



**Wamwea v Mwangi & another (Suing as the Legal Representatives  
of the Estate of George Muraguri Wanjohi – Deceased) (Civil Appeal  
E079 of 2023) [2025] KEHC 14111 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14111 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E079 OF 2023  
EM MURIITHI, J  
OCTOBER 7, 2025**

**BETWEEN**

**FRANCIS WAMWEA ..... APPELLANT**

**AND**

**LUCY NYAWIRA MWANGI ..... 1<sup>ST</sup> RESPONDENT**

**BENJAMIN WACHIRA WANJOHI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF GEORGE  
MURAGURI WANJOHI – DECEASED**

*(Being an Appeal from the Judgment of Honorable S.M Nyaga  
(P.M) delivered on the 14/9/2023 at Baricho PMCC No. 137 of 2018)*

**JUDGMENT**

1. By Plaintiff dated 31/8/2018, the Respondents sued the Appellant seeking general damages under the *Law Reform Act* and the *Fatal Accidents Act*, special damages of Ksh. 170,000 and costs of the suit plus interest. The Respondents pleaded that on or about 6/9/2015 at around 9.30 pm, George Muraguri Wanjohi, the deceased herein, was a lawful passenger aboard motor vehicle registration No. KBZ 898 K Toyota Mark X along Sagana – Makutano road at Riandira, when the Appellant so negligently, and carelessly drove it without care and attention, thereby fatally injuring him. At the time of his death, the deceased was a 26 year old healthy businessman owning 4 butchereries, making a monthly sum of Ksh. 242,516, and as a result his death, his estate suffered loss.
2. The Appellant denied the claim vide his statement of defence dated 26/11/2018 and prayed for the Respondents’ suit to be dismissed with costs.



3. Upon full hearing, the trial court found the Appellant to have been 100% liable for the accident, and awarded Ksh. 50,000 for pain and suffering, Ksh. 150,000 for loss of expectation of life, Ksh. 10,690,176 for loss of dependency and special damages of Ksh. 117,370 together with costs and interest.

### **The appeal**

4. On appeal, the Appellant vide his memorandum of appeal filed on 19/9/2023 set out 7 grounds as follows:
  1. The Learned Magistrate erred in law in awarding general damages for pain and suffering at Kshs. 50,000/= which amount is manifestly excessive and high considering that the deceased died immediately after the accident.
  2. The learned Magistrate erred and misdirected himself when he awarded to the Respondents general damages of Ksh. 150,000/= for loss of expectation of life, which amount is manifestly excessive and high considering other conventional awards in assessment of damages payable.
  3. The Learned Magistrate erred and misdirected himself when he awarded to the Respondent general damages of Kshs 10,690,176/= for loss of dependency which amount is inordinately high and not supported by the evidence presented by the Appellant.
  4. The Learned Magistrate misdirected himself and erred in fact and in law by acting more than his pecuniary jurisdiction by awarding an astronomical sum of Kshs 11,007,546/= as the aggregate decretal sum which amount grossly exceeds his pecuniary jurisdiction.
  5. The learned Magistrate totally misdirected himself into applying wrong principles of law in arriving at his decision which influenced him into arriving at an erroneous and unreasonably high award.
  6. The Learned Magistrate erred in law and in fact in failing to consider the written submissions of the Appellant on record and the authorities annexed therein in support of the Appellant's case.
  7. The Learned Magistrate erred in law and in fact by failing to follow rules of precedence in awarding general damages.

### **Duty of the Court**

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).

### **Oral Evidence**

6. PW1 Lucy Nyawira Mwangi adopted her statement dated 31/8/2018 as her evidence in chief and produced the list of documents and the further list of documents as exhibits. She testified that, "I live in Kibingoti village. Am a farmer and businessman. I'm the 1<sup>st</sup> Plaintiff. The hand written notes in my further list of documents were made by the deceased."
7. On cross examination, she stated that, "I did not witness the accused. I do not have an eye witness to confirm...of negligence, in the plaintiff. I collected the handwritten notes from the deceased's butchery. I have not availed statements from the bank to prove deposits the deceased used to make from earnings.



