



**Gant Construction & Engineering Works Ltd v Nganga (Suing as the Legal Administrator of The Estate of Teresia Wanjiru Kinyanjui) (Civil Appeal E019 of 2021) [2023] KEHC 17569 (KLR) (8 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17569 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIVASHA**  
**CIVIL APPEAL E019 OF 2021**  
**GL NZIOKA, J**  
**MAY 8, 2023**

**BETWEEN**

**GANT CONSTRUCTION & ENGINEERING WORKS LTD ..... APPELLANT**

**AND**

**MACHAHE NGANGA (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF TERESIA WANJIRU KINYANJUI) ..... RESPONDENT**

*(Being an appeal from the judgment of Hon L. Sarapai (PM) delivered on 9th March 2021 in Naivasha Chief Magistrate Civil Suit No. 48 of 2019)*

**JUDGMENT**

(Being an appeal from the judgment of Hon L. Sarapai (PM) delivered on March 9, 2021 in Naivasha Chief Magistrate Civil Suit No. 48 of 2019)

1. On or about January 25, 2016, the deceased herein Teresia Wanjiru Kinyanjui was a lawful pillion passenger on a motor cycle Registration No. KMCQ 673D along Gilgil-Olkalau road, when the motor cycle was involved in a road traffic accident with a motor vehicle registration No. KCA 514L, owned by the appellant, and driven by its authorized agent.
2. The deceased suffered fatal injuries and subsequently the Administrator of her Estate filed a civil suit No. 48 of 2019, in the Chief Magistrate's Court at Naivasha. The suit was based on the ground that the appellant and/or its authorized agent was fully liable for negligently causing the accident.
3. Subsequently, the parties negotiated the matter with a view of settling the same out of court. By a consent recorded in court on October 27, 2020, the parties agreed on apportionment of liability and entered a consent judgment in favour of the plaintiff as against the defendant in the ratio of 80:20. The documents filed in respect of the claim were admitted by consent of the parties without calling the makers.



4. The matter was heard by the court on the issue of quantum. The plaintiff proposed the award as follows:

- i. For pain and suffering .....Kshs 100,000
- ii. Loss of Expectation of Life.....Kshs 200,000
- iii. Loss of Dependency (18,000 x 8 x 12 x 2/3) .....Kshs 1,152,000
- iv. Sub-total.....Kshs 1,452,000
- v. Less 20% contribution.....Kshs 290,400
- vi. Special damages.....Kshs 86,150
- vii. Total.....Kshs 1,247,750
- viii. Costs and interest at court rates

5. The Respondent on its part made a proposal thereof as follows:

- i. For pain and suffering .....Kshs 10,000
- ii. Loss of Expectation of life.....Kshs 70,000
- iii. Loss of Dependency (10,000 x 6 x 12 x 2/3) .....Kshs.480,000
- iv. Special damages.....Kshs 25,550
- v. Sub-total.....Kshs 585,550
- vi. Less 20% contribution
- vii. Total.....Kshs 468,440
- viii. Costs and interest taxed to scale

6. After considering the aforesaid proposals, the submissions by the parties, the trial court delivered a final judgment on as follows:

- i. Pain and suffering .....Kshs 30,000
- ii. Loss of Expectation of Life.....Kshs 150,000
- iii. Loss of Dependency (10,000 x 12 x 11 x 2/3)....Kshs 880,000
- iv. Less 20% contributory liability.....Kshs 176,000
- v. Sub-total.....Kshs 704,000
- vi. Special damages.....Kshs 59,100
- vii. Total.....Kshs 943,100
- viii. Costs and interests at court rates



7. It is against this award, that the appeal herein arises based on the grounds in the memorandum of appeal, filed April 8, 2021 which states as follows:
  - a. That the learned Magistrate erred in law and in fact in awarding damages to the Respondent amounting to Kshs. 943,100.00 with costs and interest thereon.
  - b. That the quantum of damages is excessive and an erroneous estimate of the damages that may be awarded to the Respondent with due regard to the circumstances of the case before the subordinate court and the weight of precedents in similar circumstances.
  - c. That the learned Magistrate misdirected herself in failing to consider the submissions by the Appellant while arriving at the judgment.
8. The appeal was disposed of by filing of submission wherein the appellant submitted that the trial Magistrate erred in assessing damages by disregarding authorities and submissions the appellant provided. That in the case of; *Mbogo & another vs Shab* [1968] EA it was held that, the appellate court will only interfere with the trial court's discretion where the trial court misdirected itself on some arriving at a decision that was erroneous, or where considering the case as a whole the trial court wrongly exercised its judicial discretion and/or as a result there was an injustice.
9. That, for pain and suffering the evidence produced suggested that the deceased died on the spot and did not experience any pain and therefore the award of Kshs 30,000 was excessive. Reliance was placed on the case of; *Harjeet Shab Pandal v Helen Aketch Okudbo* [2018] eKLR and *Florence Awour Owuoth v Paul Jackton Ombayo* [2020] eKLR where the deceased died on the spot and the court awarded Kshs 10,000.
10. Further on loss of life expectation it was submitted that the deceased was 59 years old and there was no evidence that he was in good health. That, in the case of *Munyau Winfred v Philip Kioko Mutie (Suing as the legal representative of the Estate of Regina Mwikali Nzioka (deceased))* [2021] eKLR the court awarded Kshs 100,000 for a 59-year-old person.
11. On loss of dependency, it was argued that the deceased was jobless and had only one year to get to the official retirement age of sixty (60) years and therefore there was no basis of using the multiplier of eleven (11) years. That, in the case of; *Jamal Aleem v Jane Chebore Too* [2018] eKLR the court applied a multiplier of six (6) years where the deceased was 59 years old.
12. Furthermore, it was argued that where the multiplier would be unreasonably low, the court applies a lump sum approach. The appellant proposed a lump sum award of Kshs 400,000 and cited the case of *Dora Mwawandu Samuel (Suing on her behalf and on behalf of the Estate of Samuel Muweliani Jumamosi – Deceased) v Shabir M. Hassan* [2021] eKLR where the court issued Kshs 400,000 for the deceased who was 59 years old.
13. The respondent in its submissions conceded that an appellate court will only interfere with the judgment of the lower court if its decision is founded on wrong principles and relied on the case of; *Mkuba v Nyamuro* [1983] KLR *Gitobu Imanyara & 2 others v Attorney General* (2016) eKLR and *Butt v Khan* [1981] KLR 349.
14. The respondent argued that the trial Magistrate summarized the parties' submissions in the judgment and correctly applied the principles of law in arriving at the award. That, in awarding Kshs. 30,000 under pain and suffering, the trial court relied on the case of *West Kenya Sugar Co. Ltd v Philip Sumba*



