

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARSEN**

**CIVIL APPEAL NO. E014 OF 2024**

**JANE WAMBUI MURIITHI & HALIMAJUMA TABU (legal  
representatives of the estate of JOHN MACHARIA  
(deceased).....**

**APPELLANTS**

**VERSUS**

**RENTCO EAST AFRICA LIMITED .....1<sup>ST</sup>**

**RESPONDENT**

**THE HON. THE ATTORNEY GENERAL .....2<sup>ND</sup>**

**RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. F.M.Mulama, Resident  
Magistrate, in Lamu Principal Magistrate`s Courts Civil Suit No.E006 of 2023  
delivered on 18/9/2024)*

**JUDGEMENT**

1. The Appellants brought suit against the Respondents seeking compensation in general and special damages after their kin was killed in a road traffic accident involving a motor vehicle owned by the Respondents. The trial court awarded the Appellants a global sum of Ksh. 500,000/= in general damages for loss of dependency. The appellants were aggrieved by the award and lodged the instant appeal on the grounds that:

1). The Learned Trial Magistrate erred in law and in fact in finding that the plaintiff was entitled to kshs. 500,000/= for loss of dependency which was too much on the lower side in view of the fact that the deceased was the breadwinner in his family.

2). The Learned Trial Magistrate erred in fact and in law by failing to consider the Appellant's submissions and judicial authorities on quantum with regards to loss of dependency thereby arriving at an erroneous figure on loss of dependency.

3). The Learned Magistrate erred in law and in fact by failing to consider the minimum wage according to the law for loss of dependency in cases of similar facts.

4). The Learned Magistrate erred in law and in fact when making his award by failing to consider the passage of time and incidence of inflation.

2. The appeal was canvassed by way of written submissions of the respective counsels appearing for the parties.

### **Appellants` submissions**

3. Counsel for the Appellants submitted that the deceased died at the age of 36 years. That he was a casual labourer earning Ksh.1,0000/= per day as per the witness statement filed in the case. That the chief`s letter filed in the case showed that the

deceased had a wife and a child aged 5 years. That he was the breadwinner for his family.

4. Counsel submitted that the award of Ksh.500,000/= was too low and urged an award of a global sum of Ksh.2,500,000/= if the court is inclined to apply the global method of award. He relied on the following authorities;

- **Frankline Kimathi Baariu 7 another v Philip Akungu Mitu Mborithi (suing as the administrators and personal representatives of Anthony Mwiti Gakungu (Deceased) (2020) eKLR** where the court awarded a global sum of Ksh. 1,300,000/= to the estate of the deceased aged 36 years and who left behind 2 young children.
- **Dorah Hellen Akinyi Oloo & another (suing as the legal representatives of the estate of Jack Opiyo Gitau -Deceased v Simon Gakahu Murimi & 2 others (2020) eKLR** where the court upheld a global sum of Ksh.1,200,000/= where the deceased died at the age of 36 years.

5. Counsel for the Appellant however urged the court to compensate the estate of the deceased under the Fatal Accidents Act and Law Reform Act. He submitted that where the earnings of the deceased are unknown the court ought to apply the minimum wage. That it is not mandatory to produce documentary evidence as proof that the deceased had earnings, as held in **Kimatu Mbuvi v Augustine Munyao Kioko (2001) eKLR**.

6. It was submitted that the deceased was a casual labourer. That the minimum wage regulations 2022 provide the minimum wage for a casual labourer at Ksh.8,109.90. That the deceased would have worked up to the age of 70 and would thus have worked for 34 years. That in the case of **Chepkorir & another (suing as the legal representatives and administrators of the estate of Edwin Kipngeno Chepkwony) v Hari Oum Autospars Limited (2023) KEHC 26434 (KLR) (14 December 2023) ( Judgment)** the court applied a multiplier of 27 years where the deceased died at the age of 38 years. It was submitted that a multiplier of 34 is fair and reasonable. The same works to:

$$8,109.90 \times 43 \times 12 \times 2 / 3 = 2,205,892/=.$$

### **1<sup>st</sup> Respondent`s submissions**

7. Counsel for the 1<sup>st</sup> Respondent submitted that the award of Ksh.500,000/= was justified. They relied on the case of **Gilbert Kimatare Nairi & another (suing as the personal representative of the estate of Jackline Sin Lemaiyan (Deceased) v Civiscope Limited (2021) KLR** where the deceased was a 31-year-old farmer and the High Court upheld the trial court`s approach of a global figure of Ksh.600,000/=.

8. It was submitted that the trial court applied appropriate legal principles in making an assessment for loss of dependency. The

1<sup>st</sup> Respondent urged the court to uphold the trial court's decision.

