REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. E153 OF 2023

MORRIS MUTHOMI……

……APPELLANT

VERSUS

NJERI NKONGE & INOTI BERNARD MUNENE (Suing as the legal representative of the estate of David Muriithi-Deceased)……
……RESPONDENTS

(An appeal from the Judgment and Decree of Hon. S. Ndegwa (S.P.M) in Githongo SPMCC No. 11 of 2022 delivered on 25/8/2023)

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Principal Magistrate Hon. S. Ndegwa delivered on 25/8/2023 in Githongo SPMCC No. 11 of 2022 wherein judgment was in the following terms:

    1. Liability 100%

    2. Pain and suffering Ksh. 100,000

3. Loss of Expectation of Life Ksh. 100,000
4. Loss of Dependency Ksh. 3,874,163.20
5. Special damages Ksh. 157,419.60

2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 7th September 2023;

1. The learned Trial Magistrate erred in law and fact by finding the Appellant 100% liable for the accident, whereas the deceased was wholly or substantially to blame for the accident.
2. The learned trial Magistrate erred in law and fact by adopting the multiplicand and multiplier approach while assessing damages for of dependency whereas the circumstances of their matter did not favour use of the said approach.
3. The learned Trial Magistrate erred in law and fact by adopting a multiplicand of Ksh. 30,265.96, which was not supported by any evidence and thereby arrived at an award that is inordinately excessive.
4. The learned trial Magistrate erred in law and fact by adopting a multiplier that was too high in the

circumstances and thereby arrived at an award that is inordinately excessive.

5. The trial court findings on liability and quantum are against the law and weight of evidence on record.

Evidence at trial

3. **PW1 CPL James Mwaniki**, from Meru police station traffic base, produced the police abstract as an exhibit. He told the court that the road accident occurred along Meru-Nkubu road on 5/7/2020, around 10.40 a.m, at Ngumi area involving the deceased herein and Motor Vehicle Registration No. KCF 487 B Toyota Cienta driven by Purity Kendi. The driver veered off the road and hit the deceased, who was walking in the same direction. He visited the scene and drew the sketch map, point of impact and skid marks and charged the driver with causing death by dangerous driving, wherein she was convicted and fined Ksh. 10,000 or in default to serve one year imprisonment. The skid marks were off the road as one faces Nkubu, as well as the point of impact, but there were no witnesses, and there were rumble strips and bumps.

4. **PW2 Njeri Nkonge**, the 1st Respondent herein, and the wife of the deceased, adopted her statement dated 21/2/2022 as her evidence in chief, and produced the list of documents filed therewith as exhibits. She told the court that the deceased was a mason, who earned Ksh. 50,000 per month, and she and her 3 school-going children depended on the deceased for school fees and upkeep. The deceased was not drunk when the accident occurred, although she did not witness it.
5. **PW3 Inoti Bernard Munene**, the 2nd Respondent herein and a plant operator, adopted his statement dated 21/2/2022 as his evidence in chief. The deceased was his elder brother, and he was in Isiolo when the accident occurred, thus, he would not know whether the deceased was drunk on the material day.
6. **PW4 Erick Mutethia Kinoti**, a boda boda operator and an eye witness, adopted his witness dated statement dated 5/7/2020 as his evidence in chief. He told the court that he was walking along the road towards Meru while the deceased was walking towards Nkubu at around 10 am. There was one big bump but no rumble strips, and the

driver of the vehicle being driven from Meru towards Nkubu was on the pedestrian lane.

7. **DW1 Maurice Muthomi**, the Appellant herein, adopted his statement dated 12/10/2022 as his evidence in chief. He told the court that the deceased threw himself at the windscreen of the vehicle and the vehicle was being driven at a speed of 5-10 km per hour. While there was no evidence that the deceased was drunk, his vomit reeked of alcohol.
8. **DW2 Purity Kendi**, the driver of the accident motor vehicle, adopted her statement dated 12/10/2022 as her evidence in chief. She told the court that she was charged, convicted and fined Ksh. 100,000. She was unaware whether the post mortem did not indicate that the deceased was drunk, and the accident happened in the market place, which was only witnessed by her husband.

Submissions

9. The Appellant, through the firm of Mithega & Kariuki Advocates, filed submissions dated 11/8/2025. Counsel urged the court to apportion liability at 50:50 owing to the lack of a sketch map coupled with the unreliable

testimony of PW4, and cited ***Peter Matara & 2 Others v Alloy Kenyatta Kevongo (2017) eKLR, Kenya Power and Lighting Company Ltd v Mary Wambui Kiere (2020) eKLR and Joseph Muthuri v Nicholas Kinoti Kibera [2022] eKLR***. Counsel urged the court to award a global sum of Ksh. 1,000,000 as the deceased was aged 44 years, and cited ***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) and Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] KEHC 9014 (KLR)***.

