



**Dunfort Co Ltd v Obura & another (Suing as the legal representative/
administrator of the Estate of Benjamin O Oloo - (Dcd) (Civil Appeal
E45 of 2023) [2025] KEHC 13579 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E45 OF 2023
MS SHARIFF, J
OCTOBER 1, 2025**

BETWEEN

THE DUNFORT CO LTD APPELLANT

AND

**ROSELINE A OBURA & DANIEL A OLOO (SUING AS THE LEGAL
REPRESENTATIVE/ADMINISTRATOR OF THE ESTATE OF BENJAMIN O
OLOO - (DCD) RESPONDENT**

*(Being an Appeal against the judgment and decree of the Hon. J.
Wekesa (P.M.) in Senior Principal Magistrate's Court at Nyando
delivered on 1st March 2023, in Nyando SPMC No. E.109 of 2022)*

RULING

Case background

1. This judgment determines the Appellants' appeal filed on 11th September 2023, vide Memorandum of Appeal dated 10th March 2023. This Appeal relates to the twin issues of liability and quantum.
2. The Respondents, who were the Plaintiffs before the trial Court, pleaded that an accident occurred involving motor vehicle registration number KCJ 254U/ZG, a Mercedes Axor/Trailer, and the deceased herein. The accident occurred on 15th March 2022, while the deceased was lawfully cycling his pedal cycle on the pedestrian lane, opposite Nyando Law Courts area or thereabout, off the main Ahero-Awasi road and resulted in the deceased sustaining severe bodily injuries, resulting in his instant death.
3. The Respondents pleaded that the Appellant's motor vehicle registration number KCJ 254U/ZG Mercedes Axor/Trailer was driven carelessly, thus causing the accident and that as a result of the accident, the deceased's estate suffered loss and damage.



4. The Appellant entered an appearance and filed their statement of defence denying the claim, averred that the road conditions were poor and they cannot be blamed for the accident and claimed that the deceased was negligent and/or contributed to the occurrence of the accident.

Evidence

5. The matter was set down for hearing. Roseline Auma Obura testified as PW1 by stating that the deceased was, at the time of his death, aged 29 years and a small-scale business owner. That the deceased was her husband.
6. PW2, Peter Odhiambo, witnessed the accident that occurred. He stated that the motor vehicle KCJ 254 U/ZG 7749 was heading towards Ahero direction carrying sugarcane, when the driver began reversing carelessly, which caused the deceased, who was cycling, to fall and be crushed. He insisted that the Appellant did not make use of his side mirror as he reversed carelessly, causing him to run off as he was on the road awaiting a matatu.
7. At the close of the Respondents' case, the Appellant called one witness, Jalons Owamo Obino, the truck driver who testified as DW1. According to him, he is an employee of the Appellant herein and that he did not reverse his truck. He stated that the deceased, with his bicycle, veered into his lane as he was dazed by the overtaking of another motor vehicle, and as a result of that, the deceased fell off his bicycle and was crushed.

Judgment

8. After considering the evidence before him and the parties' submissions, the trial magistrate found the Appellant wholly liable for the accident and proceeded to assess and award the Respondents damages in the sum of Kshs. 1,866,22/= and special damages in the sum of Kshs. 59,500/. The Respondent was also awarded costs of the suit plus interest.

Appeal

9. It is that judgment that gave rise to this appeal, where the Appellant has raised the following grounds: -
 - i. The Learned Magistrate erred by not reducing the expectation of life award of Kshs. 100,000/= from the loss of dependency, thereby awarding the Respondents a double award.
 - ii. The Honourable Court failed to apportion blame, thereby blaming the Appellant 100% for the accident when the eye witness account was one man's evidence against another.
 - iii. The Learned Magistrate erred both in law and in fact by using the multiplier approach to award damages when the circumstances favoured the use of the global award method.
10. By this appeal, it is urged that this Court set aside the trial magistrate's findings on liability and quantum and replace them with its own assessment and that the costs of this appeal and the lower Court suit be provided for.
11. Vide the directions of this Court dated 18th October 2023, the appeal was admitted and was to be canvassed by way of written submissions. Both parties duly filed and exchanged submissions.

