



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. E145 OF 2022**

**STANLEY WILLIAM  
KATHURIMA.....APPELLANT**

**VERSUS**

**CHARLES MUSHENYE SAMBULI (On behalf of the estate of  
the deceased Marcellus Sambuli suing as father)  
.....RESPONDENT**

**(Being an appeal from the judgment of the Hon E Kimaiyo Suter (PM)  
delivered on 22.09.2022 in MAVOKO CMCC NO E401 OF 2021)**

**JUDGMENT**

1. The Respondent's claim against the appellant, in the court below, was for special and general damages for fatal injuries occasioned to Marcellus Sambuli (deceased) in a motor accident which occurred along the Nairobi Mombasa Highway on 2<sup>nd</sup> August 2020 when, allegedly, the defendant and /or his authorized driver, carelessly and or negligently managed, or drove his motor vehicle KCG 501 Y as a result of which it knocked down the deceased fatally wounding him.

2. In his written statement of defence dated 23<sup>rd</sup> June 2021, the defendant denied the particulars of negligence in paragraph the plaintiff and attributed negligence and/or the contributory negligence to the deceased.

3. However, upon hearing and considering the evidence and submissions of the parties the learned magistrate found the appellant wholly liable and proceeded to assess damages as follows:

- |                                |                                 |
|--------------------------------|---------------------------------|
| a. Liability                   | 100% In favour of the Plaintiff |
| b. Pain and suffering          | Kshs 50,000                     |
| c. Loss of expectation of life | Kshs 100,000                    |
| d. Loss of dependency          | Kshs2,994,000                   |
| e. Special damages             | Kshs 141,950                    |
| f. Costs and interest          |                                 |

4. Aggrieved by the judgment on liability and the quantum of damages the appellant preferred this appeal on grounds that-

- a. The subordinate court erred in holding the appellant 100 % liable for the suit accident whereas the respondent did not challenge the evidence that the deceased was negligent in his conduct and the respondent did not rebut the appellant's evidence that the deceased was negligent.***

- b. The Subordinate court erred in absolving the deceased of any liability for the suit accident whereas there was no evidence that the deceased was careful in his conduct immediately after the suit accident***
- c. The Subordinate court erred in awarding general damages for loss of dependency whereas the respondent did not prove dependence on the deceased.***
- d. The Subordinate court erred in awarding excessive sum for damages for loss of dependency.***
- e. The Subordinate court Proceeded on wrong principles and failed to take into account relevant factors while assessing damages for loss of dependency.***
- f. In assessing damages for loss of dependency the Subordinate Court failed to consider the amount of kshs 2,994,000 can be invested to earn interest that exceeds the sum the court determined to be the monthly dependency which results in enrichment of the respondent.***
- g. In assessing damages for loss of dependency the Subordinate Court erred in disregarding the age and expectation of life of the respondent.***
- h. In assessing damages for loss of dependency the Subordinate Court erred in failing to take into account the pecuniary benefits that accrue to the respondent.”***

5. Learned counsel for the parties consented to canvass the appeal by way of written submissions.

6. Learned Counsel for the Appellant relied on the case of **ECS v Jane Wangui Njuguna & Another [2011] KEHC 2102 (KLR)**, and submitted that the trial Court ought to have considered the expectation of life of the deceased's dependants in determining the multiplier; that the multiplier of 20 years was highly excessive and the same should be reviewed to 4 years to reflect the circumstances of the case.

7. For the Respondent, it was submitted that the finding on liability was sound and should not be disturbed; that the appellant did not meet the test to warrant this court to interfere with the findings and award of the learned magistrate. Counsel urged this court to instead dismiss the appeal with costs to the respondent.

### **Analysis and determination.**

8. This appeal turns on the twin issues of liability and the quantum of damages. As the first appellate court I am required to reconsider the evidence in the court below so as to satisfy myself that liability was proved against the appellant on a balance of probabilities and that the correct principles were applied in assessing the quantum of damages. I have also

considered the submissions filed the parties, the cases cited and the law.

9. On the issue of liability, while admitting the occurrence of liability the appellant blamed it on the deceased stating that the deceased for run. On their part the respondents blamed the appellant and contended that his vehicle was driven at an excessive speed. They adduced evidence, which was admitted by the appellant, that following the accident he was charged with the offence of causing death by careless driving and was convicted and fined upon his plea of guilty.
10. On this issue, I am, just as was the learned magistrate, satisfied that the appellant was solely to blame for the accident and that liability was proved against him to the required standard. It is my finding that the appellant did not prove negligence against the deceased at all. This is unlike the respondents who adduced evidence of his negligence. The fact that he pleaded guilty to the charge of causing death by dangerous driving and that he paid the fine and did not appeal is in itself proof that he was negligence- see Section 47A of the Evidence Act and Section 62 of the Interpretation and General Provisions Act.