- I have not filed his income Tax returns. I was only able to trace one business permit from the butcheries. We used to buy whole cows. I have no report to confirm purchase price. I have not filed a certificate of birth of the deceased's child or the deceased certificate of birth or his sitter's certificate of birth. I have no documents to prove the salaries paid or transport or utilities bills. The salaries would be paid in cash.”
8. In re-examination, she stated that, “Am conversant with deceased's handwriting. I was involved in the running of the butchery.”
  9. PW2 Corporal Evaline Muthongi, Traffic Sagana produced the police abstract as an exhibit. She testified that, “I was summoned to court to represent Base Commander to testify regarding this matter. George was a passenger in Motor vehicle KBZ 898K Toyota Mark X along Makutano-Sagana road. The driver lost control veered off the road and rolled several times. He died while undergoing treatment.”
  10. On cross examination, she stated that, “I am not the investigating officer. I do not have police file. I carried O.B No. sketch plan. I do not know if driver was charged.”

### Submissions

11. The Appellant proposes a sum of Ksh. 10,000 for pain and suffering and Ksh. 100,000 for loss of expectation of life, and cites Hyder Nthenya Musili & Another v China Wu Yi Limited & Another (2017) eKLR, Kenya Sugar Co. Limited v Philip Sumba Julaya (Suing as the Administrator and Personal Representative of the estate of James Julaya Sumba) [2019] eKLR, Wangari v Nkaru (2004) eKLR, Kenya Railways Corporation v Samwel Mugwe Gioche (2012) eKLR and Ngania & 2 Others v Adulu (Suing as the Legal Representative of the Estate of Clinton Morgan Kiprotich) (Civil Appeal E005 of 2023) [2024] KEHC 4005 (KLR). He urges that since there was no evidence of the earnings of the deceased, the trial court ought to have awarded a global figure, and cites Mary Khayesi Awalo & Another v Mwilu Malungu & Another (1999) eKLR, Albert Odawa v Gichimu Gichenji (2007) eKLR and John Wamae v Jane Kituku Nziva & Another (2017) eKLR. He proposes a global sum of Ksh. 800,000 for loss of dependency, and cites Chen Wembo & 2 Other v IKK & another (Suing as the legal representative of the estate of CRK (deceased) (2017) eKLR, Kitale Industries Ltd & another v Zakayo Nyende & another (2018) eKLR, Chanhadiya Enterprises Ltd & another v Sarah Alusa Mwachi (Suing as the legal Administrator and Personal Representative of the Estate of late Faiza Musa (Deceased) [2018] eKLR and Mwangangi & another v FKM (Suing as Legal Representative of the Estate of the late AMK) (Civil Appeal E11 of 2021) [2021] KEHC 291 (KLR). He faults the trial court for awarding Ksh. 11,007,546 which was beyond its pecuniary jurisdiction, and cites Owners of Motor Vessel “Lilian S” v Caltex Oil Kenya Limited (1989) KLR 1, Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others [2008] KECA 334 (KLR), West Kenya Sugar Company Limited v Okendo (Civil Appeal E056 of 2023) [2024] KEHC 2844 (KLR) and Phoenix of E.A Assurance Company Limited v S.M Thiga t/a Newspaper Service (2019) eKLR.
12. The Respondents cite Joseph Muthee Kamau & Another v David Mwangi Gichuru & Another (2013) eKLR, where the Court of Appeal held that, “...jurisdiction cannot be conferred at the time of delivery of Judgment. Jurisdiction does not operate retrospectively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.” They urge that jurisdiction is determined by the value of the subject matter as pleaded, and cite Otieno v Equity Bank Limited (Civil Appeal 182 of 2019) [2024] KECA 811 (KLR) (5 JULY 2024). They urge that the awards of Ksh. 50,000 for pain and suffering and Ksh. 150,000 for loss of expectation of life were justified, because the deceased experienced a lot of pain before he succumbed to his injuries, and cite Sukari Industries Limited v Clyde Machimbo Juma (2016) eKLR and Kenya Power Limited v James Matata & 2 Others (Suing as the legal representatives of the estate of Nyange Masaga (Deceased) [2016] eKLR. They urge that the un rebutted evidence on record alongside the handwritten notes were sufficient proof of the earnings



of the deceased, and cite *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] KECA 202 (KLR), *Terry Wanjiru Kariuki v Equity Bank Limited & Another* [2018] KEHC 9904 (KLR), *Behan & Okero Advocates v National Bank of Kenya* (2007)...and *Kyoga Hauliers v Okoddi* (Civil Appeal 58 of 2022) [2023] KEHC 26762 (KLR) (19 DECEMBER 2023).

