



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL APPEAL NO. E127 OF 2022**

**GEOFFREY TELELA.....1<sup>ST</sup>  
APPELLANT**

**STEPHEN KIMANTHI MULEI.....2<sup>ND</sup>  
APPELLANT**

**FAMILY BANK LIMITED.....3<sup>RD</sup> APPELLANT**

**ENGINEERING THREE ZERO LIMITED.....4<sup>TH</sup>  
APPELLANT**

***VERSUS***

**CYNTHIA MWENDE MUSAU(Suing as the administrator of the  
Estate of late **RAPHAEL MATHEKA MUSAU**.....  
**RESPONDENT****

**(Being an appeal from the judgment of Hon. E. Olwande,  
Chief Magistrate delivered on 26/07/2022 at the Chief  
Magistrates Court in Mavoko in CMCC E119 of 2020)**

**JUDGMENT**

1. The Respondent successfully sued the Appellant herein for compensation for fatal injuries sustained by Raphael Matheka Musau (deceased) which was attributed to negligence on the part 2<sup>nd</sup> Appellant.
2. The cause of action is said to have arisen on 29/08/2019 along Nairobi Namanga road when the deceased who was a pillion passenger on Motor Cycle registration number KMCZ 374 (N)

was hit by Motor vehicle registration number KCG 306 (S) occasioning him fatal injuries. The deceased was survived by a wife and three children.

3. By consent of the parties, liability was entered in favour of the Plaintiff at 80:20 percent and the Plaintiff list of documents was admitted as evidence without calling the makers. Parties thereafter filed written submissions for purposes of the assessment of damages.

4. After considering the evidence and submissions by both sides the learned magistrate awarded the Respondent a sum of Kshs.3,105,344/- broken down as follows: -

- Pain and suffering Kshs. 50,000.00
- Loss of expectation of life Kshs.100,000.00
- Loss of dependency Kshs 3,731,680.00
- Costs and interest.

5. Dissatisfied by the judgment, the Appellants files an appeal seeking to have the judgment on quantum set aside and the award of damages reduced to a commensurate level as per the evidence on record on the grounds that;

***a. The learned Magistrate erred and misdirected himself in law, principle and facts when she misapprehended and misunderstood the applicable principles and the law in assessing quantum thereby arriving at an award that is so manifestly and inordinately high as to constitute***

- an entirely erroneous estimate of the damages in the circumstances of the case,***
- b. The learned magistrate erred in law and fact by arriving at a finding on liability which went against the weight of the evidence***
  - c. The learned magistrate erred in law and fact by making a finding in favour of the respondent when they had not proved their case on a balance of probabilities.***
  - d. The learned magistrate erred in law and fact in awarding the Respondent Kshs 3731,680 damages under the Fatal Accident's Act which award was too excessive in the circumstances.***
  - e. The learned magistrate erred in law and fact in relying on the maximum number of productive working years which was 20 years in the circumstances and failing to consider vicissitudes of life when awarding damages under the Fatal Accident's Act.***
  - f. The learned magistrate erred in law by failing to deduct the damages awarded under the Law Reform Act from the total award.***
  - g. The learned magistrate erred in law and fact in failing to accord due regard to the Appellant's missions and authorities on quantum on applicable principles for assessment of damages.***

6. The appeal was canvassed by way of written submissions. The Appellant abandoned grounds 1, 2, 3, 6 and 7 of the memorandum of appeal and submitted that the learned magistrate erred in applying a multiplier of 20 years as she did. It was contended that the deceased was a mechanic technician and that such a profession is riddled with other

risks and is physically taxing and as such, the deceased would not have worked until the age of 58 years. It was contended that a multiplier of 15 years would have been sufficient in the circumstances. Counsel placed reliance on the cases of ***David Kiprono & 2 others v Mary Wambeti Mugira [2020] KEHC 1272 (KLR)***, ***Stella Nasimiyu Wangila & another v Raphael Oduro Wanyamah [2016] KEHC 1666 (KLR)*** and ***Njuguna & another v Swan Carriers Ltd [2004] KEHC 1144 (KLR)***.

7. However, counsel for the Respondent submitted that there is no error of law or fact warranting this court to interfere with the award. Counsel cited the case of **Mbogo v Shah [1968] EA**. Counsel urged this court to find that the multiplier of 20 years was lawful and reasonable; that the court struck a balance between the proposals of the parties of 18 and 22 years, in line with fairness and equity principles under Article 10; that this court has no jurisdiction to entertain new arguments that were not raised in the pleadings, trial court, or in the memorandum of appeal nor can the appellate court fault the trial court for matters not presented, pleaded nor submitted. It was also submitted that the Appellants' advocate was giving evidence from the bar and the assertion that the deceased would not have lived for 20 years was speculative. The court was urged to dismiss the Appeal with costs. The Respondent made reference to the

following cases in support of its submissions; **Kenya Commercial Bank Ltd vs Osebe (1982) KLR, Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR, Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another [2014] eKLR County Government of Kitui v Mutinda [2023] KEHC 19406, Antony Kamau Kungu v Leah Wanjiku Macharia suing as the administrator of the Estate of Stephen Irungu Munyiri (Deceased)} [2020] Eklr, Alice Watetu Kamangu v Zacharia Wachira Gatiga [2018] eKLR and The Standard Group v Chepngetich Beatrice [2021] eKLR.**

**Analysis and determination.**

8. The Appellant takes issue with the multiplicand of 20 years that was used to arrive at the award of Kshs 3,731,680/- for loss of dependency.
9. The principles which a court should consider in such a case were restated by the Court of Appeal in the case of **Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2) [1985] KECA 137 (KLR** where the court rendered itself as follows;

***“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that***

***the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See Ilanga v Manyoka, [1961] EA 705, 709, 713 (CA-T); Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principle.”***

10. There is no dispute that the deceased herein was married with three children. The only ground raised in support of the appeal is that the deceased would not have lived up to 60 years in light of the nature of his work. The Appellant has not provided any scientific or other plausible reasons as to why he is of that opinion. He has also not cited any cases where it was held that a multiplier of 20 years is unreasonable in the case of a deceased who was 38 years old at the time of death as was the deceased in this case. It is also clear from the record that the trial magistrate applied her mind to the vicissitudes of life when arriving at the multiplier. She stated;

***“Indeed, it is true that the deceased could have worked until the retirement age of 60, but it is also possible that he could have died of other causes. Given the uncertainties about the length and other vicissitudes of life, a balance ought to be struck. In my view, a multiplier of 20 is reasonable ...”***

11. In the present I find no valid reason to interfere with the multiplier. The appeal is found to be devoid of merit and it is dismissed with costs to the respondent.

Orders accordingly.

**Judgment signed, dated and delivered virtually on this 25<sup>th</sup> day of September 2025.**

**E. N. MAINA  
JUDGE**

**IN PRESENCE OF:**

Mr Okemwa, Advocate for the Respondent.

Mrs Sagini, Advocate for Mwangangi for the Appellant.

Geoffrey, Court Assistant.