



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 216 OF 2012**

**GEKARIA WANJUGU MACHARIA (Suing as the legal representative of the Estate of the Late  
JOEL KARONJI MACHARIA).....PLAINTIFF**

**VERSUS**

**BOARD OF GOVERNORS OF ST GEORGE'S GREENLAND ACADEMY...1<sup>ST</sup> DEFENDANT**

**GEORGE L. G. MWANGI.....2<sup>ND</sup> DEFENDANT**

**ANTHONY MWANGI GITAU.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Appellant appeals against the trial court's judgment delivered on the 22/11/2012 in respect of quantum of damages awarded to the deceased's estate, and in particular the court's application of a monthly income of Kshs.5000/= as opposed to a sum of Shs.8000/= as stated in the Memorandum of Appeal, and adoption of a Multiplier of 18 years in calculation of the loss of dependency.

2. The deceased died in a road traffic accident that occurred on the 21/5/2008 at a young age of 20 years, while a passenger in the Respondents motor vehicle Reg. No. KAS 571T along Nakuru-St. George's Grassland Academy road.

Upon trial, the court apportioned liability to the Respondents at 80% and 20% to the deceased.

At the time of the accident that claimed his life, the deceased was gainfully employed by the 1<sup>st</sup> Respondent as a casual labourer at the school.

3. The appellant's (PW1) testimony was that he did not know how much his son earned but used to give him Shs.2000/= every month for his upkeep, and that the deceased used to live within the Respondents school compound. None of his co-workers who testified knew the deceased's wages.

4. In his submissions before the trial court, Gekonga Advocate for the appellant proposed an income of Shs.8000/= against a multiplier of 45 years citing some digest authorities where 26 years was applied as multiplier for a 24 year old deceased.

I have considered the written submissions by the rival parties in the appeal.

**ISSUE FOR DETERMINATION.**

***Whether the trial Court's application of Shs. 5000/= as wages, and a multiplier of 18 years are inordinately low as to invite interference by this court.***

5. The principles applicable in the assessment of damages in a fatal claim under the Fatal Accidents Act are well stated in the **case Beatrice Wangui Thairu Vs. Hon. Ezekiel Bargentunny & another, Nairobi HCC NO. 1638 of 1988 (unreported) that;**

*a. The court must find the annual dependency, called the multiplicand by determining the net earnings of the deceased.*

*b. The net earnings should be multiplied by a reasonable figure, called the multiplier, being the expectation of earning life of the*

deceased, the expectation of life and dependency of the dependants and chances of life of the deceased's and dependants.

c. The sum thus arrived at would be the loss of dependency.

6. It is trite that the assessment of 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 simply because it would have come to a different award.

7. The only reason when substitution should happen is when it is evident that the trial court applied wrong principles, took into account irrelevant factors, or failed to take into account relevant factors, or misapprehended the evidence and so arrived at an inordinately low or high award – **Catholic Diocese of Kisumu Vs. Sophia Achieng Tete (2004) 2 KLR, Jane Chelagat Bor Vs. Andrew Otieno Onduu (1988-92) 2 KAR 288.**

In the **Selle & Another Vs. Associated Motor Boat Co. Ltd & Others (1968) EA 123**, the court held that;

*“-----this court is not bound necessarily to accept the findings of fact by the court below--- the court must reconsider the evidence, evaluate it itself and draw its own conclusion----”*

The evidence adduced before the trial court was that the deceased's wages, as a casual labourer of the Respondents were not determined.

8. It is trite that when a deceased earnings are not clear, the court ought to base it on the Government Basic Wages Regulations for the period.

The deceased died on the 2/6/2008 as stated in the Death Certificate.

The applicable guidelines would be those for the year 2008, and not for the period 2010- (The Regulation of Wages (General) (Amendment) Order, 2010.

Under the above regulations, a General Labourer, Cleaner, Gardener, in all municipalities (Nakuru) being one of them are stated as Shs.6,221/=

9. The appellant has not provided the court with the earlier Regulations for the period 2016 which would have been applicable to the deceased. Even without the guidelines, and taking into account the year 2010 guidelines that show wages of Shs.6,221/= a figure, not too far from the trial court's figure of Shs.5,000/=, I find the same as a reasonable figure. It cannot in any event be Shs.8000/= as submitted by the appellant.

10. To that end, I do find that the appellant has failed to show how or in what manner the trial court proceeded on wrong principles or misapprehended the evidence. The figure of Shs.5000/ in my new is not inordinately low as to invite interference by the court – **Butt Vs. Khan (1978) e KLR Supra.** This ground of appeal is dismissed.

The official retirement age of civil servants in Kenya is 60 years. The deceased was in informal employment. The future of life's trajectory is uncertain. The deceased would have perhaps ventured into other greener business ventures as he advanced in age. There was no indication that he was of ill-health. As stated in the case **Rosemary Wanjiru Kungu Vs. Elijah Macharia Githinji & another (2014) e KLR**, the law is that due regard is to be paid to the expectation of working life and dependency of the named dependants, as well as contingencies of life, and the fact that he would have died prematurely of a cause other than the accident that took his life.

11. In the case **FMM & another Vs. Joseph Njguna Kuria & another (2016) e KLR**, for a 23 year old deceased, the Court applied 23 years multiplier.

In the case **Felix Peter Mwora s.Kanni Ngovi & another (2017) e KLR**, for a 42 years old deceased, the court applied a multiplier of 15 years.

In **Elizabeth Chelangat Tanui & another Vs. Changmon Cheboi & another (2013) e KLR**, 16 years was adopted for a 44 years old.

In **Gamwel Vs. Wilson (1983) All ER 578**, the court held

*“----- what is a reasonable multiplier in our jurisdiction is a question of fact to be determined from the peculiar circumstances of each case----- such relevant factors as the income of the deceased, the kind of work the deceased was doing, the prospects of promotion and expectation, of working life----”*

12. Considering the relevant and factors hereto, I am of the view that the trial court's application of 18 years for the 20 years old deceased was inordinately low, regard to the above cited authorities. I also find the appellants submission for 45 years to be unreasonable and unrealistic.

To that extend, I am persuaded that a reasonable multiplier in the circumstances would be 30 years.

13. I therefore set aside the trial court's 18 years multiplier and substitute it with 30 years, against monthly wages of shs. 5,000/= per month.

Loss of dependency would therefore work out as follows;

$5,000 \times 12 \times 30 \times 1/3 = 600,000.$

The above sum will be subjected to a reduction of 20% being the contributory negligence attributed to the deceased.

The balance will therefore be Kshs.480,000/=

14. The sum totals are stated herebelow;

- **Liability – 80% against the Respondent.**

- **General damages**

a) **Pain & suffering – 100,000/=**

b) **Loss of expectation of life – 100,000/=**

c) **Lost years - 480,000/=**

d) **Special damages - 30,000/=**

**TOTAL – 710,000/=**

**80% to the appellant - kshs.568,000/=**

The appeal succeeds partly. Each party shall bear own costs.

**Delivered, Signed and Dated electronically at Nairobi this 20th Day of May, 2020.**

**J.N. MULWA**

**HIGH COURT JUDGE.**

**HIGH COURT**