Mburu & another v Kiplagat (Suing as the administrator of the Estate of the Late Dennis Kiptoo Kipruto) (Civil Appeal E007 of 2024) [2025] KEHC 14807 (KLR) (3 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14807 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ITEN

CIVIL APPEAL E007 OF 2024

JRA WANANDA, J

OCTOBER 3, 2025

BETWEEN

SIMON GITAU MBURU .... 1ST APPELLANT

DOUGLAS KIBIWOTT KIMUTAI .... 2ND APPELLANT

AND

VINCENT KIPRUTO KIPLAGAT (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE DENNIS KIPTOO KIPRUTO) .... RESPONDENT

(Appeal from the Judgment dated 26/03/2024 delivered in Iten SPMCC No. E064 of 2023 by Hon. Emily Kigen-Principal Magistrate)

JUDGMENT

1. This Appeal arises from the above suit in which the Respondent (as Plaintiff) sought compensation for the death of his 21 years old son, which arose as a result of injuries suffered in a road accident that occurred on 14/09/2022. The Appeal challenges the trial Court's findings both on liability and quantum.

2. The trial Court found the Appellants 100% liable and entered Judgment in favour of the Respondent in the following terms, plus costs and interest:

a)	Pain & suffering	Kshs 30,000/-
b)	Loss of expectation of life	Kshs 100,000/-
c)	Loss of dependency	Kshs *2,177,280/-*
d)	Special damages	Kshs 180,000/-
	Total	Kshs *2,487,280/-*

3. The award for "loss of dependency" at Kshs 2,177,280/- (computed as Kshs 15,120/- for 12 months x 36 years x 1/3) was based on the following parameters:

Multiplicand (monthly earning)	Earning years (multiplier)	Dependency ratio
15,120/-	36	1/3

4. The background of the suit is that it was instituted by way of the Plaint dated 14/08/2023 filed through Messrs Cherono J & Co. Advocates. Suing as the legal representatives of the deceased, the Respondent pleaded that the 1st Appellant was the owner of the motor vehicle registration number KDC 295L Isuzu Lorry (hereinafter referred to as "the lorry"), that on 14/09/2022, the deceased was riding the motor-cycle registration number KMEP 244B along the Eldoret-Ravine Road at Chepkorio area when the 2nd Appellant who was driving the lorry, managed and/or controlled the lorry so negligently causing it to loose control and hit the deceased thus causing him serious injuries, leading to his death. Particulars of negligence against the Appellants were then listed. Special damages was also particularized and claimed at Kshs 229,750, together with general damages, costs and interest.

5. The Appellants, through Messrs Kitiwa & Partners Advocates filed a Statement of defence whereof the allegations of negligence were denied. Blame for the accident was also attributed to the deceased for, among others, carelessly and recklessly riding the motor-cycle.

6. The matter then proceeded for trial in which the Respondent called 4 witnesses, while the Appellants called 1.

Respondent's (Plaintiff) evidence before the trial Court

7. PW1 was the Respondent, Vincent Kiprono Kiplagat. He adopted his Witness Statement and produced documents. In cross-examination, he agreed that he did not witness the accident, and also that he did not produce anything to prove his dependency on the deceased, whom he stated was his 3rd child. He then stated that he had other children still under 18 years, that he and his wife are farmers, that the deceased was 21 years old, and that he had 2 others whom however he had not named in the Plaint. He further stated that the deceased died on the spot, and that he used to do casual jobs and farming, but he did not know how much he used to earn.

8. PW2 was one Victor Kibiwott Kimutai. He, too, adopted his Witness Statement. In cross-examination, he stated that he witnessed the accident, that the lorry and the motor cycle were about 10 metres apart when the lorry lost control, that the accident occurred in the middle of the road on the left side as one

faced Ravine, and that the deceased died on the spot. I note that in his Witness Statement had also stated that he was with the deceased and that the deceased was going to the petrol station to fuel the motor-cycle when the accident occurred.

