



**Njuguna v Wanjiru (Suing as the administrator of the Estate of Duncan Ndegwa)
(Civil Appeal E064 of 2022) [2025] KEHC 18143 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E064 OF 2022
EN MAINA, J
DECEMBER 4, 2025**

BETWEEN

JEREMIAH MACHARIA NJUGUNA APPELLANT

AND

**JUDY WANGUI WANJIRU (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF DUNCAN NDEGWA) RESPONDENT**

*(Being an appeal from the judgment of the Hon M.E. Analo (SRM)
delivered on 27.04.2022 in MACHAKOS CMCC NO 172 OF 2019)*

RULING

1. The Respondent's claim against the appellant in the court below, was for compensation for fatal injuries occasioned to Duncan Ndegwa Wanjugu (deceased) who was a lawful passenger in motor vehicle registration number KBW997F in an accident which occurred along the Nairobi Mombasa Highway on 31st march 2018 when the defendant and /or his authorized driver carelessly and or negligently managed, drove the motor vehicle KBW 997F Isuzu canter that it overturned thereby fatally injuring the deceased.
2. In his written statement of defence dated 12.03.2020 the Respondent denied the particulars of negligence in paragraph 4 (a – f) of the plaint and attributed the accident to the negligence and /or the contributory negligence of the deceased and prayed that the suit be dismissed with costs.
3. After hearing the parties and considering their submissions the court below awarded damages as follows:
 - a. Liability 100% In favour of the Plaintiff
 - b. Pain and suffering Kshs 20,000



- c. Loss of expectation of life Kshs 100,000
 - d. Loss of dependency Kshs 1,628,640
 - e. Special damages Kshs 105,650
 - f. Costs and interest
4. Being aggrieved by the award the Appellant preferred this appeal. The same is premised on grounds that;
- “ a. The learned trial magistrate erred and misdirected himself in law, principle and facts when he misapprehended and misunderstood the applicable principles and the law in assessing quantum thereby arriving at an award that is so manifestly and inordinately high as to constitute an entirely erroneous estimate of damages in the circumstances of the case.
 - b. The learned trial magistrate erred in law and in fact by arriving at a finding on liability which went against the weight of evidence.
 - c. The learned trial magistrate erred in law and in fact by making a finding in favour of the respondent when they had not proved their case on a balance of probabilities.
 - d. The learned trial magistrate erred in law and in fact in awarding the respondent Kshs 1,750,340 damages under the fatal Accident’s Act which award was too excessive in the circumstances.
 - e. The learned trial magistrate erred in law and in fact in relying on the maximum number of productive working years which was 15 years in the circumstances and failing to consider vicissitudes of life when awarding damages under the *Fatal Accidents Act*.
 - f. The learned Trial magistrate erred in law by failing to deduct the damages awarded under the *Law Reform Act* from the total award.
 - g. The learned trial magistrate erred in law and in fact in failing to accord due regard to the Appellant’s missions and authorities on quantum applicable principles for assessment of damages.
 - h. The learned trial magistrate erred in law and in fact by arriving at a decision that was not based on the evidence on record, descended into the arena of litigation and erroneously apportioned liability against the appellant.”
5. The Appeal was canvassed by way of written submissions.
6. The submissions by the Counsel for the appellant seem to have submitted on a different suit and makes it difficult for me to consider their submissions.
7. For the Respondent, it was submitted that the trial magistrate's finding that the appellant was 100% liable for the accident is precise and concise to the roof. The deceased was a passenger in the Appellants motor vehicle and was not driving, controlling or managing the Appellants motor vehicle. The accident was a self-involving accident The defendant did not offer any evidence in rebuttal and neither did he produce any documents to support his statement of defence.



8. Reliance was placed in the case of *Butler v Butler* 1982 KLR 277, *Kemfro Africa LTD v M.Lubia & ANOTHER* (1988) KAR 727, *Arrow Limited v Bimomo & 2 others* (2024) ZKLR 101 and in *Denshire muteti v Kenya power & lighting company limited* (2013) eKLR and urged the court not to interfere with the multiplier adopted.
9. It was submitted that the multiplier was adopted in concurrence with the submissions made by the Appellant. The trial magistrate despite of the evidence of a high income took a multiplicand of a minimum wage.
10. Counsel urged this court not to disturb the award of the trial court but instead uphold the same and dismiss this appeal with costs to the Respondent.

Determination

11. I have considered the evidence in the court below, this appeal, the rival submissions, the cases cited and the law
12. The appellant took issue with the liability as apportioned and the quantum of damages awarded.
13. In this case this court is being called upon to interfere with the trial court's apportionment of liability. In *Khambi and Another v Mahithi and Another* [1968] EA 70, it was held that:

“It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.”
14. That seems to have been the position in *Isabella Wanjiru Karangu v Washington Malele Civil Appeal No. 50 of 1981* [1983] KLR and *Mahendra M Malde v George M Angira Civil Appeal No. 12 of 1981*, where it was held that apportionment of blame represents an exercise of a discretion with which the appellate court will interfere only when it is clearly wrong, or based on no evidence or on the application of a wrong principle.
15. In this case the deceased was a passenger in the motor vehicle registration number KBW997 R which was headed to Nairobi when it lost control and veered off the road and landed on the right side of the road. There is no way the deceased being a passenger could have contributed to the occurrence of the accident. I find no fault in the trial court apportioning liability at 100 % as against the appellant.
16. On quantum the appellant took issue with the award under the loss of damages which he termed as manifestly excessive.
17. The principles which should guide a court in 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 (N0.2)* [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.
18. For loss of dependency, the respondent told the court that the deceased was that the deceased was 45 years at the time of his death and was a fruit vendor who used to earn Kshs.113,800/- per month.



She did not however adduce evidence of such earnings. In the premises I agree with the trial court on adopting the minimum wage for unskilled labourer would be most applicable.

19. Being guided by all the above cases and while considering the ages of those cases hence inflation I find that the multiplier of 15 years and the dependency ratio adopted by the trial court under the head of loss of dependency reasonable.
20. In the upshot, the appeal fails and judgment of the court below is upheld as follows in favour of the Respondent against the Appellant.
 - a. Liability 100%
 - b. Damages
 - i. Pain and suffering Kshs 20,000/-
 - ii. Loss of expectation of life Kshs 100,000/-
 - iii. Loss of dependency Kshs 1,628,640/-
 - c. Special damages Kshs 1,700/-
 - d. Total Kshs 1,750,340/-
 - e. Costs of the appeal and interest

Orders accordingly.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY THIS 4TH DAY OF DECEMBER, 2025.

E. N. MAINA

JUDGE

In The Presence Of:-

Ms Mwangangi for the Appellant

Mr. Kinyanjui for the Respondent

Geoffrey – Court Assistant/Interpreter

