



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. E033 OF 2024

BETWEEN

MARY NJOKI KABURA (suing as a personal representative of the estate of KEVIN KINYANJUI KABURA, DECEASED) APPELLANT

AND

MARY MAINGI..... RESPONDENT
(Being an appeal from the judgment and decree in the Engineer Senior Principal Magistrate's Court, SPMCC No. E250 of 2022 by Hon. H.O. Barasa– Chief Magistrate.)

JUDGMENT

1. Mary Njoki Kabura, the appellant, was the plaintiff in Ol Kalou Senior Principal Magistrate's SPMCC No. E002 of 2022. She had sued as a personal representative of the estate of Kevin Kinyanjui Kabura, deceased. She claimed general and special damages following a road traffic accident involving motor vehicle KCF 358H and a motor vehicle registration number KCR 298M as a result of the accident, the deceased sustained fatal injuries. The appellant and the third party entered a consent judgment on liability in the ratio of 80:20 in favour of the appellant. The appellant was awarded Kshs. 244,550.00 in special damages and Kshs. 1,444,550 in general damages before factoring in contributory negligence.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Nyangito & Associates Co. Advocates. She raised the following grounds for appeal:
 - a) The learned magistrate erred in law and fact by failing to invoke proper principles and guidelines in determining the matter before him.
 - b) The learned magistrate erred in law and fact by not analyzing carefully and/ or considering the materials/ evidence on record while arriving at his judgment on quantum and general damages awarded.

- c) The learned magistrate erred in law and fact by awarding damages for pain and suffering, loss of expectation of life and loss of dependency that were so inordinately low.
 - d) The learned magistrate erred in law and fact by finding that the deceased person was healthy and was expected to live a long and healthy life, but proceeded to award an inordinately low amount for loss of expectation of life.
 - e) The learned magistrate erred in law and fact by failing to consider that even though the deceased was unemployed, he was young and healthy and had a high chance of securing employment or engaging in meaningful employment.
 - f) The learned magistrate erred in law and fact by arriving at a wrong computation on the aspect of computation on special damages when it was specifically pleaded and proved.
 - g) The learned magistrate erred in law and fact by failing to find that the plaintiff had a reasonable and overwhelming case.
 - h) The learned magistrate failed to exercise his discretion in a judicial manner on the basis of known principles of law and practice.
 - i) The learned magistrate erred in law and fact by contradicting himself by stating that the deceased was in good health and yet failed to award a reasonable amount to cater for the loss of dependency.
 - j) The learned magistrate erred in law and fact by failing to note that the parties in the proceedings had agreed on a ratio of liability at 80.20.
 - k) The learned magistrate erred in law and fact by failing to evaluate the evidence presented before him in determining a reasonable amount to compensate for the loss of dependency.
3. The respondent was served via Kenyanjui Njuguna & Company Advocates. She did not submit any grounds of opposition or submissions.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.

5. The appellant appealed on quantum in general damages.
6. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in **Nance vs British Columbia Electric Railways Co. Ltd. [1951] AC 601 on page 613**, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.

7. The deceased passed away at the age of 20. He was not married. He was still studying and had yet to join the university. In **Albert Odawa vs Gichimu Githenji, Nakuru HCCA No.15 of 2003 (2007)**, eKLR Justice Ringera expressed himself as follows:

The multiplier approach 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 the age of the deceased, the amount of annual or monthly dependency and the 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 on the altar of methodology, something a Court of Justice should never do.

The learned trial magistrate was alive to this fact and applied a global sum award approach.

8. In her submissions in the trial court, the appellant proposed an award of Kshs. 10,901,960. The record of appeal does not contain the respondent's submissions. I may not know whether they filed any, and if so, what their proposal was.

9. In the case of **Mwihaki (Suing as the personal representative of the Estate of Brian Ngure Ndung'u (Deceased) v Lengete (Civil Appeal E071 of 2022) [2023] KEHC 26603 (KLR)**, the deceased, who died aged 21 years, was awarded a global sum of Kshs. 2,000,000/=. Before the judge reached this decision, he analysed other comparable cases. I am persuaded that the award of Kshs. 1,444,550 in general damages was on the lower side. I set aside the award, which is substituted with an award of Kshs. 2,000,000.00.
10. The appeal therefore succeeds. Since the respondent did not file any opposition, there will be no orders regarding costs.

Delivered and signed at Nyandarua, this 30th day of September 2025

KIARIE WAWERU KIARIE

JUDGE