9. PW3 was one Boaz Kipngetich Korir. He also adopted his Witness Statement. In cross-examination, he stated that he was aboard a matatu travelling from Nyaru heading to Kiptulos and he was seated in front with the driver, and that the motor-cycle was near them as the distance between them was about 10-15 metres. He stated that the lorry was heading to Eldama Ravine when it suddenly the lorry lost control and knocked the deceased on his left-hand side as one headed to Eldoret and then dragged the deceased for some metres. He stated that they alighted to assist the deceased who was injured and unconscious and was facing down, and he is not sure whether the deceased died on the spot. He agreed that he did not record a statement with the police, and that the father of the deceased came and he narrated to him the events.

10. PW4 was Traffic Police Officer, Dennis Muga, who described himself as the Base Commander Kaptagat. He confirmed occurrence of the accident and stated that he had the sketch plans, and that the rider was hit on the left side towards the left lane when the lorry veered towards the rider's loan. He then produced the police abstract. In cross-examination, he agreed that he was not the investigating officer, and that he did not visit the scene but insisted that he had the police file, and that the investigations report describes the chronology of events. He stated that the record reads that "unknown driver of motor vehicle KDL 259 was moving from Eldoret towards Ravine direction fatally injured a male driver of motorcycle KMEP 244P". He agreed that the owner of the lorry has not been charged, and then stated, without elaborating or being probed further, that the investigations "were corrupted".

Appellants' evidence before the trial Court

11. DW1 was the 2nd Appellant, Douglas Kibiwott Kimutai. He, too, adopted his Statement and confirmed that he was driving the lorry at the time of the accident, and insisted that he has never been charged with any traffic offence. He then produced the Appellants' documents. In cross-examination, he stated that the accident occurred at around 8.00 pm, that the motorcycle encroached onto his lane, and that the road was clear and he thus saw the rider well as they were alone on the road. He denied that he increased speed. I note that in his Witness Statement, he had also stated that when the rider encroached onto his lane, he (DW1) slowed down and steered to the far left to avoid a collision but due to the proximity, the collision still occurred, and the point of impact was therefore on the far left outside the road.

12. As aforesaid, after the trial, the Court entered Judgment against the Appellants as aforesaid. Aggrieved by the decision, the Appellants preferred this Appeal on 5 grounds as follows:

    i. That the learned Magistrate erred in law and fact in holding the Appellants 100% liable contrary to the evidence on record.

    ii. That the learned trial Magistrate erred in law and fact in failing to dismiss the Respondent's case.

    iii. That the learned trial Magistrate erred in law and fact in failing to find that the Respondent had failed to prove his case on a balance of probabilities.

    iv. That the learned Magistrate erred in law and fact in awarding damages that were inordinately high.

    v. That the learned trial Magistrate erred in law and fact in using wrong principles in assessing damages.

13. The Appeal was then canvassed by way of written Submissions. The Appellant's Submissions is dated 22/04/2022 while the Respondents is dated 28/05/2025.

Appellants' Submissions

14. Counsel for the Appellants, on the issue of liability, pointed out that PW4, the traffic officer admitted that he was not the investigating officer, and he also did not produce sketch plans or police file or the occurrence book, and neither did he visit the scene. According to him therefore, PW4's testimony was of nominal value. He also pointed out PW4's testimony that the investigations were corrupted, and that no one was charged. He submitted that a police abstract does not prove negligence but only that the accident was reported. Regarding PW2 and PW3 who testified as eye-witnesses, he urged that there is no evidence placing them at the scene as the police abstract does not mention them, and they also never recorded any statements with the police. He also contended that there were contradictions in their testimony and pointed out that, while PW2 testified that the accident occurred on the left side of the road, PW3 stated that it happened in the middle of the road, which testimony, in his opinion, corroborated the testimony of DW1, the driver of the lorry. He submitted further that the deceased was not qualified to ride the motor-cycle since no driving licence was produced, and also that it was not demonstrated that he was wearing a helmet or a reflective jacket.

