Wak Construction Limited v Kariuki (Civil Appeal E353 of 2023)
[2025] KEHC 16152 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16152 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E353 OF 2023

BM MUSYOKI, J

NOVEMBER 7, 2025

BETWEEN

WAK CONSTRUCTION LIMITED ..... APPELLANT

AND

GRACE WANJIKU KARIUKI ..... RESPONDENT

(Being an appeal from part of judgment and decree of Honourable R.N. Ng'ang'a SRM in Gatundu Chief Magistrate's Court civil case number E073 of 2022 dated 26-09-2023)

JUDGMENT

1 This is an appeal from part of the judgment and decree in the Chief Magistrate's Court at Gatundu civil case number E073 of 2022. The genesis of the matter is that the respondent's husband (hereinafter referred to as 'the deceased') was on 16-03-2021 involved in a fatal accident with motor vehicle registration number KCM 212J which belonged to the appellant. Following the accident, the respondent sued the appellant for compensation and after the trial, the court apportioned liability at 80:20 in favour of the respondent and awarded damages to the estate of the deceased as follows;

a. Pain and suffering Kshs 50,000.00

b. Loss of expectation of life Kshs 100,000.00

c. Loss of dependency Kshs 1,800,000.00

d. Special damages Kshs 32,450.00

2 The appellant has appealed against the award of damages and has set out the following grounds of appeal;

1. That the learned trial Magistrate erred in law when the same failed to properly evaluate the evidence on record thus reaching erroneous decision.

2. That the learned trial Magistrate in assessing damages for loss of dependency failed to apply the correct principles hence arrived at an erroneous estimate of damages which the deceased suffered.

3. That the learned trial Magistrate misapprehended the evidence and misapplied, misunderstood and overlooked the correct legal principles and judicial precedent and the submissions by parties that he made an award for loss of dependency that was erroneous and inordinately high.

4. That the learned trial Magistrate choice of multiplier is wrong and unreasonable.

5. That the learned trial Magistrate erred in law and fact by double awarding the respondents both under the *Law Reform Act* and *Fatal Accidents Act*.

3 This being a first appeal the court is obligated to re-evaluate, re-assess and re-analyse the evidence produced before the trial court and come to its own independent conclusion but bearing in mind that it should give due allowance for the fact that it did not take the evidence of the witnesses first hand neither did it have the opportunity to observe their demeanour. The re-visiting of evidence must however be restricted to the part appealed. In this case, the evidence this court is concerned with is that related to the assessment of the quantum of damages on the loss of dependency. This position is borne out of the contents of the submissions by the parties. Although prayer (a) of the memorandum of appeal asks that assessment of general damages be reviewed and/or set aside, the parties have not addressed this court on damages awarded under loss of expectation of life, specials and pain and suffering damages on. I must therefore take it that the appellant has abandoned his challenge on those two heads.

4 The evidence produced before the trial court in support of quest for loss of dependency was as follows. The respondent was the third witness who told the court that the deceased who was 51 years was her husband and he used to earn Kshs 30,000.00 per month. She added that the deceased used to pick tea, milk cows and had macadamia nuts and passion fruits. According to her recorded oral testimony, the respondent told the court that they had four children all of whom were in school and that the eldest was an adult. This despite her written witness statement which she adopted showing that the children were 25, 27, 19 and 15. In cross examination, the respondent stated that the deceased was a farmer and used to sustain his family from farming and that she was sickly and not in a position to work.

5 The position in law is that award of general damages is at the discretion of the trial court and an appellate court should not interfere with the award unless it has been demonstrated that the trial court applied the wrong principles or considered an irrelevant factor or failed to consider a relevant factor or the award is shown to be too low or too high such that it amounts to an erroneous estimate considering awards in cases of similar nature. Honourable Justice P.M. Mulwa held in Maina v Njuguna & another (Suing as Legal Representatives of the Estate of Julius Kamande Muchoki - Deceased) & another (2023) KEHC 21128 (KLR) that;

> 'An appellate court will only interfere with a trial court judgment if it is satisfied that the trial magistrate proceeded on the wrong principle, or misapprehension of the evidence and arrived at figures that were inordinately too high or low.'

6 And in Ainu Shamsi Hauliers Limited v Moses Sakwa & another (suing as the Administrator of the Estate of the Ben Siguda Okach (Deceased) (2021) KEHC 4971 (KLR) the court stated that

> 'In that regard, an appellate court will only interfere with the judgment of the lower court, if the said decision is founded on wrong legal principles.'

7 The appellant has submitted that the court applied the wrong principle by using the multiplier approach instead of the global approach. It has justified this argument by stating that there was no proof of income and there was no reason for reaching the conclusion of how long was the multiplier. The respondent has submitted that the court was right in awarding damages through the multiplier approach.

8 It is in the discretion of the trial court to decide which of the two approaches to use but such discretion must be guided by the established principles, evidence and facts of the case. The court must give reasons for its choice of the approach. Where there is no reasonable justification for adopting one approach instead of the other, the appellate court will be entitled and justified to interfere with the trial court's discretion.

