

*(Being an Appeal from the Judgment and Decree in Meru CMCC
No. 171 OF 2017 by Hon. L. Juma (SRM) on 31st March, 2022)*

JUDGMENT

1. Hassan Abdi (Respondent) (suing as administrator and legal representative of the estate of Mohamed Hassan Noor (deceased) filed suit in the lower court against Silvanos Kizito (Appellant) seeking damages for fatal injuries suffered by his son Mohamed Hassan Noor (Deceased) who was on September 15, 2014 fatally injured while travelling as a fare paying passenger in Appellant's M/V KBN 897D which was allegedly driven negligently that it collided with M/V KAU 523R.
2. Appellants by his statement of defence denied the claim and blamed the driver of M/V KAU 523R for causing the accident.
3. By a judgment dated March 31, 2022, the learned trial magistrate found Appellant liable at 100% and awarded Respondent damages in the sum of Kes 3,285,000 /- plus costs and interests.

The Appeal

4. Appellant being dissatisfied with the lower court's decision preferred this appeal and on May 4, 2022 filed the Memorandum of Appeal which sets grounds of appeal mainly challenging quantum on the awards for pain and suffering, loss of expectation of life and loss of dependency.



Analysis and Determination

5. This being the first appellate court, its duty is to re-evaluate the evidence and come up with its own conclusions but also bear in mind that it should not interfere with the findings of the trial court unless the same were based on no evidence or on misapprehension of the evidence or the trial court applied the wrong principles in reaching its findings. (See *Selle & Another v Associated Motor Boat Co Ltd & Another* (1968) EA 123.
6. I have considered the entire record of appeal and considered the submissions of counsels for both parties.
7. The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former court of appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. (See *John Kamore & another vs Simon Irungu Ngugi* [2014] eKLR, *Katheri Dairy Co-op Society & another v M'marete M'guatu* [2014] eKLR and *Idi Ayub Omari Shabani v City Council of Nairobi* [1985] eKLR cited on behalf of the parties).
8. In *Catholic Diocese of Kisumu v Tete* [2004] eKLR the Court of Appeal identified the circumstances under which an appellate court can interfere with an award of damages as follows:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate.”
9. Concerning pain and suffering, Respondent at the hearing asked for Kshs 200,000/- and cited *Benedeta Wanjiku Kimani v Changwon Cheboi & another* [2013] eKLR where the sum of Kshs 200,000/- was awarded for pain and suffering for deceased who died four months following the accident and the authority is in my considered view not comparable the deceased in this case having died immediately after the accident.
10. Appellant offered Kes 10,000/- and cited *Akil Fakhrudin Mohamedali & Karim Hassanal Shariff Vs Shital R. Patel & Murgian Transport (K) Limited* [2001] eKLR where Kes 10,000/- was awarded. The trial court considered that deceased died on the way to hospital and on the basis of the holding in *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR awarded Kes 100,000/- which in my considered view has not been demonstrated to be excessive.
11. For loss of expectation of life, the court awarded Kes 150,000/- which in my considered view is not excessive considering that deceased was 19 years old.
12. Concerning loss of dependency, the general rule is that in the absence of prove of earnings, courts have adopted the global figure approach or the minimum wages guidelines in calculating the award for loss of dependency. (See *Beatrice W Murage v Consumer Transport Ltd & another* [2014] eKLR; *Monica*



Njeri Kamau v Peter Monari Onkoba [2019] eKLR and *Patrick Barasa v Serah Wambui Karumba (Suing as the legal representative to the estate of the late Albert Chebaya)* [2019] eKLR).

13. Respondent proposed an award of Kes 5,000,000/- and cited *MNM & another v Solomon Karanja Gitbinji* [2015] eKLR where a global sum of Kes 3,000,000/- was awarded for a 46-year-old deceased. Appellant on the other hand offered Kes 600,000/- and cited *Chen Wembo & 2 others v I K K & another (suing as the legal representatives and administrators of the estate of C R K (Deceased))* [2017] eKLR where lump sum award of Kshs 2,000,000/- was awarded for a 45-year-old deceased.
14. There being no evidence of deceased's earnings, the trial court rightly applied the global sum principle. From the cases that were cited by the parties as stated hereinabove, I find that the sum of Kes 3,000,000/- was reasonable in the circumstances.
15. From the foregoing, I find that the appeal has no merit and it is disallowed with costs to the Respondent.

DATED IN MERU THIS 09TH DAY OF MARCH 2023

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court - Morris Kinoti

For Appellants/Applicants - Mr. Gitonga for J.G.Gitonga & Co Advocates

For Respondent - Ms. Kaume for M.G.Kaume & Co. Advocates

