



Echoto & another (Suing as the Legal Representatives of the Estate of the Late David Echoto) v Mwiti (Civil Appeal E225 of 2024) [2025] KEHC 13578 (KLR) (30 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E225 OF 2024
HI ONG'UDI, J
SEPTEMBER 30, 2025**

BETWEEN

**JORAM ERWEN ECHOTO & GEORGE EPAKAN (SUING AS THE
LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE DAVID
ECHOTO) APPELLANT**

AND

DOUGLAS MWITI RESPONDENT

*(Being an appeal from the Judgment and decree delivered on 17th October,
2024 by Hon. Lina Akoth (RM) in Nakuru CMCC No. E788 of 2021)*

JUDGMENT

1. The appellants were the plaintiffs in the lower court while the respondent was the defendant. The appellants vide the plaint dated 16th August 2021 sued the respondent claiming general damages, special damages of kshs. 573,100/= and costs of the suit plus interest at court rates.
2. The facts of the case are that on 21st April 2021 or thereabout the deceased herein was a lawful passenger in motor vehicle registration number KCD 764A travelling along Nakuru-Nakuru road when the respondent's driver so recklessly and negligently drove motor vehicle registration number KBT 728B/ZD 1799 at a high speed as a result of which it failed to stop thus hitting motor vehicle KCD 764A and subsequently caused the deceased serious injuries which led to his demise.
3. The parties entered a consent on liability in the ratio of 80:20 in favour of the appellants. In its Judgment the trial court awarded kshs. 30,000/= for pain and suffering, kshs. 100,000/= for loss of expectation of life, kshs. 601,328/= for loss of dependency and kshs. 573, 100/= as special damages. The appellants were also awarded costs of the suit plus interest.
4. The appellants being aggrieved by the said judgment lodged this appeal dated 18th October, 2024 setting out the following grounds:



- i. The learned trial magistrate erred in law and in fact by failing to find that only statutory deductions should be deducted from a deceased's payslip in computing the award for loss of dependency, thereby arriving at an unjustly erroneous award.
 - ii. The learned trial magistrate erred in law and in fact by failing to consider the Appellant's submissions and judicial authorities on liability and quantum thereby arriving at an erroneous award of damages under loss of dependency.
5. The appellants urged the court to allow the appeal, set aside the judgment dated 17th October 2024 and re-assess damages. They also prayed for costs plus interest from the date of award in the primary suit and any other relief deemed fit by this court.
 6. The Appeal was canvassed through written submissions.

Appellants' submissions

7. These were filed by Simiyu, Opondo, Kiranga & Company Advocates and are dated 5th February, 2025. Counsel gave a brief background of the case and identified one issue for determination which is whether it was proper for the trial court to go beyond the statutory deductions in determining the multiplicand to use in computing loss of dependency.
8. He placed reliance on the decision in *Loopa & Another (Suing as the Administrators of the estate of Stephen Ngolia deceased) v Technoplast Ltd* (Civil Appeal E016 of 2021) [2024] KEHC 7580 (KLR) (20 June 2024) (Judgment) [2024] KEHC 7580 (KLR) where the High Court faced with similar circumstances, observed as follows:

“This court finds that the trial court fell into error when it applied the multiplicand of 30,504.50 as opposed to Ksh. 63,321/=. It is accepted that the deceased would not be expected to service the loans advanced to him for the rest of his working life. In the words of Maigwa (suing as Legal Representative of the Estate of Ezekiel Katupa) v British Council, loan repayments are always deducted for a limited time and should not be construed as permanent deductions that will exist for the working life of the deceased.

28. The award for loss of dependency will thus be Ksh. $63,321 * 7 * 12 * \frac{2}{3} = \text{ksh. } 3,545,976.00$ It is apparent from the pay slip that the deceased was servicing 2 loans from Platinum Credit Ltd for Ksh. 74,360/= and a Sacco Loan of Ksh. 986,611 totalling to Ksh. 1,060,470. That sum will be deducted from Ksh. 3,545,976/= to bring the award for loss of dependency to Ksh. 2,485,506.”
9. See also; *Maigwa (suing as Legal representatives of the estate of Ezekiel Katupa) v British Council* (Civil Appeal 178 of 2018) [2023] KECA 157 (KLR) (17 February 2023) (Judgment).
 10. Counsel submitted that in light of the authorities cited above and the obtaining facts, it was abundantly clear that the trial court grossly misdirected itself and misapplied the principles in calculating the award on loss of dependency. He urged the court to set aside the award on loss of dependency and substitute it with an award calculated as follows: $74,835.00 \times 12 \times 4 \times \frac{2}{3} = 2,394,720/=$. Further, that the appellants be awarded costs of the appeal.



