



Ngulu v Kyulu (Suing as Legal Representative of the Estate of the Late Stephen Munyao Kyulu) (Civil Appeal E225 of 2023) [2025] KEHC 14747 (KLR) (6 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E225 OF 2023
NIO ADAGI, J
OCTOBER 6, 2025**

BETWEEN

JOSEPHINE MUNYIVA NGULU APPELLANT

AND

AGNES MUENI KYULU (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE STEPHEN MUNYAO KYULU) RESPONDENT

(Being an Appeal from the Judgment of Hon. D. N. Sure (PM) in Kangundo PMCC. No. 050 of 2020 delivered on 15/8/2020)

JUDGMENT

1. The Respondent instituted a suit as the legal representative of the Estate of the late Stephen Munyao Kyulu (deceased) vide a Plaintiff dated 15/3/2020 for damages, costs and interest for fatal injuries sustained in a motor vehicle accident that occurred on 13/2/2019.
2. Parties recorded a consent on liability on 26/6/2023 at the ratio of 80:20 in favour of the Respondent against the Appellant.
3. The case proceeded for assessment of damages where only the Respondent testified but the Appellant opted to close her defence case without calling evidence. Judgment was delivered on 15/8/2023 as follows:-
 - a. Liability 80:20
 - b. Pain and SufferingKshs. 30,000
 - c. Loss of expectation of lifeKshs. 150,000
 - d. Loss of dependencyKshs.3,787,370



e. Special damagesNIL
Kshs.3,967,370
Less 20% Kshs. 793,474
Total Kshs.3,173,896

4. The Appellant being aggrieved by the said judgment, has filed this appeal to this Court vide the Memorandum of Appeal dated 11/9/2023 basically challenging both liability and quantum.

Analysis and determination

5. This being a first appeal, I am reminded of the primary role as a first appellate court namely, to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & another v Associated Motor Boat Co. Ltd.& others* and in *Peters v Sunday Post Limited* (1968) EA 123 (1958) E.A. Page 424.

6. In the case of *Mursal & another v Manese* (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022), the court held that: -

A first appellate court has jurisdiction to reverse or affirm the findings of the trial court. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.

7. I have perused the Record of Appeal, considered and weighed the parties' rival submissions on the appeal and also taken into consideration the judicial decisions cited and attached. I will consider both the issue of liability and quantum.

Liability

8. The Appellant submitted that the appeal is on liability and quantum. The Appellant did not make any submissions in regard to the issue of liability. I have perused the record and I have established that the Parties recorded a consent on liability on 26/6/2023 at 80:20 at the ratio of 80:20 in favour of the Respondent against the Appellant which the trial court adopted and applied in its judgment. This consent was never set aside or challenged by the Appellant. I find it strange that the Appellant would now turn around to challenge liability in the appeal but still not say anything on the same. I find this ground of appeal to be misplaced and I disallow the same. I confirm the liability that Parties consented to and adopted by the trial court.

Quantum:

9. This court is alive to the fact that in an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These



conditions were outlined in the case of *Kemfro Africa Limited t/a Meru Express Services (1976) & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985]* eKLR thus:

“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 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”.

10. The Respondent in the trial court testified that the deceased was 35 years at the time of her death and the deceased's death certificate was produced as an exhibit. The Respondent further testified that the deceased left a young family and was a welder in Ruai. The deceased was in good health at the time of his death.

Loss of expectation of life.

11. On loss of expectation of life, the trial court agreed that the deceased was 35 years when he died and had a young family with the prospect of living a longer life. The court awarded Kshs.150,000/= under this head. The Respondent had proposed Kshs.150,000/= whilst the Appellant proposed Kshs.100,000/= . It is my view that Kshs.100,000/= proposed by the Appellant to reasonable award under this head and I will disturb the trial court's finding. I am persuaded by the finding in the case of *Mercy Muriuki & Another vs Samuel Mwangi Nduati & Another (suing as the Legal Administrator of the Estate of the late Robert Mwangi) [2019]* eKLR where Muchemi J. stated: -

“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”.

Pain and suffering

12. On pain and suffering, the trial court awarded Kshs.30,000/=. The Respondent proposed Kshs.50,000/= whilst the Appellant proposed Kshs.20,000/=. There is also no dispute that the deceased died on the spot following the accident. I will therefore not disturb the trial court's finding under this head as the court exercised its discretion and the award was within the range given in the case of *Mercy Muriuki & Another (Supra)*.

Loss of dependency

13. The Respondent submitted that the deceased was survived by a wife and two children who relied on him and proposed a multiplier of 25 years and that the deceased would have worked up to the age of 60 years and longer noting he was working in a private setting and relied on the case of *Melbrimoinvestment Company Ltd Vs Dinah Kemonto & Anor (2022)*. The Respondent proposed dependency ratio of 2/3. On multiplicand, the Respondent relied on the Regulation Wages (General) (Amendment) and proposed Kshs.18,936.85. In total the Respondent proposed an award of Kshs.3,787,370/= made up of Kshs.50,000 x 12 x 6 x 2/3.
14. The Appellant proposed a dependency ratio of 2/3. On multiplicand, the Appellant proposed Kshs.7,240.95 as per the Regulation of Wages (General) (Amendment) Order 2018 for a general



laborer. On multiplier, the Appellant submitted there was no evidence to show the deceased was in good health. They therefore proposed 20 years taking into account the uncertainties of life relying on the case of *Mariera Vs Nzuki & Anor (2021) Kehc And Haji Ashraf & Anor Vs Sidi Masha Kalama & Another (2021) eKLR*.

