



**Gitari & 2 others v Kassim & 2 others (Civil Appeal E011 of 2022)  
[2024] KEHC 14065 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14065 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E011 OF 2022  
J WAKIAGA, J  
NOVEMBER 12, 2024**

**BETWEEN**

**JUSTUS GITARI ..... 1<sup>ST</sup> APPELLANT**

**LUCYLINW KANGAI GITARI & ANOTHER & ANOTHER & ANOTHER &  
ANOTHER & ANOTHER & ANOTHER ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MUHSIN KASSIM ..... 1<sup>ST</sup> RESPONDENT**

**FAIDA HARE KOMBE ..... 2<sup>ND</sup> RESPONDENT**

**B LUETECH FREIGHT & FORWARDERS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgement of Hon. S.K. Nyaga SRM on  
17th January 2022 in the CMCC NO 198 OF 2020 AT MURANGA)*

**JUDGMENT**

1. By a Plaintiff dated 31<sup>st</sup> August 2020, the Appellant sued the Respondents for general and special damages arising out of the Road Traffic accident on 3<sup>rd</sup> July 2019 involving motor vehicle registration number KBA 834B wherein the deceased was traveling as a passenger and motor vehicle registration number KCQ 424C belonging to the Respondents as a result of which the deceased sustained fatal injuries.
2. By a defence thereon dated 22<sup>nd</sup> February 2021 the Respondents attributed the cause of the accident to the negligence on the part of the owner of motor vehicle Registration KBA 834B and the deceased for failing to fasten her safety belt and following traffic rules.
3. By a judgement thereon dated 17<sup>th</sup> January 2022 the Court on liability found that the Defendants should bear liability at 100% jointly and severally since the driver of KCQ 424C had a duty of care



to ensure that the collision did not occur by keeping to his proper lane and according to the police abstract the matter was still pending under investigations.

5. On damages the Court made the following award:
  - a. Pain and suffering Kshs. 20,000
  - b. Loss of expectation of life Kshs. 100,000
  - c. Loss of dependency Kshs. 1,000,000
6. Being aggrieved by the said judgement, the Appellant filed this Appeal and raised the following grounds of appeal: -
  - a) That the learned trial Magistrate erred in law and in fact in making an award of Kshs.1,000,000 in general damages for loss of dependency which award was inordinately low and not supported by the facts of the case and the applicable principles for assessment of damages.
  - b) That the learned trial Magistrate erred in law and in fact in failing to take into account that the deceased had completed her university education for a defined career in the education sector and apply the minimum wage in the defined profession which computing the general damages for loss of dependency/lost years.
  - c) That the learned trial Magistrate erred in law and in fact in failing to give due regard to the Appellant's pleadings, evidence and submissions placed on record and thereby arrived at an erroneous decision on quantum of damages.
  - d) That the learned trial Magistrate erred in law and in fact in failing to assess general damages for lost years due to the estate of the deceased under the Law Reform Act.
  - e) That the learned trial Magistrate erred in law and fact in relying on the provisions of Section 19 of the Stamp Duty Act to dismiss the claim for special damages which had been specifically pleaded and proved by the Appellants.

### Submissions

7. Directions were issued on the disposal of the appeal by way of written submissions. On behalf of the Appellant it was submitted that the Magistrate was wrong in using the global sum award since the deceased who was training as a teacher would have earned Kshs.35,000.
8. It was contended that the award by the trial Court was inordinately low, the Appellant having produced evidence which would have supported the use of multiplier as was stated in the cases of Sheikh Mushtaq Hassan v Nathan Mwangi Kamau Transporters & 5 others [1985] eKLR and Zachary Achachi Nyakundi v Kimilili Hauliers Limited & another [2013] eKLR where the Court adopted the expected salary of the deceased in arriving at an award. It was therefore submitted that an award of Kshs. 4,900,000 would have been appropriate.
9. It was submitted further that the Appellant had pleaded special damages of Kshs.246,010 which was supported by production of receipts and that the trial Court penalized the same for omission of the receiver of the money to indicate stamp duty thereon contrary to the Court decision in Benjamin Muelsa Kimono v Daniel Kipkirong Tarus & another [2015] eKLR and that the receipts should never have been disregarded by the Court on technicality of lack of stamp duty.
10. The Respondent filed written submissions wherein it was contended that the Court would only interfere with the award of the trial Court if the same were inordinately very high or low so as to



represent an erroneous estimate. It was contended that the trial Court erred in applying the global sum approach as opposed to the multiplier thereby arriving at an ordinally lower award.

