

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO E222 OF 2023

CONSTANT WANYONYI
APPELLANT

VERSUS

JOHN JADIEL MURIITHI (Legal Representative of estate of
KIAMBI MURIITHI)
RESPONDENT

*(Being an appeal from the judgment from the Chief Magistrate's Court at
Meru in CMCC 111 of 2022 delivered by Hon. J. M. Njoroge(C.M.) on
22/11/2023)*

JUDGMENT

BACKGROUND

1. The Respondent filed suit in the Chief Magistrate's Court at Meru seeking general and special damages and costs. The suit arose out of a road traffic accident that occurred on 20th February, 2020 at Nkiayanga Area, along the Meru-Maua Road.
2. It was the Respondent's case that the deceased was lawfully riding abode motor vehicle registration number KCD 286F.

That the Appellant's authorized driver negligently drove the said motor vehicle and lost control and it rolled several times causing fatal injuries to the deceased, one Kiambi Muriithi.

3. The Appellant filed defence denying liability as alleged.
4. At the end of the trial the lower court entered judgement against the Appellant as follows: -

a) Liability 100%.

b) General Damages for pain and suffering - Kshs. 20,000/-.

c) Loss of expectation of life - Kshs. 100,000/-.

d) Loss of dependency - Kshs. 12,000,000/-.

e) Special damages - Kshs. 100,000/-.

Total - Kshs. 12,220,000/-

5. Aggrieved by the said Judgement the Appellant filed the Memorandum of Appeal dated 8th December 2022.

The Appeal

6. The Memorandum of Appeal set out the following grounds: -

- I. That the Learned Trial Magistrate erred in law in awarding general damages for loss of dependency at Kshs. 12,000,000/- which amount is manifestly excessive.***
- II. That the Learned Trial Magistrate erred in law and fact by adopting a multiplicand of Kshs. 100,000/- as the deceased's income which amount was excessive.***
- III. That the Learned Trial Magistrate erred in law and fact by adopting a dependency ration of half ($\frac{1}{2}$) in calculating loss of dependency as the deceased did not have any children.***
- IV. That the Learned Trial 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 while arriving at the award of general damages.***
- V. That the Learned Trial Magistrate is against the law and weight of the evidence on record and against the doctrine of stare decisis.***

7. Directions were given that the Appeal be canvassed by written submissions.

Appellants Submissions

8. The Appellant's submissions were mainly on quantum of damages awarded by the trial court.

Analysis and Determination.

9. The duty of this court was to set out in **Selle v Associated Motor Boat Co. Ltd (1968) EA 123** where the Court of Appeal for East Africa stated follows: -

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that, this Court must 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 this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on

the demeanor of a witness is inconsistent with the evidence in the case generally.”

10. As stated earlier, the appeal is only on quantum. The Appellant’s view is that the award of damages was manifestly high. The Respondent was of the contrary view and urged the court not to distress the decision by the trial magistrate.

11. The principles applicable to a case like this one were set out in **Butt vs Khan [1981] KLR 349** where it was held as follows;

“An appellate Court will not 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 judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”

12. Similarly, in the case of **Savanna Saw Mills Ltd Vs Gorge Mwale Mudomo (2005) eKLR** the court stated as follows: -

“It is the law that the assessment of 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 simply because it would have awarded a different figure if it had tried the case at the first instance ...”

13. There was really no contest over the award made under the following heads;

- Pain and suffering.
- Loss of expectation of life.
- Special damages.

14. These awards were within the conventional range and I uphold them.

15. The hotly contested issue was the award for loss of dependency. The trial magistrate accepted the letter said to have come from the deceased's employer which put his gross salary at Kshs. 150,000/- per month.
16. The Appellant's view was that in the absence of an employment contract as a payslip, then the trial court erred in relying on the said letter.
17. I have looked at the letter in question. The Appellant did not object to its production or ask for the deceased's employer to be called to produce the letter, and be subjected to cross examination. Therefore, the letter has to be taken as it is.
18. That said, I am really concerned that the letter does not give a breakdown of the salary, such as the statutory deductions and any deductions/liabilities on the deceased's pay. The trial magistrate faced the same dilemma and apportioned $\frac{1}{3}$ of the amount to the said deductions, which I think was reasonable. This is almost similar to the KRA PAYE Tax

Calculation Portal's Assessment. I am unable to find any error and principle in the manner that the deceased's net salary was arrived at.

19. It is on record that the deceased had a wife but no children. In my view the extent of dependency was not established by the respondent. It was unlikely that the deceased would have used half his net salary on the plaintiff and spouse. I think that a ratio of $\frac{1}{3}$ as suggested by the Appellant is reasonable. Therefore, I adopt that ratio.

20. The trial magistrate adopted a multiplier of 20 years, which in my view is reasonable and I uphold it. In the end, the tabulation for loss of dependency works out as follows;

$$\mathbf{Kshs. 100,000/- \times 12 \times 20 \times \frac{1}{3} = 8,000,000/-}$$

21. In the end, the judgment of the lower court is set aside and is substituted with the following awards: -

a) Pain and suffering - Kshs. 20,000/-.

b) Loss of expectation of life - Kshs. 100,000/-.

c) Loss of dependency - Kshs. 8,000,000/-.

d) Special damages - Kshs. 100,000/-.

Total - Kshs. 8,220,000/-.

22. Judgment is entered for the respondent against the appellant for the said ksh. 8,220,000/-.

23. The parties shall bear their respective costs of this appeal.

Dated, Signed & Delivered at **Meru** this **6th** day of **November, 2025.**

H. M. NYAGA

JUDGE