15. The trial Magistrate stated that upon considering the above and the fact that the dependency ratio of 2/3 was not disputed. The Magistrate stated that she looked at the authorities and it shows persons who died at the age of 35 years are awarded a multiplier ranging from 20 years to 30 years. The trial Magistrate considered that the deceased was aged 35 years and had two children aged 11 years and 2 years. That according to the Magistrate was evidence of a person who was at the cusp of his life. The Magistrate was thus persuaded a multiplier of 25 years on the multiplicand. The Magistrate noted that the Death Certificate captured the profession of the deceased as a welder and relied on the Remuneration Order of 2022 which came in force on 1st May 2022 as a guide. It showed the income applicable was that of an ungraded artisan in all former municipalities and town councils of Mavoko, Ruiru and Limuru at Kshs.18,936.85/=. In total the court awarded Kshs.3,787,370 made up as follows: $18,936.85 \times 12 \times 25 \times 2/3$.
16. In making an award under this head, the trial Magistrate state that she had looked at the authorities and it shows and it shows persons who died at the age of 35 years are awarded a multiplier ranging from 20 years to 30 years, however the Magistrate failed to cite the exact authorities she relied upon and this court is not able to consider the same.
17. On the above award this court is guided by the principles applicable to an assessment of damages under the *Fatal Accidents Act* which were enunciated in the case of *Odera v Adoyo & another (Suing as the Legal Representatives of the Estate of Vincent Ochieng Adoyo - Deceased) (Civil Appeal 13 of 2020) [2023] KEHC 17962(KLR) (30 May 2023) (Judgment)* which referred to the case of *Richard Matheka Musvoka & another v Susan Aoko & (suing as the administrators ad litem of Joseph Onyango Owiti (Deceased)) (2016) eKLR* where J. Ringera stated as follows:-

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants.”
18. Dependency is a matter of fact and must be proved by evidence as was held in *Abdalla Rubeya Hemed Vs Kayuma Mvurya & Another [2017] eKLR* as follows:-

“Dependency is always a matter of fact to be proved by evidence. It is not that the deceased earned a sum and therefore must have devoted a portion or part of it to his dependence. Rather the claimant must give some evidence to show that he was dependent upon the deceased and to what extent.”
19. I find that the dependency ratio of 2/3 is reasonable considering that the deceased died at the age of 35 years and left behind a young wife aged 30 years and 2 children who were minors of tender ages. The multiplicand has been established to be Kshs.18,936.85/=. per month according to the minimum wage in application at the time of death of the deceased. The multiplier is the number of years that



the deceased would have gainfully worked until retirement. In this case, I find it prudent to apply a multiplier of 20 years.

20. The trial court's adoption of a multiplicand of 25 years for the deceased who was aged 35 years, although not shown to have been of ill health, was wrong for failing to take into account life's other vicissitudes not restricted to ill health that could cut short the working life of the deceased. For such vicissitudes despite the deceased being of good health, the court awards a multiplier of 20 years.
21. Therefore, the trial magistrate left out of account a relevant issue in adopting a multiplicand of 25 years for calculating damages under the *Fatal Accidents Act* in this case where the deceased was aged 35 years. This court is inclined to disturb the trial court's award under this head by adopting a multiplier of 20 years as opposed to 25 years as follows; $18,936.85 \times 12 \times 20 \times 2/3 = \text{Kshs.}3,029,896.00$
22. The trial court declined to award special damages as the same were not pleaded. The Respondent did not cross appeal the same. I will not disturb this award.
23. Accordingly, for the reasons set out above, the appellant's appeal herein is allowed in terms as follows:
 - a. The award of Kshs.150,000/= for loss of expectation of life is set aside and substituted with Kshs.100,000/=
 - b. The award of Ksh.3,787,370/- for dependency under the *Fatal Accidents Act* is set aside and substituted with an award of Ksh.3,029,896/-
 - c. The award of Ksh.30,000/- for pain and suffering is affirmed.
 - d. The total award under orders a, b and c above is subject to 20% contribution ($100,000 + 3,029,896 + 30,000 = 3,159,896$)-631,792.20 =
Total - Kshs.2,528,103.80
 - e. The award of Nil Special Damages is affirmed.
 - f. The Respondent shall have costs of the lower court plus interest at court rates
 - g. The Appellant shall have half the costs of this appeal.
 - h. The Appellant shall have half the costs of the appeal.
 - i. Stay of execution granted for Thirty (30) Days.Order accordingly.

JUDGMENT WRITTEN, SIGNED & DATED AT MACHAKOS THIS 6TH FEBRUARY 2025

NOEL I. ADAGI

JUDGE

