

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL DIVISION
CIVIL APPEAL NO. E299 OF 2023**

FORMERLY KIAMBU CIVIL APPEAL NO. E242 OF 2023

PETER KARIUKI GATUHI 1ST APPELLANT

BENSON NDIRITU MUMBUYA 2ND APPELLANT

VERSUS

JANE WAKARITI GITHINJI &

MOSES NGURU GITHINJI

**(Suing as the Legal Representatives of the
Estate of Asaph Muriuki Githinji (Deceased).....**

RESPONDENTS

*(Being an Appeal from Judgement of Hon. Christine Asuna Okello,
Principal Magistrate in Ruiru Civil Suit No. E483 of 2022 delivered on
21 June 2023)*

JUDGEMENT

1. By Plaintiff dated 24 August 2022, the Respondents instituted proceedings against the Appellants, jointly and severally, for:
 - (i) General damages
 - (ii) Special damages
 - (iii) Costs of the suit
 - (iv) Interest
 - (v) Any other relief the Court may deem fit to grant.

2. The genesis of the dispute lies in a tragic road traffic accident that occurred on or about 23 April 2022, along the Thika Superhighway, near the precincts of Kenyatta University. The Deceased, Asaph Muriuki Githinji, was a young man aged 28 years at the time of his demise, He was a pedestrian, standing at or near the guardrails of the highway when the accident occurred. The 1st Appellant was the driver of the motor vehicle registration KAC 633B, Isuzu Lorry. The 2nd Appellant was the registered owner of the said motor vehicle. The Respondents filed the suit in their capacity as the legal representatives of the estate of the Deceased.
3. The particulars are that the 1st Appellant, while driving the motor vehicle, did so negligently, recklessly and without due care, causing it to lose control, veer off the road and strike the Deceased. The impact resulted in severe injuries, to which the Deceased succumbed shortly thereafter. The Respondents sought special damages of Kshs 104,210/= as well as general damages under the Fatal Accidents Act and the Law Reform Act.
4. The Appellants entered appearance and filed a Statement of Defence dated 1 October 2022, in which the denied the averments in as pleaded by the Respondents. The Appellants pleaded contributory negligence on the part of the Deceased and invoked the doctrine of *volenti non fit injuria*, arguing that the Deceased voluntarily assumed the risk of injury by attempting to cross a busy highway when it was unsafe to do so. They also denied vicarious liability and the quantum of damages.
5. At the hearing, the Respondents called 3 witnesses, while the Appellants elected to close their case without calling any evidence. PW1 adopted her witness statement dated 24 August 2022 and testified that on the material day, she received a phone call informing her that her son, the Deceased, had been involved in a road accident. Her son was rushed to Kenyatta University Teaching, Referral and Research Hospital (KUTRRH) where he was treated, but succumbed to his injuries. PW1 testified that the Deceased was 28 years

old at the time of his death. She described him as a healthy, industrious young man who was a businessman dealing with the sale of farm produce at Githurai Market. PW1 testified that the Deceased earned approximately Kshs 50,000/- per month from this trade.

6. PW1 was emphatic that the Deceased was a pillar of the family. Although he was unmarried and had no children, he used approximately two-thirds of his income to support his mother and siblings. Specifically, the Deceased would spend about Kshs 35,000/- to buy medicine for PW1 and also supported his younger brother in purchasing medication. PW1 listed the dependants as herself, 2 sisters and 2 brothers.
7. On cross examination, PW1 admitted that she had no documentary proof of the monthly income.
8. PW2, PC Samuel Kirimi, confirmed the occurrence of the accident and produced the Police Abstract. PW3, David Wamai Gititio, was an eye witness to the accident. His testimony provided a graphic account of the sequence of events.
9. In its judgement, the trial court relied heavily on the testimony of PW2 and PW3. The court rejected the defence's unproven allegations of contributory negligence. However, in somewhat unexplained exercise of discretion, the trial court entered judgement on liability at a ration of 90:10 in favor of the Respondents. The court awarded damages as follows: Kshs 30,000/= for pain and suffering, Kshs 120,000/= for loss of expectation of life, Kshs 2,419,200/= for loss of dependency and Kshs 104,210 for special damages. The total gross award of Kshs 2,673,410 was subjected to the 90% liability apportionment to arrive at the net decree award of Kshs 2,163,069/=.

10. Aggrieved by the quantum of damages, particularly the loss of dependency, the Appellants lodged this appeal. The Memorandum of Appeal dated 18 July 2023 raises two primary grounds:

- (i) That the award of Kshs 2,403.410/- was too excessive in the circumstances;
- (ii) That the court erred in awarding Kshs 2,419,200/= for loss of dependency by ignoring the evidence that the Deceased was unmarried and without children.