11. It was submitted that the Appellant failed.
12. This being a first appeal, the Court is under a duty to re-evaluate the record of the lower Court and to come to its own determination thereon, while giving allowance to the fact that unlike the lower Court, it did not have the advantage of seeing and hearing the witnesses.
13. PW1 Justus Gitari adopted his witness statement and stated that the deceased who was his daughter was working as a casual labourer as she awaited graduation in December 2019 from Meru University with a Degree in Education. He stated that he had sued three Defendants and that the accident was caused by Track registration number KCC 424C which swerved onto the lane of KBA 834 B. He stated that whereas the deceased was working as a casual labour, he expected her to be employed after graduation.
14. PW2 PC Frida Kagwiria stated that the accident was reported on phone that the driver of motor vehicle registration No. KCQ 424 C failed to keep to his lane and collided with the oncoming motor vehicle registration number KBA 843 B. In cross examination, she stated that no one was to blame as the matter was still pending under investigation and that the driver of the Motor vehicle registration number KCQ had not been charged. The Defendant did not call any evidence.

### **Determination**

15. From the proceedings herein, I have identified the following issues for determination:
  - a. Whether the trial Court erred in applying the global sum award in the assessment of damages for loss of dependency.
  - b. Whether the Court erred in failing to assess general damages for lost years due to the estate of the deceased under the law reform.
  - c. Whether the Court was right in dismissing the claim on special damages.
16. For record purposes, this appeal is by the Plaintiff in the lower Court who feels aggrieved by the trial Court's application of the global sum principles in assessing general damages for loss of dependency. There is no cross appeal by the Respondent and neither did the Appellant appeal against liability.
17. In adopting the global sum approach, the Court had this to say " 19. I note that it was pleaded that the deceased was a student. I note that no payslip was produced to prove the said amount. I also note that the death certificate has indicated the age of the deceased as 24 years old. 20. I further note that the deceased being aged 24 years a lumpsum approach shall be prudent when making an award under this head a lumpsum of Kshs. 1,000,000 is reasonable .21 on the issue of special damages, it must be pleaded. The Court guided by Section 60(1) of the *Evidence Act* notes that the special damages were proved with receipts however the provision of Section 19 of the *stamp duty act* has not been complied with ...."
18. On the issue of special damages, the law requires that the same must be pleaded and strictly proven. In this matter the Court found as a fact that the same was pleaded and proven but declined to award the same on then basis that the provisions of Section 16 of the *Stamp Duty Act* had not been complied with, with due respect the learned Magistrate misdirected herself on this issue, the fact that the receipts were not stamped did not vitiate the fact that the Appellant had proved the specials.
19. Under the *stamp duty Act*, the Court was only required to impound the said document and have them stamped. This was the view taken by the Court in the case of Paul Njoroge v Abdul Sabuni Sabonyo



[2015] eKLR submitted by the Respondent. I agree with the Court's finding in Benjamin Muela Kimono (supra) that the payee cannot be penalized for the omission of the receiver of the monies who was under a duty as per Section 88 of the Act to have them stamped. To that extent I allow the appeal under this heading and set aside the trial Court determination thereon and substitute it with a finding allowing special damages of Kshs.264,010 as proved.

20. On the use of global sum award, it is trite law that there is no scientific formula for assessing damages and that in addition to the use of multiplier which the Appellant seems to prefer, the use of a global sum award is an accepted mode of assessing damages and the trial Court cannot be faulted in using the same since there was evidence on record that as at the time of the accident, the deceased was employed as a casual labourer but the Respondent did not provide any evidence of her earning as at that time, the fact that she was expected to graduate notwithstanding.
21. I would therefore not interfere with the Court's finding thereon simply because the Appellant had a preferred mode and that had this Court being the trial Court might have arrived at a different determination. I say so because the expected earning of the deceased upon graduation was purely speculative having noted that it is no longer automatic that graduate teachers are employed by the Government on graduation.
22. It is clear that the court awarded the Plaintiff a sum of Kshs.100,000 for loss of expectation of life and therefore the Applicant's submission thereon has no merit.
23. In the final analysis I allow the appeal on special damages but dismiss the appeal on loss of dependency.
24. The final judgement is entered for the Appellant against the Respondent as follows:
  - a. Liability 100% against the Respondent
  - b. Loss of expectation of life Kshs. 100,000
  - c. Pain and suffering Kshs. 20,000
  - d. Special damages Kshs. 264,010
  - e. Loss of dependency Kshs. 1,000,000Total Kshs. 1,384,010.
25. The Appellant is entitled to the cost of the appeal.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 12<sup>TH</sup> DAY OF NOVEMBER 2024.**

**J. WAKIAGA**

**JUDGE**

In the presence of :

Mr. Githinji for the Appellant

Mr. Kyalo for the Respondent

Jackline – Court Assistant