Appellant's Written Submissions

12. The Appellant submitted on two major issues. On the issue of liability, counsel for the Appellant submits that liability as apportioned by the trial Court was contrary to the weight of the evidence adduced. Counsel submits that there was no sketch plan produced in Court; rather, the only document



- availed in court was the police abstract, which was not conclusive proof for causation of the accident. Counsel submits that the trial Court erred both in law and fact to conclude that the police abstract, which was not supported by any other documentary evidence, was enough to hold the Appellant 100% liable. Counsel relied on the case of *Kennedy Nyagoya vs Bash Hauliers* (2016) eKLR.
13. Counsel submits that the trial Court ought to have apportioned liability at the ratio of 50:50, given that investigations into the accident were still pending and could not reveal who was to blame for the accident. Counsel relied on the case of *Platinum Car Hire and Tours Limited vs Samuel Arasa Nyamesa & Another* (2017) eKLR.
 14. On the issue of quantum, counsel for the Appellant submitted that under the Law Reforms Act, the trial Court awarded Kshs. 100,000/= for loss of expectation of life and Kshs. 20,000/= for pain and suffering. Counsel submits that the aforementioned awards are fair, and the Appellant does not contest the same. Counsel submits that the same should be deducted from any award made under the *Fatal Accidents Act*, as the beneficiaries under both Acts would ordinarily be the same, thus amounting to double compensation. Counsel relied on the case of *Transpares Kenya Limited & Another vs. S.M.M. (Suing as the Legal Representative for and on behalf of the Estate of E.M.M. (Deceased))* (2015) eKLR and the case of *Daniel Mwangi Kememi & 2 Others vs Estate of N.K. DCD Meru HCC No. 18 of 2014* (2016) eKLR.
 15. Counsel submits that the trial Court misapplied principles on assessment of damages wrongly by adopting the multiplicand approach instead of the global award approach. Further counsel submits that since the deceased was a small-scale businessman, with no evidence available as to his prospects or school attended, and that the Respondents simply pleaded that his business made only Kshs. 1,000/=. Counsel relied on the case of *Chen Wembo & 2 Others vs IKK & HMM* (2017) eKLR, wherein the Court reduced the lump sum payments from Kshs. 1,680,080/= to Kshs. 600,000/=.

Respondents Written Submissions

16. Owour, learned counsel for the Respondents, submits under three issues. On the issue of reduction of expectation of life award from loss of dependency, counsel argues that the issue is well settled by superior Courts and that in the case of *Hellen Waruguru Waweru (Suing as the Legal Representative of Peter Waweru Mwenje (deceased) vs Kiarie Shoe Stores Limited* (2015) eKLR the Court of Appeal on the issue of awards under the loss of expectation of life under *Law Reform Act* and an award under loss of dependency under the *Fatal Accidents Act* amount to double compensation is a misguided notion that is not supported by law. Further counsel submits that since the *Hellen Waruguru Waweru* case has not been overturned, the same remains sound in law. Counsel also relied on the cases of *Omar Sharif & 2 Others vs Edwin Matias Nyonga & Maxwell Musungu (Suing as the Legal Representatives and Administrators of the Estate of Enos Nyonga Deceased)* (2020) eKLR and *Pleasant View School Limited vs Rose Mutheu Kithoi* (2017) eKLR. Counsel submits that there is no legal rationale as to why damages for loss of expectation of life should be deducted from the award under loss of dependency.
17. On the issue of liability, counsel submits that the testimony of the eye witness (PW2) played a pivotal role in the trial Court's determination on liability, and the said testimony was not shaken on cross-examination, deeming the same safe. Counsel relied on the case of *Catherine Mbithe Ngina vs Silker Agencies Limited* (2021) eKLR.
18. Counsel submits that the Respondents proved their case beyond a reasonable doubt on the Appellant's negligence and relied on the cases of *Masembe vs Sugar Corporation and Another* (2002) 2 EA 434; *Joseph Muthuri vs Nicholas Kinoti Kibera* (2022) eKLR; *Munyau Winfred vs Philip Kioko Muite*