9 A multiplier approach is suitable where the court can with some degree of certainty establish or estimate how much the deceased used to earn and the age of the deceased. Once it ascertains the two, the court would then decide the number of years the deceased would have continued earning but of course give allowance for contingencies of life.

10 In this case, the deceased was 51 years. Other than mentioning that the deceased was a farmer and used to pick tea and milk cows, the respondent did not produce evidence of his earning. There was no slightest indication of where he sold the tea, milk, nuts and passion fruits. None of the 15 documents produced by the respondent has an iota of evidence of the income the deceased used to get.

11 In its judgement, the court did not give any reason for adopting the multiplier approach. She stated that the deceased was a farmer and added that the minimum wage proposed for a general labourer was too low without stating why she considered it as too low. There was no evidence of the expenditures like school fees, rent and utility bills which in my view would have given an indication of how much the deceased used to spent on his family.

12 After stating that the minimum wage was too low, the Honourable Magistrate applied Kshs 15,000.00 as the income which in her own words was a modest, current and reasonable multiplicand. The trial court went on to apply 15 years as the multiplier and justified that by stating that the deceased's chances of working gainfully after retirement were probable. With due respect, the trial court reached the decision on multiplier and multiplicand through speculation and thus reached a wrong approach. A court of law should be guided by law, facts and evidence and not pick figures from the air as the trial court seems to have done in this matter.

13 The courts have held that where there is uncertainty of income of the deceased, the appropriate approach to adopt is the lumpsum one. In Mary Khayesi Awalo and Nickson Vielitha v Mwilu Malungu & another (1999) KEHC 44 (KLR), the court stated that;

> 'As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjuncture. It is better to opt for the principle of a lumpsum award instead of estimating his income in the absence of proper accounting books.

14 In similar case of Frankline Kimathi Baariu & another v Philip Akungu Mitu Mborothi (suing as the Administrator and Personal Representative of Antony Mwiti Gakungu Deceased) (2020) KEHC 5897 (KLR) the Honourable Court had this to say;

> '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.

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.'

15 Having evaluated the circumstances of this case and owing to the uncertainty of the deceased's income and lack of proof of level and extent of dependency, I hold that the trial court fell into error of principle in adopting the multiplier approach. The appropriate approach was a global award. In making awards using the global approach, the court should be guided by the circumstances of the case including but not limited to the ascertainable lifestyle of the family, the age of the dependants and the age of the deceased. In Nzioka (Suing on her own behalf and as Administrator of the Estate of Gideon Mwanthi Nguyo - Deceased) v Mwangangi & another (2022) KEHC 15711 (KLR), Honourable Lady Justice J.N. Mulwa held that;

> 'In making a global award, apart from comparison with previous trends or precedents, courts will also consider other factors such as the general health of the deceased before he met his death, his age and the number of dependents, particularly children below the age of eighteen years.'

16 And in Amazon Energy Limited v Josephine Martha Musyoka & another (2019) KEHC 6359 (KLR), Honourable Justice R Nyakundi held which I agree with that;

> 'I have already expressed my discomfiture with the lump sum/global award approach. In making a global award, the trial court should always ask itself whether the award made is close to an award that could have been made using the multiplier approach taking into account the age of the deceased, and using the minimum wage of a general worker, where the earnings of the deceased cannot be ascertained. It will be unjust for the lump sum to be much higher than the award to the estate of a deceased whose earnings have been established and a multiplier approach used.'

17 I have also looked at the following authorities which I find fairly comparable to the circumstances of this appeal;

a. Domitila Wangui Karugu & another v Dagu Hidris Haide (2020) KEHC 9201 (KLR) where the court awarded a global sum of Kshs 800,000.00 for loss of dependency for a deceased who was aged 47 years and left behind one minor child.

b. Kabora & another (Suing as the legal representative of the Estate of Esther Gathigia Mwangi (Deceased)) v Mwangi (2023) KEHC 24919 (KLR). In this case, the deceased died at 43 years and left behind one child who was still in school. The court awarded a global sum of Kshs 1,000,000.00 for loss of dependency.

18 I have considered the fact that only one out of the four children of the deceased was below the age of majority. I have also considered that the deceased was said to have been engaged in farming which the respondent and her children could still continue running. I have noted that the deceased was 51 years and the period of dependency if any in respect of the youngest child would have been three years or thereabout. Putting all the above into consideration, I am of the opinion that the level of dependency did not justify the award of Kshs 1,800,000.00. I am minded to reduce the same to Kshs 1,000,000.00.

19 In conclusion, this appeal is allowed to the extent that the Honourable Magistrate's award of Kshs 1,800,000.00 for loss of dependency is set aside and substituted therefor with award of Kshs 1,000,000.00. There shall be no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT .

Judgment delivered in presence of Mr. Ng'ang'a holding brief for Mr. Ndumia for the appellant and Mr. Ndung'u for Mr. Gichimu for the respondents.