15. On quantum, regarding "pain and suffering", he submitted that the deceased having died on the spot, the award of Kshs 30,000/- should be reduced to Kshs 10,000/-. Regarding "loss of expectation of life", he urged that the award of Kshs 100,000/- should be reduced to Kshs 70,000/-., and on "loss of dependency", he submitted that the trial Court should not have adopted the "minimum wage", but the "multiplier approach". He also contended that the deceased not being married, and there also being no proof that he left behind any children, the dependency ratio of 1/3 adopted by the trial Court was justified. Regarding "multiplicand", he contended that Section 3(2) of the Insurance (Motor Vehicle Third Party Risks), defines "earnings" as either the minimum wage or a reasonable income, whichever is higher. Counsel then, in a somewhat departure from, and/or in contradiction to his earlier submissions proposing adoption of the "multiplier approach" instead of the "minimum wage", averred that, in the absence of proof of earnings made by the deceased, the Court has to resort to the "minimum wage", which he stated, was Kshs 8,109.90, and which should be adopted as the "multiplicand". Counsel's position on this issue is therefore not clear.

16. As regards the "multiplier" adopted at 39 years, he proposed that, as the deceased died at the age of 21 years old, the same ought to be reduced to 18 years. On special damages, he agreed with the trial Court's award.

Respondent's Submissions

17. Counsel for the Respondent basically recited authorities restating the limitations imposed on an Appellate Court under the law, and submitted that the Court should not interfere with the trial Court's findings.

Determination

18. As reiterated in a plethora of cases, this being a first appellate Court, its role is to evaluate, re-assess and re-analyze the evidence before the trial Court and draw its own conclusion. In the case of Kenya Ports Authority vs Kuston (Kenya) Ltd. [2009] 2 EA 212, for instance, the following was stated:

> " On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that

it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence”

19. In the circumstances, I find the issues that arise for determination in this Appeal to the following:

    i. Whether the attribution of liability by the trial Court at 100% against the Appellants was justified.

    ii. Whether the trial Court’s award for “pain and suffering”, “loss of expectation of life”, and “loss of dependency” were based on proper principles.

20. Regarding the extent of the powers of an Appellate Court, it is settled that an appellate Court will only interfere with the conclusions and findings of a trial Court if the same were not supported by evidence or were premised on wrong principles of law. This was the import of the holding in the case of Mwangi V. Wambugu (1984) KLR 453, in which the Court of Appeal held, inter alia, as follows:

> “ A court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding and an appellate court is not bound to accept the trial Judge’s finding of fact if it appears either that he has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

21. In this case, there is no dispute that the 2nd Appellant, who was driving the lorry, and the deceased, who was riding the motor-cycle collided. There is also no dispute that the two were approaching each other from opposite sides, the lorry from Eldoret side, and the deceased from the Ravine side. The question that was before the trial Court was to determine whether the point of impact was on the lorry’s lane as alleged by the Respondent, or whether it is the lorry that encroached into the of the motor-cycle. On this point, the trial Magistrate stated as follows:

> “ I have considered the evidence tendered in court it is my considered view that the plaintiff has proved on a balance of probabilities the evidence of PW1 was corroborated by the evidence of PW2 and PW3 who were eye witnesses, as such I find the defendant to be 100% liable for the accident and the plaintiff’s fatal injuries.”

22. The Appellants’ Counsel correctly observed that PW2 and PW3 do not appear in the Police Abstract as witnesses, and thus doubted whether the two really witnessed the accident. While this is a valid point, the two were cross-examined and the trial Court, having seen and observed them, believed them as truthful witnesses. That was within her discretion and this Court cannot easily interfere. In any event, it has not been alleged that in practice, all eye-witnesses are always identified by the police and documented in the police abstract. That point may therefore have been of more weight in a criminal/ traffic case where the proof is beyond reasonable doubt, than in a civil case as herein, where the standard is proof on a balance of probabilities. The Appellants’ Counsel also pointed out that PW4 was not the investigating officer, never visited the scene, and also never produced the police file. Again, PW4 was cross-examined and the trial Magistrate, having seen and observed him, believed him as truthfully recounting the information that was contained in the police file. Police files, like all office files, do not belong to an individual and even when the person handling it (the investigating officer in this case, is away, or leaves that office, or is transferred or dies, the file remains under the custody of the office, and other authorized officer can therefore refer to it and give evidence on its contents.