## **2<sup>nd</sup> Respondent's submissions**

9. The 2<sup>nd</sup> Respondent submitted that the death certificate filed by the Appellants did not indicate the occupation of the deceased. That the case cited by the Appellant's counsel to buttress the proposition that documents need not be produced is wrong law. They instead cited a more recent case in **Anthony Njoroge Ng`ang`a (legal representative of the estate of the late Freed Nganga Njoroge aka Fred Ng`ng`a Njoroge v James Kinyanjui Mwangi & 2 others (2022) eKLR** where the court held:

**The fact that there was no proof of the deceased's monthly income left no other option for the trial court but to award a global sum. In this regard the court in *Albert Odawa vs. Gichimu Gichenji [2007] eKLR*, cited with approval the case of *Mwanzia vs. Ngalali Mutua & Kenya Bus Service (Msa) Ltd & Another*, where Hon. Ringera, J took the view that:**

**"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 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 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.”**

10. It was submitted that the trial court had the discretion to make the award. They urged the court to dismiss the appeal.

#### **Analysis and determination**

11. The principles which guide the court in determining whether or not to disturb an award of damages made by a lower court are well settled. The same was stated by the Court of Appeal in **Bashir Ahmed Butt -vs- Uwais Ahmed Khan (1982 - 88) KAR 5** as follows:-

**“An Appellate court will not disturb and award of damages unless it is as 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 aspect and so arrived at figure which was inordinately high or low.”**

12. The same court in the case of **Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia &**

**another (No 2) [1985] eKLR** pronounced itself on the issue as follows:

**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.**

13. I have considered the grounds of appeal, the evidence adduced before the trial court and the submissions filed by the respective parties for the parties. The issues for determination are:

- (1) Whether the trial court erred in opting for global method of approach in awarding damages for loss of dependency.
- (2) Whether the award of damages made by the trial court was manifestly low.

14. The trial court in opting to award a global sum stated that the multiplier method of approach is applied where the earnings of the deceased can be ascertained and that where that is not possible the global method is to be preferred. The court cited the case of **Albert Adawa v Gichimu Gichenji 922007) eKLR** cited

with approval in **Mwanzia v Ngalali Mutua & Kenya Bus Service (Msa) Ltd & another** where Ringera J (as he then was) took the view that:

**“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 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 amount of annual or monthly dependancy, and the expected length of the dependancy 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.”**

15. The trial magistrate also cited the case of **Mary Khayesi Awalo & another v Mwilu Malungu & another Eld. HCCC No.19 of 1997 (1999) eKLR** where Nambuye J.(as she then was) 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 conjecture. It is better to opt for the principle of a lump sum award**

**instead of estimating his income in the absence of proper accounting books.”**

16. In **Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR** the court stated:

**“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.”**

17. From the above it is clear that the trial magistrate had a proper approach in preferring the global method of approach than the multiplier method. The approach used by courts is to apply the global method where it is difficult to assess the earnings of the deceased.

18. The Appellants pleaded in their plaint that the deceased was a casual a labourer. The 1<sup>st</sup> Appellant testified in court and stated that the deceased was working as a casual labourer in farms and

construction sites. She never told the court how much he was earning at any of these places. In my view there was no sufficient evidence to prove the earnings of the deceased. The trial court was justified in using the global method instead of the multiplier method. The argument by counsel for the Appellants that the court was wrong in using the multiplier method is dismissed.

19. The trial court in awarding a global sum of Ksh.500,000/= for loss of dependency relied on the case of **Jane Wamae & 2 others v Jane Kituku Nziva & another (2017) eKLR** where the court awarded Ksh.400,000/=.

20. It is a principle of law that comparable injuries ought to be compensated by comparable awards. In **Stanley Maore v Geoffrey Mwenda, NYR CA Civil Appeal No.147 of 2002(2004) eKLR**, the court stated as follows:-

**“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar case.”**

21. I have considered the authorities cited by the counsel for the Appellant where sums of Ksh,1,300,000/= and Ksh.1,200,000/= were made for loss of dependency. I have also considered the authority by counsel for 1<sup>st</sup> Respondent where a sum of Ksh.600,000/= was made. In my view the authorities cited by counsel for the Appellants are more preferable in a case where the deceased left behind a widow and one child. I am of the view that an award of Ksh.600,000/= or Ksh.500,000/= as proposed by counsel for 1<sup>st</sup> Appellant is manifestly low. In **Hashi Hauliers & another v Joel Songok & another [2021] KEHC 6338 (KLR)**, where the deceased was aged 38 years the trial court awarded a global sum of Ksh.1,000,000/= for loss of dependency. I would therefore go by authorities cited by counsel for the Appellants. I consider a global sum of Ksh.1,200,000/= to be reasonable compensation.

22. The upshot is that the judgment of the trial court is set aside and substituted with an award of Ksh.1,200,000/=. The Appellants to have costs of the appeal.

**Delivered, dated and signed at GARSEN THIS 19<sup>th</sup> day of February, 2026.**

**J. N. NJAGI  
JUDGE**

**In the presence of:**

**Miss Kareji HB for Mr. Chamwanda for Appellant**

**Miss Nyabuto for Respondent**

Court Assistant - Rahma

Original