Respondent's submissions

11. These were filed by G & G Advocates and are dated 22nd May, 2025. Counsel identified one issue for determination which is whether the trial court erred in law and in fact in failing to find that only statutory deductions should be deducted from the deceased's pay slip in computing loss of dependency.
12. Counsel submitted that the trial court adopted a multiplicand of kshs 18,791/25 which was the deceased's net pay after all deductions as per his last pay slip which was for the month of March 2021. He placed reliance on several decisions including *Atina (suing as the personal representatives of the Estate of Peter Omari Onyancha-deceased v China Quinjian International Group (Kenya))* (Civil Appeal 161 of 2021) [2023] KEHC 3655 (KLR) (27 April 2023) (Judgment), where the Honourable Lady Justice Cecilia Githua in dismissing the appeal on the same ground stated as follows;

“Starting with the challenge on the multiplicand, the record shows that in settling for a multiplicand of Kshs 9,081.35, the learned trial magistrate considered the contents of the Payslip tendered in evidence by the appellant which showed that he was earning a monthly gross salary of kshs. 27,195 but his net salary after loans and statutory deductions amounted to kshs. 9,081.35. I find nothing wrong with the multiplicand adopted by the learned trial magistrate since ideally, the amount used as the multiplicand should represent what used to be the deceased's actual disposable income or net earnings as opposed to gross salary or total turnover in cases where the deceased was engaged in business.”
13. He urged the court to uphold the findings of the lower court on the issue of multiplicand and the appeal be dismissed with costs.

Analysis and Determination

14. This being a first appellate court, I am guided by the dictum in the case of *Selle v. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to re-consider and re-evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.
15. Having considered the record of appeal, grounds of appeal, the submissions and the authorities relied on by the parties, I opine that the main issue for determination whether the trial court applied the correct multiplicand in assessing general damages for loss of dependency.
16. The law is clear that this court as an appellate court will only interfere with the decision of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in *Mkuba v Nyamuro* [1983] LLR at 403, where Kneller JA & Hancox Ag JJA held that as follows;

“A court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”
17. The appellants through their counsel argued that the trial court grossly misdirected itself and misapplied the principles in calculating the award on loss of dependency. The respondent argued in the negative and urged the court to uphold the said award.



18. The trial magistrate in her judgment noted that at the time of the deceased's death, his net salary according to the pay slip for May 2021 was kshs. 18,791.25. Thus, under the head of loss of dependency, the court found as follows;

Kshs. $18,791.50 \times 4 \times 12 \times 2/3 =$ kshs. 601,328/=

19. In the instant case there is no doubt that the trial magistrate applied the net salary as the multiplicand. The authorities relied on by the respondent support this position while those relied on by the appellants indicate that the multiplicand should be the gross income less statutory deductions. Hellen Gesare Ayoti (suing as the legal representatives of the Estate of the Late Justus Momanyi Ayot) v P.N. Mashru Ltd [2016] eKLR, Mulwa J held that: -

“6. I am persuaded to agree and abide by the principles stated in the Beatrice Wangui Thairu (Supra) and make a finding that the NET salary of a person's earnings is gross salary including allowances less statutory deductions (PAYE, NHIF and NSSF). It is also my finding that any other deductions towards union dues, contributions Sacco Loans and any other loans are assumed to be so deducted for the benefit of the family, that goes to the improvement of living conditions for the family.”

20. Similarly, in Simeon Kiplimo Murey & 3 others v Kenya Bus Management Services Limited & 4 others [2014] eKLR, Majanja J (as he was then) held as follows: -

“The net income reflected in the payslips was the result of statutory and other deductions like salary advance, SACCO Loans, School Fee and School Boarding Programme. The net income used as the multiplicand is the net income which would have been available to the deceased to support his family. It is the gross income excluding statutory deductions (see Chunibhai J. Patel and another v P. F. Hayes and others (supra)). The learned magistrate therefore erred by excluding all deductions in calculating the net salary. Apart from statutory deductions, it is clear that the other deductions were for the benefit of the family and they ought to be taken into account in calculating the multiplicand. In the circumstances, the appellate court is entitled to intervene.”

21. Having considered the law and legal authorities referred to above, I find the net pay applicable to be the gross salary less statutory deductions and in this case it is kshs. 65,870/55. The resultant award works out as follows: $65,870/55 \times 12 \times 4 \times 2/3 =$ kshs. 2,107,857/60 as loss of dependency. The trial court thus erred in applying all the deductions including those which are for the benefit of the deceased's family for example the loans from Platinum credit and Equity bank and the public service mortgage.

22. On the issue of his submissions not having been considered, I opine that the said allegation is neither here nor there and the same does not hold water. I am guided by the decision in Ngang'a & Another v. Owiti & Another [2008] 1 KLR (EP) 749, the Court held that:

“As the practice has it and especially where counsel appears, a court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of



a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable.” (Emphasis added)

23. The upshot is that the appeal herein succeeds on the 1st ground of the appeal and the award by the trial court on loss of dependency amounting to kshs. 601,328/= is hereby set aside and substituted with kshs. 2,107,857/60 less 20% contribution. The rest of the awards remain undisturbed
24. Costs of the appeal to the appellants.
25. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF SEPTEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