*Julaya (Suing as the administrator and personal representative of the Estate of James Julaya Sumba*  
[2019] eKLR.

15. Further, that under loss of expectation of life, the court awards range between Kshs 100,000 and Kshs 200,000 and therefore the award of Kshs 150,000 cannot be said to be inordinately high and is reasonable.
16. Lastly, on the issue of loss of dependency it was submitted that, the trial Magistrate relied on the case of *Beatrice Wangui Thairu v Hon Ezekiel Bargetuny & another* Nairobi HCCC No. 1638 of 1988 (UR) where the court laid principles to be followed in giving its award. That, the only variance between the appellant's proposal and the award by the trial court was the five (5) years of the multiplier, which cannot be a reason to disturb the trial court's finding.
17. Having considered the appeal in the light of the material placed before the court and the arguments advanced vide submissions, I find that, the main issue to determine is whether the learned trial magistrate properly guided herself while determining quantum herein.
18. The law is settled as well quoted by the parties that, the 1<sup>st</sup> appellate court will not interfere with the trial court's discretion in assessing damages unless in exercising that discretion the trial court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice.
19. Similarly in the case of; *Loice Wanjiku Kagunda v Julius Gachau Mwangi* CA 142/2003 (unreported) the Court of Appeal held that:

“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (see *Manga v Musila* [1984] KLR 257).”
20. However, while determining an appeal the role of the 1<sup>st</sup> appellate court re-evaluated evidence adduced in the trial court, and arrive at its own decision. In doing so I find that as regards an award on pain and suffering, the decision relied on by the defendant in the trial court to suggest a figure of Kshs 10,000 was delivered in the year 2004, with inflation, it cannot be relevant in the age and time when the decision herein was rendered year 2021. To the contrary the court relied on a decision of 2019 rendered by the High Court and thus more recent. Therefore, the award of Kshs 30,000 is reasonable and will not be interfered with.
21. As regards loss of expectation of life, it is not in dispute the deceased was fifty-nine (59) years old at the time of demise. The trial court found that he enjoyed good health and could attain the age of seventy (70) years. However, it suffices to note that good health is not the only factor to long life. Although we are all expected to have a healthy long life given the natural calamities in life, one can live below or beyond the seventy (70) years.
22. Therefore, the reason advanced by the trial court per se is not sufficient. Even then, the defendant offered a figure Kshs 70,000 for loss of expectation of life without justification. The plaintiff on the other part sought for maximum amount awardable.
23. Taking into account the fact that in the appellant has in the submission before this court suggested an enhanced figure of Kshs 100,000 for the same, I find that figure reasonable, and adopt it.



24. Finally as regards loss of dependency, the parties agreed as per the submissions in the trial court on a global figure of Kshs 10,000 as monthly income of the deceased and a multiplier of 2/3. The only variance is on the numbers of years. As already observed herein to apply a total of 11 years in the calculation was too presumptive of life. Therefore, based on the decided cases relied on a period of eight (8) years will suffice. Consequently, I make an award as follows;  $(10,000 \times 12 \times 8 \times 2/3) = 640,000$

25. In summation an award is made s follows:

Pain and suffering .....	Kshs 30,000
Loss of Expectation of Life.....	Kshs 100,000
Loss of Dependency.....	Kshs 640,000
Special damages.....	Kshs 59,100
Less 20% contributory liability.....	Kshs 165,820
Total.....	Kshs 663,280

26. No order as to costs

**Dated, delivered and signed this 8<sup>th</sup> day of May 2023.**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of:**

No appearance for the appellant

**\*\*Mr Owour for the respondent**

**Ms Ogutu: Court assistant**

