REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. E031 OF 2024

BETWEEN

JOSEPH GICHUKI NJOROGE ……..... 1ST APPELLANT

DANIEL MBIYU WAITHERA …… 2ND APPELLANT

AND

CHARLES HUNGI MAINA &

ESTHER WAMBUI MBARIRE (suing as the legal representatives of FRANCIS MBARIRE HUNGI-DECEASED) ……. RESPONDENTS

(Being an appeal from the judgment and decree in the Engineer Chief Magistrate's Court, CMCC No. E141 of 2022 by Hon. E. Wanjala (Principal Magistrate).

JUDGMENT

1. Joseph Gichuki and Daniel Mbiyu Waithera, the appellants, were the defendants in the Engineer Chief Magistrate's CMCC No. E141 of 2022. They had been sued for a claim of general and special damages following a road traffic accident involving motor vehicle KDC 013U and motorcycle registration number KMFV 849S, the deceased was riding. As a result of the accident, the deceased sustained injuries. Parties herein entered into a consent on liability. The respondent was awarded Kshs. 87,440.00 in special damages and Kshs. 3,385,846.40 .00 in general damages.
2. The appellants were dissatisfied with the judgment and submitted this appeal through John Ngigi & Company LLP Advocates. They raised the following grounds for appeal:
    a) The honourable learned magistrate erred in law and in fact in the assessment of damages payable.
    b) The honourable learned magistrate erred in law and fact in failing to find that the respondents did not prove the occupation of the deceased at the time of death.

c) The learned magistrate erred in law and fact in applying the wrong provisions of the regulation wages (General) (Amendment Order).

d) The learned magistrate misdirected herself by failing to consider and apply some weight to the evidence, authorities and the submission by the appellants on the applicable provisions of the regulation of wages (General) Amendment Order in the assessment of damages.

e) The honourable learned magistrate erred in law and fact in relying on extraneous evidence in arriving at the decision on quantum.

3. The respondent was represented by Gekong'a & Company Advocates. At the time of writing the judgment, they had not filed their submissions.

4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.

5. The appellant appealed on quantum in general damages.

6. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in **Nance vs British Columbia Electric Railways Co. Ltd. [1951] AC 601 on page 613,** where it stated:

> ***The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.***

7. The deceased passed away at the age of twenty-seven years. Although his father testified that he was a lorry driver, there was no evidence of his employment or earnings. The best approach would have been the Global Sum Award. In **Albert Odawa vs Gichimu Githenji, Nakuru HCCA No.15 of 2003 (2007), eKLR** Justice Ringera expressed himself as follows:

   The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can and must be abandoned where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.

8. I have looked at the decisions relied upon by the parties in the trial court and in this appeal. In the trial court, the respondents urged the court to award Kshs. 13,760,000.00 by using a multiplier of 43 years and an income of Kshs.40,000.00 per month. I have already observed that the earning was not proven, nor was it established that he was employed as a lorry driver.
9. The appellants, on the other hand, had urged the trial court to use a multiplier of 25 years.
10. In the case of **David Mbuba & another v Victoria Mwongeli Kimwalu & another [2018] eKLR**, an award of Kshs. 2,500,000.00 was granted under the Fatal Accidents Act. He was aged 35 years.
11. I am persuaded to interfere with the award on loss of dependency. I will award Kshs. 3,000.000.00 subject to the contributory negligence. I will not interfere with the other awards.
12. The appellants will be entitled to half the costs of this appeal.

Delivered and signed at Nyandarua, this 19th day of November 2025

KIARIE WAWERU KIARIE

JUDGE