



Daneva Company Limited v Rapado & another (Suing as the Legal Representatives and Administrators of the Estate of the Late Albert Barasa Rapando (DCD) (Civil Appeal 181 of 2023) [2025] KEHC 13893 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13893 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL 181 OF 2023
E OMINDE, J
OCTOBER 2, 2025**

BETWEEN

DANEVA COMPANY LIMITED APPELLANT

AND

MESHACK WAFULA RAPADO 1ST RESPONDENT

ANN KHATOTO LUCHIVYA 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF THE LATE ALBERT BARASA RAPANDO (DCD**

*(Being an Appeal from the Judgement and decree of Hon. R K Onkoba
delivered on 13th September 2023 in Eldoret CMCC No. 376 of 2022)*

JUDGMENT

1. This Appeal arises from the Judgement and decree in Eldoret Chief Magistrates Court Case No. 376 OF 2022. The Respondent instituted the suit vide a Plaint dated 27/04/2022 seeking compensation for the dependants of the deceased.
2. The accident involved the vehicle in which the deceased was a passenger, KAU 218Q and the Appellant's motor vehicle registration number KAX 661M/ZD8578 which was allegedly being driven by the Appellant's driver. The Respondent pleaded that that the Appellant's driver negligently drove, managed and controlled motor vehicle registration number KAX 661M/ZD8578 and caused an accident, the consequence of which the deceased, who was a passenger aboard motor vehicle registration number KAU 218Q sustained injuries from which he succumbed. The Respondent sought general damages, special damages, costs of the suit and interest.



3. The Appellant filed a defence dated 11/04/2023 through Messrs Onyinkwa & Co. The occurrence of the accident, ownership of the motor vehicle, among others, was generally denied. Liability for the accident was also denied and, in the alternative, it was averred that if the accident occurred as alleged, then the same was wholly caused by negligence on the part of the deceased.
4. The suit proceeded to trial and the parties entered into a consent on liability. The same was apportioned at 80%: 20% in favour of the Respondent. The Respondent then called Anne Khatoro Luchivya as a witness for formal proof.

Respondents' evidence at the trial court

5. PW1 was Anne Khatoro Luchivya, one of the administrators of the estate of the deceased and consequently, the respondent. She was a wife to the deceased and produced as P-Exh 1(a) and (b) the Chief's Letter. She also produced, a Statutory Notice, Certificate of postage, Demand Letter, Certificate of Postage, Ad Litem Letter, Receipt of Kshs. 65,000 and a death certificate as Pexh2(a), (b), 3(a), (b), 4(a), (b) and 5(a) respectively. She further testified that the deceased was 43 years old and that he worked as a mechanic at Engineering Development Limited. She produced his payslip as P-Exh5 (b), urging that he used to earn Kshs. 46,000/-. She produced his burial permit, ID Cards, Birth certificate, post mortem report, Mortuary discharge, receipts for Kshs. 17,000, police abstract, search and receipt for Kshs. 550 as exhibits Pexh.6, 7(a) & (b), 8, 9(a) & (b), 10, 11 & (b) respectively.
6. During cross examination she stated that the deceased died on 24th December 2021 at 49 years and his net salary was Kshs. 46,000/-. She stated that she did not avail fee structures or the receipts for burial expenses. Further, that the contributions were Kshs. 200,000/-.
7. Upon considering the testimonies of the witnesses and the evidence tendered in court, the submissions on record and attendant authorities, the trial court awarded damages as follows;

Liability 80%/20% against the defendant

Under the *Law Reform Act*

Loss of expectation of life Kshs. 10,000/-

Pain & Suffering Kshs. 100,000/-

Loss of Dependency Kshs. 4,217,768/-

Less 20% Contribution Kshs. 865,553/-

Special Damages Kshs. 152,919/-

Total: Kshs. 3,615,134/-

Appeal

8. Aggrieved by the trial Court's said Judgment, the Appellants filed this Appeal on 16/10/202. In the Memorandum of Appeal, the following 7 grounds were cited:
 - i. That the learned trial magistrate erred in law and fact in adopting the wrong principles in making a determination on the award for loss of dependency hence arriving at an award, that was manifestly excessive in the circumstances.
 - ii. That the learned trial magistrate erred in law and fact by awarding an amount for loss of dependency that was manifestly excessive.



