REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL NO. E082 OF 2023

BETWEEN

MASH EAST AFRICA LIMITED…… APPELLANT

AND

CONSOLATA NDINDI KING'OLA

&

LENA KAVENE KIVUVA

(suing as the legal representatives of the estate of JOSIAH KIAMBA KINGOLA alias KIVUVA-DECEASED) ……... RESPONDENTS

(Being an appeal from the judgment and decree of the Kilungu Principal Magistrate's Court, PMCC No. E174 of 2022, by Hon. G. Okwengu (Senior Resident Magistrate).

JUDGMENT

1. Mash East Africa Limited, the appellant, was the defendant in Kilungu Principal Magistrate's PMCC No. E174 of 2022. They were sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration numbers KCX 012A, and the deceased who was a pedestrian. As a result of the accident, the deceased sustained fatal injuries. The respondents were awarded Kshs. 1,845,928.00 for loss of dependency.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Wambua Kilonzo & Company Advocates. They raised the following grounds for appeal:
    a) The learned trial magistrate erred in law and fact in applying the minimum wage of Kshs. 13,573 instead of Kshs.8,109.90 as the deceased place of residence was Kiongwani which falls under other areas.

b) The learned trial magistrate erred in law and in fact in using a multiplier for a municipality when all the evidence tendered showed that the deceased was a resident of Kiongwani area.
c) The learned trial magistrate erred in law and in fact in failing to take into account the deceased's wife evidence that the deceased earnings was Kshs. 6,000 monthly
d) The learned trial magistrate erred in law and in fact in failing to take into account authorities cited by the appellant in relation to net earnings of the deceased.
e) The learned trial magistrate erred in law an in fact assessing the damages payable for pain and suffering at an inordinate high when the deceased died on the spot.
f) The learned trial magistrate erred in law and in fact assessing the damages payable for loss of expectation of life at an inordinate high contrary to cited authorities.
g) The learned trial magistrate erred in law and in fact in failing to consider or have any or any sufficient regard to the submissions filed on behalf of the appellants.
h) In all the circumstances of the case, the learned trial magistrate failed to do justice.

3. The respondent opposed the appeals through Shem Kebongo & Company Advocates. She argued that the appeal lacked merit.
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. This appeal is on the quantum of damages on the head of dependency. The appellant argued that the learned magistrate made an error in applying the minimum wage of Kshs. 13,573 instead of Kshs.8,109.90. 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.

6. The deceased died aged 40 years. There was no proof of earnings by the deceased. When a similar issue confronted Ringera J. (as he then was) opined, in **Mwanzia vs. Ngalali Mutua and cited D.M.M (Suing as The Administrator and Legal Representative of The Estate of L K M vs. Stephen Johana Njue & another [2016] eKLR** 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 facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as age of 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.

7. In the instant case, the trial court ought to have used the global award approach. The award for loss of dependency, in my view, was high in the circumstances. The same is set aside and substituted with a global sum of Kshs. 1,500,000.00.
8. The appeal has succeeded with half the costs.

Delivered and signed at Makueni, this 18th day of December 2025

KIARIE WAWERU KIARIE

JUDGE