

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL APPEAL NO. E006 OF 2025

BEATRICE MUTHONI CHEGE.....1ST APPELLANT

STEPHEN MACHARIA GICHUKI (Suing as the legal
Administrators of the late

CHARLES MUREITHI GICHUKI (Deceased).....2ND
APPELLANT

-VERSUS-

WALTER NGUNJU GATHIRU.....1ST RESPONDENT

BEATRICE WAMUYU GIKONYO.....2ND
RESPONDENT

JUDGMENT

- 1.** This appeal emanates from the Judgment and order of the trial court presided by Hon. S. Mogute, SPM, where the Respondents sued the Appellants claiming general damages and special damages under the **Fatal Accidents Act and Law Reform Act.**
- 2.** By consent of all parties, judgment on liability was entered for the Plaintiffs to shoulder 20% liability while the Defendants were to shoulder 80% liability. Having considered evidence, submissions and authorities cited, the court awarded damages as follows; pain and suffering -

Kshs.50,000/-, loss of expectation of life - Kshs.100,000/-, loss of dependency - Kshs.850,000/-, special damages - Kshs.101,100/-. The total sum was reduced by 20% contribution, a sum of Kshs.220,220/- making the net award against the 2nd Defendant per the consent entered at Kshs.880,880/- plus interest and costs.

3. Aggrieved, the Appellants' appeal on grounds that;

a. The trial court misdirected itself by awarding the Appellants herein damages for loss of dependency in the sum of Kenya Shillings eight hundred and fifty thousand (Kshs.850,000/-).

b. The honourable Magistrate misapprehended the evidence in awarding damages for loss of dependency at a figure that is inordinately low without giving due regard to evidence and the Appellant's submissions.

c. The learned Magistrate erred in law and fact by using a global sum in awarding the damages for loss of dependency.

d. The learned Magistrate erred in fact and law if failing to give due regard to the fact that the global sum is only applicable where the multiplier is not feasible i.e. the deceased is 60 years and above.

4. For that reason, the Appellants seek orders setting aside the award of Kshs.850,000/- for loss of dependency so as to

substitute it with an award of Kshs.2,189,037.61/- computed at (15,201.65 (minimum wage) x 12 x 18 x 2/3). And that costs of the appeal to be awarded to the Appellant.

5. In support of the appeal, the Appellants submitted that the deceased was survived by a wife, daughter and son who depended on him and prior to his death at the age of 38 years, he was a farmer earning Kshs.30,000/- per month, and he paid school fees for his daughter at a private academy.
6. That the assessment should have been based on multiplicand, multiplier and dependency ratio. They relied on the case of **Francis K. Righa v Mary Njeri (Suing as the legal representative of the Estate of James Kariuki Ng'ang'a [2014] eKLR** where the Court of Appeal stated that;

“...on the choice of a multiplier and multiplicand, we take it from the decision of the court in the case of Roger Dainty v Mwinyi Omar Haji & Another 2004 that to ascertain a reasonable multiplier in each case, the court should consider relevant factors like the income of the deceased, the kind of work he was engaged in before his death, the prospects of promotion and his expectations of working life.”

7. That the trial court erred in adopting a global award formula rather than applying the relevant multiplicand and

dependency ratio as submitted by the Plaintiffs inspite of the deceased having been married with two (2) children, a 9-year-old daughter and 9 months old son respectively who solely depended on him.

8. Also relied on is the case of **Moses Maina Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the Estate of Mercy Nzula Maina (deceased) [2016] eKLR** where Ngaah J stated that;

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”

9. That the approach employed by the trial court was inappropriate in the matter resulting in inordinately low damages for loss of dependency. That they would assign a dependency ratio of 2/3, net income of Kshs.14,315.3/- (minimum wage for the year 2021) and a multiplier of 22 years. That being the case, the damages would have been

quantified at Kshs.2,519,492.8/- under the head that would have been fair, just and reasonable in the circumstances.

- 10.** On their part, the Respondents submitted that the principle of compensation underlines the assessment of damages for loss of dependency. That both statute and case law recognize that courts must be guided by evidence when determining the deceased's income. And, where such evidence is absent, courts have to apply rigid mathematical formula that would necessarily rest on speculation. Reliance in this regard was placed on the case of **Mwanza v Ngalali Mutua & Kenya Bus Service (Mombasa) Ltd** where the court clarified that;

“The multiplier approach is just a method of assessing damages. It is not a principle of law dogma.”

- 11.** That where no credible foundation exists to support a multiplicand, the multiplier method becomes inapplicable.

- 12.** That in **Chabhadiya Enterprises Ltd & Another v Gladys Mutenyo Bitali [2018] eKLR** the Court of Appeal affirmed the legitimacy of the global award, by holding that;

“Where there is no concrete evidence of income or where earnings cannot be ascertained with reasonable precision, a global award is appropriate.”

- 13.** That the Appellants did not produce any proof of the deceased earning capacity prior to his death hence the

learned Magistrate declined to engage in conjecture. That the deceased was 38 years old, not in formal employment and there was no evidence of ascertainable earnings, such that applying a multiplier in such circumstances would have been arbitrary. And, using the global award method, the trial court awarded Kshs.850,000/- for loss of dependency which aligns to prevailing comparable awards.

- 14.** The Respondents urged the court not to interfere with the discretion of the trial court and based the argument on the decision of **Butt v Khan [1982 - 1988] 1KAR1** where the court stated;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

- 15.** Also cited is the case of **Kemfro Africa Ltd t/a Meru Express Services & Another v Lubia & Another (No. 2) [1987] KLR 30** where the court stated that;

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of

Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

- 16.** This being a first appellate court, it is duty bound to reconsider the entire case by re-evaluating evidence adduced, both documentary and oral, and reach its independent well reasoned findings bearing in mind that I did not see or hear witnesses, this was clearly expressed in **Selle v Associated Motor Boat Company Ltd [1968] EA 123** as follows;

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of circumstances or probabilities, or if the impression of the demeanor of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High 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.