- iii. That the learned trial magistrate erred in law and fact by completely disregarding the vagrancies and vicissitudes of life and adopting the maximum multiplier of 17 years.
 - iv. That the learned trial magistrate erred in law and in fact by adopting a dependency ratio of 2/3 despite the fact that dependency was not proved at all.
 - v. That the learned trial magistrate erred in law and fact by adopting a multiplicand of Kshs. 31,013/= despite the fact that the deceased's pay slip was subject to total deductions of Kshs. 7,896.35/= and therefore leaving a net salary of Kshs. 27,013/=.
 - vi. That the learned trial magistrate erred in law and in fact by awarding special damages of Kshs. 152,919/= which were manifestly excessive considering the fact that only Kshs. 52,919/= was proved during the hearing.
 - vii. That the learned trial magistrate erred in law and fact by failing to consider the appellant's submissions on the issue of quantum.
9. The Appeal was then canvassed by way of written Submissions. The Appellants' Submissions was filed on 21/11/2024 while the Respondent filed on 17/05/2025.

Appellant's Submissions

10. On loss of dependency and dependency ration, Counsel for the Appellant submitted that dependency is a question of fact which must be proved, citing the case of Chania Shuttle v Mary Mumbi [2017] eKLR in this regard. Further, that the respondents averred that the deceased was survived by a wife and 7 children, a chief's letter was produced as proof of dependency. He stated that though a chief's letter is proof of survivorship based on the presumption that an area chief knows their area residents well, it does not prove dependency. Further, that out of the 7 children, only one birth certificate was produced to show paternity. The birth certificate produced as PExh 7(b) indicates that the child was born in 1997, this shows that when the deceased passed on in 2021, the child was 24 years. It was therefore incumbent upon the respondents to prove that the adult child was actually dependent on the deceased and not the other way around. Counsel submitted that the respondents did not provide birth certificates of the remaining 6 children and there was no way of telling whether they had attained the age of majority hence answering the question of dependency.
11. Counsel submitted that it is clear from the trial magistrate's judgment that he was very well aware of the principle that dependency must be proved. He did not give a reasoning as to why and how reached the decision that the respondent's proved that the deceased was married with children. Counsel submitted that it was reasonable to have expected that as an African man, the deceased financially supported the 2nd respondent who was his wife. However, it was not unreasonable to assume that the 2nd respondent did not wholly depend on him because as she had testified, she was engaged in farming. He reiterated that no evidence was led to show the level of dependency on the deceased and birth certificates to ascertain their age.
12. On the multiplier, counsel urged that the trial magistrate did not consider the relevant factors in play before granting these years. He quoted the decision and urged that the retirement age in Kenya is currently 60 years, pointing out that the deceased passed on at 43 years. He submitted that the trial court ought to have considered the uncertainties and contingencies of life as it was not guaranteed that he would enjoy good health and be in employment until the age of 60. He cited the case of Crown Bus Services Ltd & 2 others v Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala- Deceased) [2020] eKLR and the case of Coastal Kenya Enterprises Limited v Muchiri (Civil Appeal 84 of 2017) [2023]. Counsel urged that the trial magistrate ought to have adopted a multiplier



- of 10-12 years, citing the case of Mars Logistics Limited v Susan Kavogoi (Suing as the Administrator, a dependant and on behalf of the dependants of Evans Imbalia Andiva) [2021] eKLR where the appellate court substituted a multiplier of 17 years for a 43 year old deceased to 12 years.
13. On the multiplicand, counsel quoted the holding of the trial court and urged that the deceased's pay slip for November 2021 listed a number of statutory deductions. These included; P.A.Y.E for Kshs. 2,796/=, N.S.S.F for Kshs. 200/=, and N.H.I.F for Kshs. 900/=. Counsel urged that in their submissions, the appellant pointed out that Kshs. 7,896,35/= out of the deceased's pay slip was statutory deductions but the trial magistrate ignored the appellant's submissions and disregarded the statutory deductions. He stated that it is the principle in law that courts must factor in statutory deductibles prior to arriving at the appropriate figure to use as a multiplicand.
 14. That the trial magistrate failed to factor in the element of taxation and other compulsory statutory deductions which error amounts to double compensation, when considering a multiplicand, the court should take into account what was available for use by the deceased and his dependants at the time of death. Counsel placed reliance on the case of Joshua Mulinge Itumo (Suing for and on behalf of the estate of Damaris Nduku Musyimi (Deceased) v Bash Hauliers Limited & Another (2021) eKLR in this regard. Additionally, Counsel cited the case of Simeon Kiplimo Murey & 3 others v Kenya Bus Management Services Limited & 4 others [2014] eKLR and urged that the learned trial magistrate ought to have taken into account all deductions that the deceased's salary was subjected to in order to find the net salary. We therefore submit that the multiplier that ought to have been adopted is Kshs. 27,013/=.
 15. On special damages, Counsel submitted that the crystalized rule of law is that special damages must not only be specifically pleaded but strictly proved. Further, that they take judicial notice of the fact that the respondent must have expended money to bury their deceased, but the compensation should be reasonable. He reproduced the decision of the court in making an award for funeral expenses, urging that courts have recognized that a reasonable award ought to be made in respect of reasonable and legitimate funeral expenses, but when such a large sum is claimed for such expenses then there ought to be proof of what the money was spent on. He placed reliance on the case of WMT & Another (Suing in their own capacity and as Administrators of the estate of the late ETN v Sarova Hotels Ltd T/A Sarova Whitesands Beach Resort & Spa [2021] eKLR. Counsel urged that the trial magistrate failed to take notice of the fact that the burial expenses were catered for by the community and further, that the respondents cannot claim compensation for monies that was contributed to by the community.
 16. Counsel further submitted that PW1 indicated that she had the receipts for burial expenses but she failed to avail them, urging that when such a large sum is claimed, there ought to be proof of what it was spent on. Further, that the respondents only provided receipts summing up to Kshs 52,919/=. It is the applicants' case that the trial magistrate ought to have awarded the same as it was strictly proved. He urged the court to interfere with the trial court's award of and substitute it with Kshs 52, 919/=. He further urged the court to allow the appeal as prayed.

