



**Samuel (Suing as the Legal administrator of the Estate of Samuel Muthee Mungai) v Gitau  
(Civil Appeal E070 of 2023) [2024] KEHC 12410 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12410 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E070 OF 2023  
LM NJUGUNA, J  
OCTOBER 16, 2024**

**BETWEEN**

**ANTHONY MUNGAI SAMUEL (SUING AS THE LEGAL ADMINISTRATOR  
OF THE ESTATE OF SAMUEL MUTHEE MUNGAI) ..... APPELLANT**

**AND**

**JOYCE NJERI GITAU ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal against the Judgment of Hon. Endoo which was delivered on the 27<sup>th</sup> day of October 2023.
2. By way of the Amended Plaintiff dated the 25<sup>th</sup> day of January, 2022, the appellant herein sued the respondent claiming General damages under both the Fatal accidents and Law reform Acts, special damages, costs of the suit and interests at court rates, following a road traffic accident that occurred on the 2<sup>nd</sup> day of April, 2018.
3. The appellant who has sued as the administrator of the estate of the late Samuel Muthee Mungai pleaded that on the material date, the deceased was lawfully travelling in the respondent's motor vehicle registration number KBP 931X, when the vehicle lost control as a consequence of which, the deceased sustained severe bodily injuries as a result of which he died. The appellant blamed the respondent for the accident and has set out the particulars of negligence in paragraph 6 of the plaintiff, as well as the particulars of loss pursuant to the statutes under which he is claiming.
4. The respondent through her amended statement of defence dated the 18<sup>th</sup>, November, 2019 denied the appellant's claim. The particulars of negligence and loss were denied in total.
5. However, on the 16<sup>th</sup>, September, 2021, the parties entered a consent on liability at 80: 20 % in favor of the appellant and the matter proceeded for formal proof, with the appellant testifying as the only



witness in the case. He adopted his witness statements dated the 24<sup>th</sup> April, 2019 and 25<sup>th</sup>, January, 2022 as his evidence in Chief. The respondent did not call any witnesses.

6. The learned Magistrate in the judgment delivered on the, 27<sup>th</sup>, October, 2023, entered judgment, on quantum in favor of the appellant as follows;

1. General damages under the *fatal accidents Act*.....Ksh.1,000,000
2. Loss of expectation of life.....Ksh.100,000
3. Pain and suffering.....Ksh.50,000

With costs and interest.

7. The appellant being dissatisfied with the judgment of the trial court filed the Memorandum of appeal dated the 20<sup>th</sup> day of November, 2023 through which he has sought that the judgment of the trial court be set aside and the award of general damages under both the fatal accidents and the law Reform Acts be enhanced . He has also prayed for the costs of the appeal. The following are the grounds of appeal;

1. The learned Magistrate erred in law and fact in failing to consider the appellant’s case at all.
2. The learned magistrate misdirected herself in her assessment of damages due to the appellant by failing to take into consideration the income of the deceased as per the evidence presented and thus arriving at a wrong, erroneous, unjust assessment of damages.
3. The learned magistrate erred in law and in fact in finding in favor of the respondent in her submissions.
4. The learned magistrate failed to consider the evidence and testimony of the appellant even when it was unchallenged by the respondent, yet, proceeded to agree with the respondent on their submissions and awarded the exact same award that the respondent prayed for and completely disregarded the appellant’s testimony, evidence and submissions, hence arrived at an erroneous and unjust award and conclusion.
5. The learned magistrate erred in law and in fact in awarding the appellant a very negligible award in comparison to the evidence presented and hence the appellant was not properly compensated for the death of his son.
6. The learned magistrate erred in law and in fact in failing to appreciate the evidence of the appellant’s claim as pleaded and as per the submissions.
7. The learned magistrate erred in law and in fact by not awarding the appellant sufficient general damages under the *fatal accidents Act*, and the *Law Reform Act* commensurate with the evidence and the submissions presented to court
8. The award made by the learned magistrate was inordinately low and amounts to a gross injustice to the estate of the deceased.