23. The Respondent having called the Traffic Officer as a witness for himself, he was deemed to have addressed to his duty to prove his case. The Appellants, if they wished to disprove that piece of testimony, had the option of also applying for Summons to be issued to compel the police to produce the Court file for scrutiny, which option they never took up. The alleged contradictions in the testimony of PW1 and PW2 as regards the point of impact have also not been shown to be so material to the extent that they would justify for overturning of the trial Court's findings. In any case, PW2, PW2 and PW3 were all in unanimity that the collision occurred when the lorry lost control, and veered onto the lane of the motor-cycle.

24. On the guidance of the case of Mwangi V. Wambugu (supra), I do not discern any demonstration that the trial Magistrate's findings on liability were based on no evidence, or on a misapprehension of the evidence, or that she acted on wrong principles.

25. On quantum of damages, the Appellants "feels" that the respective awards made are excessive. On this issue, in Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.M. Lubia and Olive Lubia [1985], Kneller J.A, guided 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 ...."

26. Similarly, in the case of Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR, the Court of Appeal pronounced itself as follows:

> " ...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled ...."

27. An appellate Court will not therefore disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the trial Court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low. The question is therefore whether there are justifiable grounds for this Court to interfere with the quantum of damages awarded by the trial Court.

28. On "pain and suffering", there is no dispute that the deceased died instantly. My review of awards for "pain and suffering" in such instances reveals that the Courts give figures in the region of Kshs 20,000/- to 40,000/-. In the circumstances, I find that the award of Kshs 30,000/- was merited.

29. On "loss of expectation of life", from my review of comparable authorities, I established that Courts have been awarding sums in the region of Kshs 100,000/- to Kshs 200,000/-. The trial Magistrate having awarded Kshs 100,000/-, I find that the this figure is within what is ordinarily awarded.

30. On “loss of dependency”, it is clear that the earnings or income made by the deceased, if any, or the source thereof, was not proved. The trial Magistrate therefore adopted the “minimum wage” as the “multiplicand”. Although neither of the parties mentioned it, the trial Court also had the option of adopting the so-called “global” or lump-sum award” approach”.

31. On adoption of the “global” or lump-sum award” approach, J. Ngaah, J, in the case of Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the estate of Mercy Nzula Maina (deceased) [2016] eKLR, stated as follows-

> “It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

32. Similarly, Mabeya J in the case of Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR, stated as follows:

> “(23) In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.
>
> (24) The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly fits the gap.”

33. It is therefore evident that the principle advanced in the said cases and in many others, which I have not necessarily also cited, is that the “multiplier” approach should preferably only be adopted in cases where there is satisfactory proof of the monthly income earned by a deceased person. The income earned by the deceased not being ascertainable in this case, the trial Magistrate perhaps should have adopted the “global sum” approach. However, since neither of the parties advanced adoption of the “global award” method, which issue was thus not canvassed before the trial Court or in this Appeal, I will leave it that since, in any case, adoption of the “minimum wage” method in cases where there is no proof of income is also still acceptable and recognized, and the trial Magistrate cannot therefore be faulted for applying it. Each case on its own facts. For instance, F. Muchemi J, in the case of Gachoki Gathuri (suing as legal Rep. of the estate of James Kinyua Gachoki (Deceased) v John Ndiga Njagi Timothy & 2 others [2015] KEHC 4127 (KLR), held as follows:

> “It is trite law that where there is no proof of income, the court will adopt the minimum wage provided in the Regulations of Wages (General Amendment) Order ....”