Respondents' submissions

17. Counsel for the respondent submitted that it is settled principle of the law that awarding of damages is a matter of judicial discretion based on the trial court's evaluation of the evidence and that an appellate court will not interfere unless it is shown that the trial court acted on wrong principles or misapprehended the evidence, placing reliance on the case of Ratemo v Ogaro (Civil Appeal E098 of 2021) 2024 KEHC14539 (KLR) (18th November 2024) (Judgment) and the case of Catholic Diocese of Kisumu v Sophia Achieng Tete - Kisumu Civil Appeal No. 284 of 2001 among other similar authorities.



18. Counsel urged that money can never compensate loss of life; it is merely an assessment of a sum of money that a court deems to be reasonable in the circumstances to compensating the dependants for the pecuniary loss suffered due to the death of the deceased. Further, that this assessment must however be reflective of the prevailing inflationary trends and is not without limits because a court must be guided by precedents. He urged that the damages awarded by the trial court was well within the limits set out by decided cases and that the Appellant has not provided any compelling reasons for the judgment of the trial to be disturbed.
19. On the issue of multiplier, counsel submitted that the trial court correctly considered the age of the deceased, the working life expectancy, and uncertainties of life. That the choice of a multiplier is a matter of the court's discretion depending on the circumstances of each case. The deceased was 43 years old and in good health. Given Kenya's retirement age of 60, the trial court reasonably applied a multiplier of 17 years after factoring in the vagaries of life. Counsel posited that the appellant has not produced any proof that the deceased was not of good age at the time of his death and thus, the multiplier, adopted by the trial court is consistent with awards in similar cases.
20. On the multiplicand Counsel urged that the Respondents produced a valid payslip from the deceased's employer showing monthly earnings. The same showed a gross salary of Kshs. 34,910 with some deductions, including a mid-month salary advance which is not a statutory deduction. The Plaintiff also testified that the deceased also engaged in other gainful activities, cumulatively earning Kshs. 40,000 monthly. This oral evidence was not controverted during cross examination and the Defendant did not produce any witness to rebut it. Counsel urged that it is trite law that where a party proves income with documentation, it ought to be relied upon unless rebutted, reiterating that the Appellant did not call any witnesses to controvert the payslip. He maintained that the court correctly exercised its discretion in this regard and additionally, submitted that the position of the law is clear that it is net earnings and not gross earnings that should be used as the multiplicand. He cited the case of Alexander Okina Anagwe (Suing as the administrator of the estate of Patricia Kezia Anagwe (Deceased) v Reuben Muriuki Kahuha, City Hopper Ltd, Michael Craig & Rueben Kamande Mburu (2015) eKLR in this regard.
21. On dependency, counsel submitted that the deceased was married and had children, facts which were not disputed by the Appellant. That the 2/3 dependency ratio is the standard approach for manned persons with families and therefore, the trial court rightly applied the dependency ratio of 2/3 in the absence of any contrary evidence.
22. Counsel cited Section 27 of the *Civil Procedure Act* and the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR urging that the Respondent has successfully established that the trial court's judgment is grounded on the evidence and therefore this court should dismiss the appeal with costs to the Respondent.