11. Moreover, as was stated in the case of **Masembe vs. Sugar Corporation and Another [2002] 2 EA 434:**

***“When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his court at any time to avoid anything he sees after he has seen it.... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object .... Whereas, a driver is not to foresee every extremity of folly which occurs on the road, equally he is not certainly entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, that is to say anything which the experience of the road users teaches them that people do albeit negligently...”***

12. In the case of **Micheal Hubert Kloss & Another vs. David Seroney & 5 Others [2009] eKLR** the court observed as follows:

**“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more**

**graphically in Stapley vs. Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows:**

**‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...’”**

13. On my part I find no evidence upon which this court can attribute negligence on the deceased and in the premises, I

find no reason to disturb the learned magistrate's finding on liability and I shall not disturb it.

14. As regards quantum, the appellant took issue with the award under the head of loss of dependency only and more particularly on the multiplier adopted. In his view, it was too high given the age of the deceased's father on whose behalf the claim was brought.
15. The principles which guide an appellate court when considering whether or not to disturb an award of damages by a lower court were settled in the case of **Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (NO.2)[1985] KECA137(KLR)** to be that **"either the court took into account an irrelevant factor, or left out a relevant one, or that, the amount of damages is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."** It is also a tenet of the law that similar injuries should attract comparable awards albeit taking the issue of inflation into account.
16. In regard to the multiplier Ringera J, as he then was stated in the case of **Marko Mwenda vs. Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993:**

***"In adopting a multiplier, the Court has regard to such personal circumstances of both the deceased***

***and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss .....***”

17. In the same vein, the Court of Appeal stated as follows in the case of **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others Civil Appeal No. 123 of 1983 [1986] KLR 457; [1982-1988] 1 KAR 946; [1986-1989] EA 137:**

***“Today parents and children in most Kenya families do expect their children when adults to help their parents if they need it and that should be encouraged and not fulminated against as a “system of gerontocracy at its worst”. In Kenya parents of a deceased young man who would have been preparing himself for a career with a view to looking after his parents in their old age suffer economic loss. The financial assistance relative to the ability of the deceased, which is normally expected and readily provided, is obliterated by the death... The cost of bringing up the deceased and the expense of his/her education is lost, never to be redeemed. All the benefits that would accrue to***

***the parents, and where it applies, to the younger brothers and sisters of the deceased as the deceased natured physically and materially are extinguished. Now, almost all assistance of this kind would in the conditions of Kenya be wholly economic in substance. So much so that the loss caused by the death could never be adequately compensated in monetary terms. No question of a windfall to the parents can therefore reasonably arise. The sole issue all the same is the assessment of a fair award in the circumstances of any one case. ....In general, in Kenya children are expected to provide and do provide for their parents when the children are in a position to do so and to the extent of their abilities. The children are expected to do that by established customs of the various African and Asian communities in Kenya. This particular custom is broadly accepted, respected and practised throughout Kenya both by Africans and Asians and the application of the custom at family level is the basis of the national ethos of being mindful of others' welfare.....The Courts in Kenya exercise their respective jurisdictions inter alia to the extent the circumstances of Kenya and its inhabitants permit and subject to the qualifications those circumstances render necessary....."***

18. It is my finding that the above sentiments of the Court of Appeal apply today as they did at the time they were expressed. The deceased was expected to take care of his father whether his father was a pensioner or not. His father was 70 years old at the

time he testified on 16<sup>th</sup> June 2022 and hence 68 years old when the deceased died. Unlike retirement it is not possible to approximate, with exactitude, how long the father of the deceased will live. It may be 71, 80, 90 or even 100. I am not therefore persuaded that the multiplier should be reviewed to four years. To the contrary I find the multiplier of 20 years reasonable and fair. The multiplicand and ratio are not contested and shall remain.

### **DISPOSITION**

19. **The upshot, is that the appeal fails and judgment is entered for the Respondent against the appellant as follows;**

<b>a. Liability</b>	<b>100%</b>
<b>b. Damages</b>	
<b>i. Pain and suffering</b>	<b>Kshs 50,000</b>
<b>ii. Loss of expectation of life</b>	<b>Kshs 100,000</b>
<b>iii. Loss of dependency</b>	<b>Kshs 2,994,000</b>
<b>c. Special damages</b>	<b>Kshs</b>
<b>141,950</b>	
<b>d. Total</b>	<b>Kshs</b>
<b>3,285,950</b>	
<b>e. Costs of the appeal and interest to be calculated at court rates and in the usual manner.</b>	

**Orders accordingly.**

**Judgment signed, dated and delivered virtually on this  
27<sup>th</sup> November 2025.**

**E. N. MAINA**

**JUDGE**

**IN PRESENCE OF:**

**Ms Jeruto for the Respondent.**

**Mr Kamau for the Appellant.**

**Geoffrey Court Assistant.**

ORIGINAL