11. It is pertinent to note that the Appellants did not file written submissions to canvass the suit in the trial court, nor this appeal, despite being granted leave and time to do so. By failing to submit, the Appellants have essentially left it to the Court to decipher their legal arguments solely on the face of the Memorandum of Appeal.

12. On the other hand, the Respondents filed their detailed submissions. On the issue of income, they relied on **Jacob Ayiga Maruja & Another vs Simeon Obayo** to justify the use of reasonable estimates in the absence of documents. On ratio, they relied on **Beatrice Wangui Thairu vs Ezekiel Barngetuny** to argue that the ration of 2/3 is a question of fact, which was proven by PW1's testimony. On the multiplier, the Respondents cited **Jackson N. Mutyetumo vs Mary Menze Mathuku** and **Mary Wanjiru Watheka vs Alice Wangui Ndungu** to show that the award was within range.

Analysis & Determination

13. The role of this Court, sitting as a first appellate court, is well-settled in our jurisprudence. As established in the *locus classicus* case of **Selle & Another vs. Associated Motor Boat Co. Ltd & Others EA 123**, this Court is not merely a rubber stamp for the lower court's decision, nor is it a forum for a

completely fresh trial. Rather, this Court must reconsider the evidence, evaluate it itself, and draw its own conclusions. However, it must bear in mind that it has neither seen nor heard the witnesses and should make due allowance for this fact. The appellate court will generally not interfere with the exercise of discretion by a trial court in the assessment of damages unless it is satisfied that the judge acted on wrong principles of law, or has misapprehended the facts, or has made a wholly erroneous estimate of the damages detailed.

14. The central issue for determination herein is whether the learned trial Magistrate erred in principle or made a wholly erroneous estimate in the assessment of damages for loss of dependency. The dispute concerns the arithmetic variables used to calculate the loss of dependency: the multiplicand, the multiplier and the dependency ratio.
15. Regarding the multiplicand, the trial court rejected the unproven figure of Kshs 50,000/= and adopted the statutory minimum wage of Kshs 15,120/=. This approach aligns with the Court of Appeal's decision in ***Jacob Ayiga Maruja & another v Simeon Obayo [2005] KECA 202 (KLR)***, in which the Court held that strict documentary proof of income is not always possible in Kenya's informal economy, and courts should not deny claims solely on that basis. The use of the minimum wage serves as a statutory safety net, ensuring compensations is based on a legal baseline rather than speculation.
16. The Appellants contend that the award is excessive, yet they benefit from the court's rejection of the Kshs 50,000/- claim. Had the court accepted PW1's testimony entirely, the award would have been threefold. The adoption of Ksh 15,120/- is conversative, lawful and reasonable. I find no error in this regard.
17. With respect to the multiplier, the trial court applied a multiplier of 20 years for the 28-year-old Deceased. The choice of multiplier is an exercise of judicial

discretion, aiming to balance the Deceased's expected working life against the vicissitudes of life and the benefit of accelerated lump-sum payment. A 28-year-old has a working expectancy of roughly 32 years, until age 60. A review of comparative case law reveals a spectrum of approaches. In ***Chari Mwadime & another (suing as the administrators of the Estate of Janet M Mwadime - Deceased) v William Mbukuli Nyende & another (sued as the personal representatives of the Estate of Caleb Wakala Nyende-Deceased) [2020] KEHC 7575 (KLR)***, the Court applied a multiplier of 28 years for a 30-year-old deceased. This was an exceptionally high multiplier, arguably an outlier, demonstrating the upper limit of judicial discretion. In ***JACKSON N. MUTYETUMO t/a PAJU INVESTMENTS & another v MARY MENZE MATHUKU & HUMPREY MUNENE KABURU & another [2009] KEHC 97 (KLR)***, the Court used a multiplier of 23 years for a 30-year old.

18. In ***Mary Wanjiru Watheka & another v Alice Wangui Ndungu & another [2015] KEHC 3449 (KLR)***, a multiplier of 20 years was used for a 35-year-old.
19. In ***Joseph Ndirangu Thuo & another v Kamau Ngugi (suing as the legal administrators of the estate of Peter Waweru) [2019] KEHC 9375 (KLR)***, the Court applied a multiplier of 15 years for the 25-year-old.
20. The trial court's choice of 20 years sits squarely in the middle of this jurisprudential cluster. It is neither inordinately high or inordinately low. It acknowledges the youth of the Deceased while applying a reasonable discount for life's uncertainties. The Appellants have failed to demonstrate why this specific figure is erroneous. Consequently, this Court upholds the multiplier of 20 years.
21. Regarding the dependency ratio, the trial court applied a dependency ratio of 2/3. The Deceased was a bachelor with no children. The Applicants

challenge this figure. The Respondents argued that it is a question of fact, supported by PW1's evidence that the Deceased spent most of his income on his family.