Analysis & Determination

23. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court stated as follows on the duty of a first appellate court

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”



24. In *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, the court held that:
- “The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”
25. The principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of *Butt v Khan* {1981} KLR 470 where the court pronounced itself as follows;
- “An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”.
26. In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in *Mkubee v Nyamuro* [1983] LLR at 403, where *Kneller JA & Hancox Ag JJA* held that-
- “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.
27. In *Hyder Nthenya Musili & Another -vs- China Wu Yi Limited & Another* [2017] eKLR, the Court stated as follows on damages awarded under pain and suffering which holding of the court I associate myself with fully;
- ... As regards damages awarded under the *Law Reform Act*, the principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death.... The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/= while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death....
28. Further, the law on loss of dependency is provided for under Section 4 (1) of the Fatal Accident Act as hereunder;
- “Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought”
29. Under this head on loss of dependency, the Appellant contends that the trial court erred in determining that the dependency ratio was two thirds. While noting that during her testimony, the plaintiff produced her Identity Card and the Birth Certificate of one of her children as evidence that the deceased had dependants, the court also notes that the Respondent testified that she was a farmer and that her last born with the deceased was 13 years old and further that their six children were still in



school. This evidence was not in any way challenged by the Appellants in cross-examination. It should be noted that it is at the hearing that it is open to parties to rebut and challenge any piece of evidence they wish to contest and not in submissions. This is because submissions are anchored on the evidence that is on record and it is not an avenue for the introduction of new evidence.

30. The issue of whether or not the deceased herein had dependants is a point of fact to be demonstrated and proved by way of evidence. The Appellant having not disproved, challenged and/or rebutted the Respondent's testimony at the trial, it is now not open to him to attempt to do so by way of submissions. From the evidence on record therefore, the court is satisfied that the Respondent being a farmer was not gainfully employed as such and that between her and the deceased they had a total of seven children who were all school going and therefore wholly dependent on the deceased and for this reason, the court is satisfied that a dependency ratio of two thirds as given by the trial court was reasonable and appropriate in the circumstances.
31. On whether the trial court erred in adopting a multiplicand of Kshs. 31,013/-, I note that the trial court took into consideration the statutory deductions and after careful consideration established that the mid-month salary deduction was not a statutory deduction and therefore added it to the nett pay in determining the multiplicand of Kshs. 31,013/-. Suffice it to say that I agree with this computation of the multiplicand which for a salaried deceased is based on the nett pay after statutory deduction only and not on every deduction on the payslip - See the holding of the Court of Appeal in the case of Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) v Kiarie Shoe Stores Limited [2015] eKLR -
32. This issue was even better elucidated in the case of Joseph Ndegwa & another v Japhet Ndungu Muoro the Legal Representative of the Estate of late Dishon Irungu Ndungu [2019] eKLR where Mwongo, J stated thus;
- “ 42. I am persuaded by the argument that non statutory deductions are in essence for the benefit of the family. In the present case, the statutory deductions that are not for the benefit of the family are:
- i. Tax deductions Kshs 18,309.00
 - ii. NHIF Kshs 320.00
 - iii. NSSF Kshs 200.00
 - iv. Fringe benefit tax Kshs 14.05
 - v. University Loans Kshs 3,489.30
- Total deductions from Gross Kshs 22,332.35
- These deductions cannot be included in the deceased's net salary.
43. The deductions for aspects that the deceased voluntarily subscribed to such as the Pension scheme, Emergency Loans, Co-operative shares, and Co-operative loan are deductions which form part of his earnings and are a benefit to his estate that cannot be withheld from his net earnings.”
33. . In associating myself fully with the findings in both cases, I see no justifiable reason to interfere with the Trial Court's award on the multiplicand. Further, on the amount that the Trial Court awarded on funeral expenses, I associate myself fully with the holding of the Court of Appeal, in Premier Diary



Limited vs. Amarjit Singh Sagoo & another [2013] eKLR and uphold the said award. The Court stated thus;

“We do not think that it is a breach of the general rule that special damages must be pleaded and proved to hold that families who expend money to bury or otherwise inter their dead relatives should be compensated. In fact, we do take Judicial notice that it would be wrong and unfair to expect bereaved families to be concerned with issues of record keeping when the primary concern of a bereaved family is that a close relative has died and the body needs to be interred according to the custom of the particular community involved...We are of the respectful opinion that the judge was entitled to award that sum without in any way breaching the general rule we have referred to on the issue of special damages.”

33. Lastly, it is not in dispute that the deceased was gainfully employed. The retirement age in Kenya is 60 years. It is a generally accepted principle that in determining a multiplier, the most reasonable benchmark to use is the retirement age. The deceased herein died at the age of 43 years and had 17 more years to work before retirement. In this regard, I am satisfied that the Trial Magistrate was not in error in adopting a multiplier of 17 years.
34. In light of the above, I am well satisfied that the Hon Magistrate properly, appropriately and judiciously applied himself in exercising his discretion in reaching the determination on the damages as assessed and I see no reason at all to disturb the same. Accordingly, in upholding the impugned judgement in its entirety, I find that the Appellant’s appeal lacks merit and the same is accordingly dismissed with costs to the Respondent.

READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025

E. OMINDE

JUDGE