8. The appeal herein is on quantum of damages as the parties had agreed and recorded a consent on liability. In this appeal, the court gave directions on filing of submissions but none of the parties complied with the said directions.



9. The role of an appellate court is to re-examine the evidence at the trial and come up with its own conclusions while keeping in mind the findings of the trial court. In the case of *Selle & another v Associated Motor Boat CO. & Others* [1968] EA 123, this principle was enunciated thus;
- “...this court is not bound necessary to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw own conclusions though it should always bear in mind that it has not heard the witnesses and should make due allowance in this respect.....”
10. Further, this being an appeal on quantum only, this court is aware of the extent of its jurisdiction. In *Butt v Khan* [1977] 1KLR, it was held;
- “An appellate court will not disturb an award for damages unless it is 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 at a figure which was either inordinately high or low”.
11. The evidence on record on quantum is that the deceased was aged 24 years at the time he met his death and had just graduated from Meru University of Science & Technology with a Bachelor of Science in Computer Technology with a second Class Honours ( upper Division). Among the documents produced by the appellant, was a letter dated the 16<sup>th</sup>, December, 2021 from the Public Service Commission showing the entry point in the Public service and the career progression had the deceased been employed in the Public service. It shows that he would have joined at Civil Service Grade ( CSG) 11 earning Ksh. 30,170 in the first year and Ksh 34,430 in the second year. That he would get promoted after one year to CSG10 to earn Ksh, 37,070 for the first year and Ksh, 38,070 in the second year.
12. In her judgment, the learned Magistrate argued that the deceased was yet to be employed and the letter from the public service is not a letter of employment and proceeded to award a global sum of Ksh, 1,000,000 as damages under the *[fatal accidents Act](#)*, which amount the appellant has termed as very negligible and inordinately low.
13. The only issue before this court is whether the trial court erred in its assessment of general damages under both the Fatal Accidents and Law Reform Acts.
14. In awarding damages, there are two schools of thought on this issue, with one school advocating for an award under the heading loss of dependency by calculating the number of years and anticipated income for the deceased, whereas the other school advocates for a global sum. The principles applicable to an assessment of damages under the *[Fatal Accidents Act](#)* are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased and the dependents. The sum thus arrived at must be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature”.



15. In the case of *Mwanzia v Ngalai Mutua* cited in the case of *Albert Odawa v Gichumu Githenji Nku Hcca No.15 of 2003 [2007]* the court made the following observation;

“The multiplier method 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 age of the deceased, the amount of annual or monthly dependency and 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 at the altar of methodology which a court of justice should never do.”

16. In this appeal, it is true that the deceased was not employed when he met his death but he had completed a degree course. A copy of the certificate is annexed to the list of documents that were filed in court and produced as exhibits. In the cases of *Haniel Mugo Muriuki Vs Morris Min Njaramba HCCC No. 124 of 2005* and Betty *Ngatia Vs Samuel Kinuthia Thuita HCCC No. 339 of 1998*, the respective courts awarded damages for lost years to the estates. In the first case, the deceased was a university student aged 24 years while in the second one she was pursuing a secretarial course. Similarly, in the case of *Zachary Achachi Nyakundi v Kimilili Haulers Limited & another*, the court awarded damages for lost years to the estate of the deceased who was a student who was undertaking a course in a degree in Business Studies.

17. Being guided by the above decisions, I would award damages using the multiplier method based on the letter from the Public Service Commission. I do adopt the Ksh.30,170 as the multiplicand, a multiplier of 30 years and a ratio of 1/3 making a total of Ksh.4,344,480 subject to contribution.

18. Since the costs follow the event and the appellant has succeeded in this appeal, he is awarded the costs of the appeal.

19. It is ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF OCTOBER, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the Respondent