### **Analysis and determination**

13. From the grounds of appeal as framed, the issues for determination are whether the awards were excessive and whether the Appellant's submissions and authorities were considered.

### **Excessive damages**

14. This court has previously considered the principles for appellate interference with an award of damages by a trial court in *Crown Bus Services Ltd & 2 others v BM (Minor suing through his mother & Next Friend) SMA* [2020] eKLR as follows:

“The well-known principles for interference of an award of damages by a trial court are laid down by the Privy Council in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601, 613 and applied in East Africa by Sir K. O'Connor (with whom Sir Alastair Forbes, V.-P. and Newbold, J.A. agreed) in *Henry H. Ilanga v. M. Manyoka* [1961] EA 705, 713 as follows: “The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking in some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell*, [1935] 1 K.B.), approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.”

15. According to the Mortuary Record Summary from Jamii Hospital, the deceased succumbed to the injuries on arrival at the hospital. The cause of the death of the deceased was cardiopulmonary arrest due to severe head, abdominal and limb injuries. It is therefore reasonably expected that he endured excruciating pain, and the award of Ksh. 50,000 by the trial court for pain and suffering was thus appropriate.
16. Whilst the conventional figure awardable for loss of expectation of life is Ksh.100,000, the fact finder is enjoined to consider the unique circumstances of each case, in awarding a higher amount. The deceased was aged only 26 years when his life was brutally cut short by the Appellant's negligence, and this court finds that the award of Ksh.150,000 for loss of expectation of life was justified.
17. Admittedly, the deceased herein was 26 years old, enjoying a robust and healthy life. It is urged that the deceased was operating 4 butcheries to support his wife, son, a sister with disability and parents with a monthly income of Ksh. 242,516. The uncontroverted evidence on record is that the deceased was operating a butchery at Kibingoti as evinced by the business permit issued on 26/6/2015 and the books of accounts therefrom.



18. In his submissions during trial, the Appellant urged that –
- “Therefore your honour, we urge this Court to adopt the Deceased’s earnings of Kshs. 55,678/=. By our above calculation, loss of dependency can be awarded as;  $55,678 \times 20 \times 2/3 \times 12 = 8,908,480/-$ .”
19. Having expressed its difficulty in comprehending the computations contained in the hand written notes of accounts, the trial court adopted the multiplicand of Ksh. 55,678 proposed by the Appellant in his submissions. It is a trite law that submissions, however persuasive, cannot take the place of pleadings.
20. As counseled by the Court of Appeal in *Jacob Ayiga Maruja & another v Simeon Obayo* [2005] KECA 202 (KLR), the absence of proof of the deceased earnings in the form of receipts cannot be construed to mean he was not working for gain, and other relevant evidence may be considered.
21. Supposing the 4 butcheries allegedly operated by the deceased fetched a cumulative monthly income of Ksh.242,516, one butchery would generate Ksh.60,629 per month. This court therefore finds that, after factoring in taxes and other operational expenses, a multiplicand of Ksh.50,000 would be reasonable.
22. In view of the vicissitudes of life and the contingencies incidental to the management of a private business venture, this court finds that a multiplier of 20 years would suffice.
23. The special damages of Ksh.117,370 were specifically pleaded and strictly proved.

#### **Consideration of the Appellant’s submissions**

24. While the Appellant faults the trial court for disregarding his submissions and authorities, the record shows that the trial court considered the submissions of the parties and was persuaded by the Appellant’s submissions in its adoption of a multiplicand of Ksh.55,678.

#### **Orders**

25. Accordingly, for the reasons set out above, the Court finds the Appellant’s appeal to be merited and it is allowed in the following terms:
1. The multiplier of 24 years is set aside and substituted with 20 years.
  2. The multiplicand of Ksh.55,678 is set aside and substituted with Ksh.50,000.
  3. The award for loss of dependency shall thus be  $50,000 \times 20 \times 2/3 \times 12 = 8,000,000/-$ .
  4. The other awards remain unchanged.
26. There shall be no orders as to costs.

Orders accordingly.

**DATED AND DELIVERED THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

M/S Gatuiku Mwangi & Co. for the Appellants.



Ms. Natocho for Mr. Magee for the Respondent.