- (Suing as legal representative of the estate of Regina Mwikali Nzioka (Deceased) (2021) eKLR; Mary Njeri Murigi vs Peter Macharia & Another (2016) eKLR and Fraciah Njeri Grace vs Isaiah Ngararika Muindi and Another (2012) eKLR. Counsel urged this Court to uphold the decision of the trial Court on liability.
19. On the issue of quantum, Counsel submits that the choice of the trial Court to adopt the multiplier approach instead of the global sum approach was because the Court was aware of the age of the deceased person, the dependency factor as the deceased was survived by a wife and two children; the unknown fact with regards to the deceased's person income was not a deterrent as the trial Court adopted the minimum wage as the income of the deceased person. Counsel submits that the trial Court relied on the decision of the Court of Appeal in Isaack Kimani Kanyingi & Another (Suing as legal representative of the estate of Loise Gathoni Mugo (deceased) vs Hellena Wanjiru Rukanga (2020) eKLR.
 20. Counsel submits that the adoption of 26 years as the multiplier for a 29-year-old deceased person, a dependency ratio of 2/3 for a deceased survived by a wife and two children and a multiplicand of Kshs. 8,109/= as the minimum way for casual labourers was fair and fortified by the cases of Melbrimo Investment Company Limited vs Dinah Kemunto & Francis Sese (Suing as legal representative of the estate of Stephen Sinange alias Reuben Sinange (deceased) (2022) eKLR; China Henan International Co-operation Ltd vs China Henan International Limited & Another (2018) eKLR; Isaack Kimani Kanyingi & Another (Suing as legal representative of the estate of Loise Gathoni Mugo (deceased) vs Hellena Wanjiru Rukanga (2020) eKLR.
 21. Counsel submits that the Appellant failed to provide sufficient evidence before this Court to prove that the trial Court erred and/or misdirected itself in arriving at its decision. Further, counsel urged this Court to dismiss the Appellant's appeal.
 22. I have duly perused, analyzed and considered the record of the lower Court as well as the rival submissions of parties as filed herein.

Analysis and determination

23. This is the first appeal to the High Court, as such, it is an appeal on both facts and the law. As the first appellate Court, I am duty-bound to re-evaluate and reconsider the evidence adduced before the trial Court before I draw my own independent conclusions, remembering that, unlike the trial Court, I did not have the benefit of seeing or hearing the witnesses as they testified and give due allowance for that disadvantage. See *Selle V Associated Motor Boat Company Ltd* (1968) EA 123; *Williamson Diamond Ltd V Brown* (1970) EA 1.
24. The issues in this appeal are on liability for the accident and the quantum of damages awardable in the circumstances.
25. On the issue of liability, the Respondents had in their Pleint pleaded that the Appellant's motor vehicle was being driven in a reckless and or careless manner. The specific instances of negligence were listed in paragraph 5 of the Pleint.
26. In their evidence before the trial Court, the Respondents' witness, PW2, brought out the aspect of negligence attributable to the Appellant. PW2 was categorical that he witnessed the accident which occurred while he was waiting for a matatu: that the respondents vehicle reversed negligently and hit the motor cycle of the deceased thus causing the deceased to fall down and was then ran over. This witness testified that he too escaped the collision by a whisker as he had to dash off.



27. Section 107 (1) and 108 of the *Evidence Act*, Cap 80 Laws of Kenya, outlines the burden of proof as follows;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

Section 108

“The burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were given by either side.”

28. At this juncture, it is imperative to note that the investigating officer in this matter was not called to tender evidence before the trial Court, hence the police file and sketch maps of the scene were not available. The parties herein give two possible scenarios of how the accident occurred. I do find that the respondents’ witness, who was an eye witness had no interest in the case as compared to the driver who would ordinarily defend himself with a view of exonerating himself and his employer from blame. I thus find that the evidence of PW2 was credible on the issue of causation of the accident as compared to the testimony of the driver DW1. I also note that the Appellant failed to provide the vehicle inspection report despite the testimony of DW1 that the vehicle had been inspected after the accident.