10. The Respondents, through the firm of Muchomba Law Advocates, filed submissions dated 1/11/2025 lauding the trial court for basing the finding on liability on the weight of the evidence on record, and cited ***Awich v Okello & another (Civil Appeal E009 of 2022) [2023] KEHC 2779 (KLR) (22 March 2023) (Judgment)***. Counsel contended that the adoption of the minimum wage of Ksh.

30,266.90, as the multiplicand was reasonable, and cited ***Nelson Rintari v CMC Group Ltd (2015) EKLR and Jacob Ayiga Maruja & Another v Simeon Obayo [2005] eKLR***.

Analysis and Determination

11. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.

12. In ***Selle & another v Associated Motor Boat Co. Ltd [1968] EA,*** the court held as follows: ***"This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."***

13. I have considered the appeal herein, the trial court's judgment, which is the subject of this appeal, as well as the submissions by counsel.

14. From the grounds of appeal, the twin issues for determination are whether the apportionment of liability at 100% and the award of Ksh. 3,874,163.20 for loss of dependency were justified.

15. The age-old principle of law is that he who alleges must prove. PW1 restated that when he visited the scene, he took the particulars of the sketch plan and map. He was categorical that the accident was solely caused by the DW-2's negligence, who veered off the road and hit the deceased. His testimony was corroborated by PW4, the eye witness herein, who reiterated that, ***"I was walking along the road going towards Meru while David was walking towards Nkubu. This vehicle was being driven from Meru towards Nkubu. The driver was on the pedestrian lane."***

16. Indeed, DW2 admitted in her testimony that she was charged and fined Ksh. 100,000 over this accident. While the Appellant and DW2 insisted that the deceased was

intoxicated at the time of the accident, on account of detecting alcohol in his vomit, there was no confirmation in the post mortem report of the said intoxication.

17. It is thus more probable than not that the DW1 veered off the road and hit the deceased herein.

18. I thus find that the trial court's apportionment of liability at 100% is well supported by the evidence on record, and, therefore justified.

19. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were extensively dealt with by Ringera, J *(as he then was)* in ***Marko Mwenda v Bernard Mugambi & another Nairobi HCCC No 2343 of 1993*** that: ***"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 suffered as a result of the death of the deceased… The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown 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. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

20. On the multiplicand, the Respondent testified that, ***"David Murithi was my husband. He was a mason. We had 3 children going children. We used to depend on my husband for school fees and up keep. I now wish to go by my statement that he earned Kshs. 50,000/= per month."***

21. It is trite that each case must be decided on its own facts as aptly articulated in ***Bwire v Wayo & Sailoki (Civil Appeal 032 of 2021) [2022] KEHC 7 (KLR) (24 January 2022) (Judgment)***, by the court *(John Mativo J, as he then was)* that; ***"The ratio of any decision must be understood in the background of the facts of the particular case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail***

may alter the entire aspect. In deciding cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but one must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches."

22. In upholding a trial court's award of Ksh. 3,014,400 for loss of dependency, the court *(John Mativo J, as he then was)* in ***Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa) [2022] KEHC 282 (KLR)***, espoused that; ***"Any legal process should yield an appropriate compensation that is compensation, which is neither too much, nor too little. The compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in***

injustice to the defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable."

23. Whereas the 1st Respondent testified that the deceased earned Ksh. 50,000 per month, she tendered no documentary proof to substantiate that claim, and in the absence of proof of the actual earnings of the deceased, the trial court properly adopted the minimum wage of Ksh. 30,266.90 as the appropriate multiplicand.

24. The deceased was survived by his wife, the 1st Respondent herein and 2 school going children, who expectedly depended entirely on him for provision and upkeep. The record is clear that the deceased was aged 44 years at the time of his untimely death. I find that the adoption of a dependency ratio of $^{2}/_{3}$ was reasonable. Evidently, the deceased, being engaged in the informal sector as a mason, would have continued working well beyond the conventional retirement age of 60 years. Nonetheless, the multiplier of 16 years was on the higher side, taking into account the vicissitudes and vagaries of life that can potentially limit career longevity.

25. I find that a multiplier of 12 years would have been appropriate in the circumstances. The award for loss of dependency will thus be Ksh. 30,266.90 × $2/_3$ ×12 ×12 = Ksh. 2,905,622.40

26. The upshot from the foregoing is that the appeal partly succeeds and is allowed in the following terms:

    1. The award of Ksh. 3,874,163.20 for loss of dependency is set aside and substituted with Ksh. 2,905,622.40.

27. Each party to bear own cost of the appeal.

DATED AND DELIVERED AT MERU THIS 17TH DAY OF DECEMBER, 2025

S.M. GITHINJI

JUDGE

APPEARANCES:-

Mr. Kaaria for the Respondent.

Mr. Kariuki for Appellant.