34. Regarding the trial Magistrate’s adoption of the “multiplicand” as the “minimum wage” of Kshs 15,201.65, it is not disputed that the accident having occurred on 14/09/2022, the applicable law was, as at that time, the Regulation of Wages (General) (Amendment) Order, 2022. The monthly minimum wage stipulated under that Order for “general labourer” and allied services, was Kshs

15,201.65 for "Nairobi, Mombasa, Kisumu and Kisumu cities" (the highest), Kshs 14,025.40 for "all former Municipalities, and Town Councils for Mavoko, Ruiru and Limuru", and Kshs 8,109.90 for "all other areas" (the lowest). From the Chief's letter produced in evidence, the deceased was a resident of Kaptarakwa, I believe in Elgeyo-Marakwet County as also indicated in the Certificate of death, thus clearly outside the highest minimum wage limit of Kshs 15,201.65 reserved for "Nairobi, Mombasa, Kisumu and Kisumu cities". The trial Magistrate's adoption of the figure of Kshs 15,201.65 was therefore evidently erroneous.

35. No evidence was however led on whether the area within which the deceased resided was under the category of "former Municipalities" or "other areas". In view thereof, I will grant the Respondent the benefit of doubt, and adopt the next category of "former Municipalities", and thus apply the next highest minimum wage of Kshs 14,025.40.

36. Regarding the "multiplier" adopted by the trial Court at 36 years, as aforesaid, the deceased met his death at the young age of 21 years. I also note that at the trial Court, the Respondents had proposed a figure of 39 years as "multiplier", while the Appellants proposed 18 years. I have looked at relatively recent comparable cases, and I have come across the following appropriate decisions:

    a. E. Mureithi J, in Crown Bus Services Ltd & 2 others v Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased) [2020] eKLR, while dealing with an Appeal concerning a 21 years old deceased, reduced a multiplier of 39 years adopted by the lower Court to 25 years.

    b. O. Sewe J, in Mosonik & Another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased) (Civil Appeal 113 of 2019) [2022] KEHC 11823 (KLR) (29 July 2022) (Judgment), while dealing with an Appeal concerning a 23 years old deceased, upheld a multiplier of 35 years adopted by the lower Court.

    c. E. Mureithi J, in Crown Bus Services Ltd & 2 others v Jamilla Nyongesa and Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased) [2020] KEHC 1806 (KLR), while dealing with an Appeal concerning a 21 years old deceased, reduced a multiplier of 39 years adopted by the lower Court to 25 years.

37. From the above authorities and various others which I have not necessarily cited, I deduce that in comparable cases, where the deceased is around 21 years of age, most Courts have adopted multipliers of between 25-35 years. In the circumstances, and taking into account the vagaries, uncertainties and vicissitudes of life, I do not find the multiplier of 36 years adopted by the trial Court, though a little higher than ordinary, to be too excessive or too unreasonable or too inordinately high so as to merit setting aside thereof. I am therefore not persuaded that I should interfere with the same.

38. The "dependency ratio" of 1/3 adopted by the trial Court not having been challenged in this Appeal, I therefore award "loss of dependency" at Kshs 2,019,657.60 (computed as Kshs 14,025.40 for 12 months x 36 years x 1/3) particularized under the following parameters:

Multiplicand (monthly earning)	Earning years (multiplier)	Dependency ratio
Kshs 14,025.40	36	1/3

39. The special damages awarded at Kshs 180,000/- was not challenged.

Final Orders

40. In the end, I rule and order as follows:

    i. The Appeal only partially succeeds, and only to the extent that the trial Court's award on "loss of dependency" at the sum of Kshs 2,177,280/- is hereby set aside, and substituted with an award of Kshs 2,019,657.60

    ii. The rest of the awards made by the trial Court are therefore left undisturbed.

    iii. For avoidance of doubt therefore, the Judgment amount shall now read as follows:

a)	Pain & suffering	Kshs 30,000.00
b)	Loss of expectation of life	Kshs 100,000.00
c)	Loss of dependency	Kshs 2,019,657.60
d)	Special damages	Kshs 180,500.00
	Total	Kshs 2,329,657.60

    iv. Each party shall bear his own costs of this Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 3RD DAY OF OCTOBER 2025

....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the Presence of:

Ms. Satia for the Appellant

N/A for the Respondent

Court Assistant: Brian Kimathi