29. The production of the Police Abstract Report corroborated the occurrence of the accident and confirmed that the same was duly reported to the relevant authorities. Upon a careful evaluation of the evidence on record, I am satisfied that the Appellant’s negligence was sufficiently established. Consequently, I find no fault in the trial Court’s determination on liability and accordingly uphold its findings in that regard.

30. The Court of Appeal in *Michael Hubert Kloss & Another vs. David Seroney & 5 Others* [2009] eKLR held:

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley v. Gypsum Mines Ltd* (2) (1953) A.C. 663 at p. 681 as follows:

‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation, it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that, as a matter of history, several people have been at fault and that if any one of them had acted properly, the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...’

31. On the issue of quantum, I place reliance on the Court of Appeal decision in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55, wherein the Court



of Appeal set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

“It is trite law that the assessment of general 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 by the court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate).”

32. On the award of loss of expectation of life under the Law Reform Act and an award of loss of dependency under the Fatal Accidents Act amounting to double compensation, the Court of Appeal in *Hellen Waruguru Waweru (suing as the Legal Representative of Peter Waweru Mwenja (deceased) v Kiarie Shoe Stores Limited [2015] eKLR*, clarified the rationale as to why damages for loss of expectation of life should not be deducted from the award under loss of dependency. I therefore decline the invitation made by the appellant for a deduction of the award of Kshs. 100,000/= for loss of expectation of life and Kshs. 20,000/= for pain and suffering from the award under loss of dependency.
33. In relation to the award made under the head of loss of dependency, the Appellant challenges the findings of the learned trial magistrate on the ground that the Court took into account irrelevant considerations. The Appellant contends that the learned magistrate failed to give due regard to the fact that, according to the testimony of PW1, the deceased was a casual labourer and engaged in informal business, and that no credible evidence was led to establish the deceased’s specific monthly earnings. It is the Appellant’s submission that, in the absence of such proof, the trial Court ought to have adopted the global award approach. The Respondents, however, support the trial Court’s reliance on the minimum wage applicable to unskilled labourers at the material time of death. Upon review, I find that the trial Court’s reliance on Legal Notice No. 116 (The Regulation of Wages (General) (Amendment) Order, 2022) in determining the deceased’s notional income was lawful, proper, and within the ambit of judicial discretion. (see HCCA No.108 of 2008 Philip Musyoka Mutua vs. Veronicah Mbura Mutiso [2018] eKLR).
34. The Appellant did not controvert the trial Court’s factual determination that the deceased was lawfully married and survived by two children. In the absence of any challenge to that finding, I see no cause to interfere with the dependency ratio of two-thirds (2/3) as adopted by the learned trial magistrate. The said ratio is therefore upheld.
35. A perusal of the trial Court record reveals that a multiplier of twenty-six (26) years was applied in the computation of the loss of dependency. While the statutory retirement age for public officers is pegged at sixty (60) years, it is material to note that the deceased, being self-employed as a farmer and businessman, was not bound by the same. He could reasonably have continued engaging in gainful employment for as long as his health allowed. Nonetheless, cognizant of the vicissitudes of life, I find that the adoption of a multiplier of 26 years was both reasonable and judicious. Further, the trial Court’s reliance on the prescribed minimum wage as the deceased’s notional monthly income was appropriate and in conformity with legal standards. I therefore find no error in the trial magistrate’s assessment under this head.
36. With respect to the award under the head of special damages, the record is devoid of any indication that the Appellant took issue with the same. Accordingly, the award remains unchallenged and stands as granted.



37. In light of the foregoing findings and analysis, I am satisfied that the appeal lacks merit and is accordingly dismissed in its entirety.

38. Costs of the appeal shall follow the event and are hereby awarded to the Respondents.

It is hereby so ordered.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 1ST DAY OF OCTOBER 2025.

M.S. SHARIFF

JUDGE

In the presence of :

N/A by Omayya for the Appellant

Owuor for the Respondents.

Peter Court Assistant