22. This Court is tasked with reconciling the specific evidence of this case with the broader principles of consistency in damages. The 2/3 rule is traditionally derived from the presumption that a married man with children consumes 1/3 of his income and devotes 2/3 to his immediate family. Applying the same ratio to a bachelor implies that he too consumes only 1/3 of his income, leaving 2/3 for his parents and siblings. While the African extended family structure often involves significant support from unmarried sons to parents, the law must also account for the high probability that a 28-year-old bachelor would eventually marry and establish his own nuclear family. Once this occurs, the resources available to the parents and siblings would inevitably diminish. A ratio of 2/3 fails to factor in this future contingency.

23. The decision in **Joseoh Ndirangu Thuo case (supra)** is highly persuasive on this point. In that case, Hon. Mwongo, J dealt with a 25-year-old bachelor where the lower court had applied a 2/3 ratio. The learned Judge held:

"It would appear from a review of the decisional law on this point that our Courts tend to lower the dependency ratio when the deceased is an unmarried child... I would therefore apply a ratio of one-half (1/2) in the circumstances of this case, which is consistent with the current court practice."

24. Similarly, in **MARY KERUBO MABUKA v NEWTON MUCHEKE MBURU & 3 others [2006] KEHC 2252 (KLR)**, the Court applied a ration of ½ for a young, unmarried person.

25. The Respondents cited the **Chari Mwadime case (supra)** to support a higher award. However, a close reading of that case reveals a critical

distinction: although the deceased in the ***Chari Mwadime case*** was 30 years old, the judgement explicitly notes that deceased left behind two minor daughters, aged 8 and 3 years. This explains the use of the 2/3 ratio in that case, which was for the benefit of direct minor dependants, not just parents.

26. In the instant case, the dependants are the mother and siblings (all of whom are adults: 31, 30, and 27 years old). The financial obligation to adult siblings is legally and factually distinguishable from the obligation to minor children. While the Deceased was generous, treating his entire future income as permanently encumbered by a 2/3 obligation to his parents and adult siblings ignores the reality of his own life progression.
27. Therefore, I find that the learned trial Magistrate erred in principle in applying the 2/3 ratio to a bachelor without factoring in the contingency of marriage and his own personal expenses. A ratio of one-half (1/2) strikes the appropriate balance between recognizing the support he rendered and acknowledging his status as a single man.
28. It is noted that the trial court awarded damages under both the Law Reform Act (Kshs. 150,000 total) and the Fatal Accidents Act (Kshs. 2.4M) without expressly deducting the former from the latter. The principle against double compensation dictates that the benefit accruing to the estate (Law Reform award) should be taken into account when assessing the dependency award, as the dependants are usually the beneficiaries of the estate.
29. However, the Court of Appeal has often held that where the Law Reform award is modest (as it is here), strictly deducting it is not always mandatory if the global figure remains reasonable. The Appellants did not raise this specific ground of appeal. Given that this Court is already reducing the global figure by adjusting the dependency ratio, I see no need to further reduce the award by deducting the Kshs. 150,000, as the resulting sum will be just and fair.

30. Having varied the dependency ratio from $\frac{2}{3}$ to $\frac{1}{2}$, the calculation for loss of dependency is revised as follows:

$$\text{Kshs } 15,120/= \times 12 \text{ months} \times 20 \text{ years} \times \frac{1}{2} = \text{Kshs } 1,814,400/=$$

31. Accordingly, for the reasons set out hereinabove, I make the following orders:

- (i) The appeal herein is partly successful;
- (ii) The trial court's apportionment of 90:10 for liability remains undisturbed.
- (iii) The judgement of the lower court in Ruiru CMCC NO. E483 of 2022 delivered on 21 June 2023 is hereby set aside regarding the quantum of damages. The same is substituted with the following award:

Kshs 30,000/- for pain and suffering

Kshs 120,000/= for loss of expectation of life

Kshs 1,814,400/= for loss of dependency

Kshs 104,210/= for special damages

Kshs 2,068,610/= TOTAL DAMAGES

KSH 1,861,749/= NET AWARD (less 10% contribution)

- (iv) The said sum of Kshs 1,861,749/= shall attract interest at court rates from the date of the trial court judgement until payment in full;
- (v) Bearing in mind the outcome of the appeal, each party shall bear its own costs of the appeal.

Dated and Delivered at THIKA this 21 day of NOVEMBER 2025

HELENE R. NAMISI
JUDGE OF THE HIGH COURT

Delivered virtually in the presence of:

For Appellants: N/A

For Respondents: Mr. Nyoro

Court Assistant: Lucy Mwangi

Judgement