In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

17. In **Kiruga v Kiruga & Another [1988] KLR, 348** the Court of Appeal held that;

"An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. In the offcited case of Peters v Sunday Post [1958] EA 424 this court accepted the principle laid down by the House of Lords in Watt v Thomas [1947] 1 All ER 582.

Sir O'Connor who spoke for the court on this aspect of the case said:-

"It is a strong thing for an appellate court to differ from the finding, on a question of fact

of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution.”

18. Similarly, in ***Butt v Khan (Supra)*** the court was emphatic on the question of the discretion of the trial court which can only be interfered with when it is apparent that the trial court wrongly interfered with the discretion and it did result into an injustice.

19. The Appellants sought damages on various heads in the plaint and Judgment was entered as follows;

- Pain and suffering – Kshs.50,000/-
- Loss of expectation of life – Kshs.100,000/-
- Loss of dependency – Kshs.850,000/-
- Special damages – Kshs.101,100/-

20. The only disputation is on the head of loss of dependency. The court adopted the global award method as opposed to the multiplier approach. The court expressed itself thus;

“The deceased in this case was not in formal employment and no evidence was tendered to show how much the deceased earned.”

- 21.** Guided by the decision of superior courts it settled on the global award approach which it found to be appropriate in the circumstances of the case.
- 22.** Notably, the award of quantum of damages is the duty of the trial court which may have its preference. Mostly the multiplier – multiplicand is preferred for being structured and congruous for it ensures fair total transparent compensation which can be understood by any individual. This would be acknowledged as financial loss suffered following the demise of the deceased.
- 23.** The method is mainly adopted where the net annual income of the deceased is evident.
- 24.** There may be cases where the actual income the deceased used to have cannot be proved, like where the claimant lacks documentary proof of earning, courts have adopted the award of global sum in such instances. When it is alleged that the deceased was self-employed but he did not keep records of his income this cannot be ascertained hence just a matter of conjecture.
- 25.** In **Mary Khayesi Awalo & Another v Mwilu Malungo & Another [1999] KEHC 44 (KLR)** the court stated that;
- “As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjuncture. It is better to opt for***

the principle of a lumpsum award instead of estimating his income in the absence of proper accounting books. See the case of Sheikh M Hassan versus Kamau Transporters and 10 others (1982-88) 1 KAR 946.”

26. In the case of children whose career pathways cannot be imagined it would be reasonable to think of a global award instead of theorizing about what they would have become in future.

27. Elderly people are another category where the dependency period would be unpredictable. A prudent court in the circumstances would adopt the global award approach since the multiplier/multiplicand approach would be inappropriate. In **Moses Mairua Muchiri v Cyrus Maina Macharia (suing as the personal representative of the Estate of Mercy Nzula Maina (deceased) [2016] eKLR** it was held that;

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure

but is an award that will always be subject to the circumstances of each particular case.”

28. In the instant case, the deceased died at the age of 38 years. He was married to the 1st Appellant who is also an Administrator of the Estate and they were blessed with two(2) children both of tender age, 9 years and 9 months respectively as proved by birth certificates. They were stated to have fully depended on him at the time. What was not established was documentary evidence of his income. He was stated to have been a farmer earning Kenya Shillings thirty thousand (Kshs.30,000/-) per month without evidence of the of the type of farming he was engaged in.

29. In as much as the multiplier/multiplicand award was available such that the trial court would have adopted a net income of Kshs.14,315.3/- being a minimum wage then, the court having exercised the discretion by adopting the global figure in the circumstances was not erroneous.

30. It is also the contention of the Appellants that the figure awarded of Kshs.850,000/- was way below what could have been reasonable. The widow and the two children of tender years would definitely have depended on the deceased for a long period. In ***Ainu Shamsi Hauliers Limited v Moses Sakwa & Another (suing as the Administrators of the Estate of the late Ben Siguda Oketch (Deceased) [2021]*** where the deceased died aged 40 years and was survived by a widow and two(2) young children the award of

the court of Kshs.2,000,000/- was upheld by the Court of Appeal.

31. In *David Mbuba & Another v Victoria Mwangeli Kimwalu & Another [2018] KEHC 476 (KLR)* where the deceased was survived by a wife and two minor children aged 6 and 4 years at the time of his death, damages of Kshs.2,500,000/- were awarded under the **Fatal Accidents Act.**

32. Although the trial court awarded the sum of Kshs.850,000/- having been guided by previous awards that were awarded in 2003 and 2016 respectively, the Appellants have demonstrated that the global award was inordinately low. In the circumstances, I find the appeal having merit. Therefore, I hereby quash the order of the court, set aside the same and substitute it with an award in lost dependency of Kshs.2,100,000/-.

33. Hence judgment entered for the Appellants will be thus;

- Damages for pain and suffering	-
Kshs.50,000/-	
- Loss of expectation of life	-Kshs.100,000/-
- Loss of dependency	-Kshs.2,100,000/-
- Special damages	-Kshs.101,100/-
Total	<u>-Kshs.2,351,000/-</u>
Less 20% contribution	-Kshs.470,220/-
Net award	<u>-Kshs.1,880,880/-</u>

34. The costs of the appeal follow the event. Hence costs are awarded to the Appellants.

35. It is so ordered.

Dated, signed and delivered virtually this 16th day of February, 2026.

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L.N. MUTENDE

JUDGE