

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E053 OF 2024

BETH WAMUYU GITUKU & MARTHA WAMBUI GITUKU
(Suing as the Legal Administrators of the Estate of the
late JOHN MUHOTI MWANGI

----- **APPELLANT**

-VERSUS -

WHITE HORSE CARRIERS LIMITED -----
RESPONDENT

(Being an Appeal from the Judgment delivered by the
Hon. Y.M. Barasa, (PM) on 9th May 2024 in Naivasha
CMCC No. E279 of 2023)

JUDGMENT

1. The Appellants herein, who were the Plaintiffs before the trial court, sued the Respondent/Defendant vide Plaint dated 16th June 2023 seeking the following prayers: -

(i) General Damages under the Fatal Accidents Act

(ii) General Damages under the Law Reform Act

(iii) Special Damages in the sum of Kshs. 113,550/= with interests from the date of filing the suit.

(iv) Costs of the suit and interest.

2. The Appellants' case was that on or about 10th of February 2023, the deceased JOHN MUHOTI MWANGI was lawfully driving motor vehicle Registration No. KBM 316E along

Naivasha-Mai Mahiu road when the defendant's authorized driver and/or agent so negligently and/or carelessly drove motor vehicle Registration No. KBW 643K causing it to lose control and hit motor vehicle Registration No. KBM 316E and thus an accident occurred causing fatal injuries to the deceased. The Appellants averred that the said accident was caused by the negligence of the Defendant's authorized driver and/or agent and that the Defendant was therefore vicariously liable.

3. In a judgment delivered on 9th May 2024, the trial court held as follows: -

Liability set at 80:20 by consent in favour of the Plaintiffs

Damages under the Law Reform Act

Pain and Suffering - Kshs. 50,000/=

Loss of Expectation of Life - Kshs. 100,000/=

Damages under the Fatal Accidents Act

Loss of Dependency - Kshs. 1,945,728/=

Special Damages - Kshs. 113,550/=

Total - Kshs. 2,209,278/=

Less 20% liability - (Kshs. 441,855)

Grand Total - Kshs. 1,767,423

Costs of the suit and interests.

4. Dissatisfied with the said judgment, the Appellants filed the instant appeal and listed the following grounds of appeal in the Memorandum of Appeal: -

(1) THAT the Learned Trial Magistrate erred in law and in fact by making an award that was

inordinately low and failed to pay due regard to the circumstances of the case and applicable precedent.

- (2) ***THAT the Learned Trial Magistrate erred in law and in fact by completely failing to consider the evidence that the deceased was driving when the accident occurred and therefore using minimum wages of a general worker was an error.***
- (3) ***THAT the trial Magistrate erred in law and in fact by failing to properly evaluate the evidence on record and apply the applicable principles in assessing damages thus reaching erroneous decision and an award that was too low.***
5. The Appellants sought orders that the appeal be allowed with costs and that the judgment of the trial court set aside and a fresh assessment of damages be done by this Court.
6. The appeal was canvassed by way of written submissions which I have considered.
7. The duty of a first appellate court was aptly explained in the case of ***Selle vs. Associated Motor Boat Company (1968) EA 123*** thus: -

“This court must consider the evidence, evaluate itself and draw its own conclusions. Though in doing so it should always bear in mind that it neither heard 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 had 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 (Abdul Hamond Sarif vs. Ali Mohamed Solan [1955] 22 EACA 270)"

8. I find that the main issue for determination is whether the trial court arrived at the correct finding on quantum since liability was agreed upon by consent of the parties in the ratio of 80:20 in favour of the Appellants.

Analysis and Determination

9. In ***Arrow Car Ltd vs. Elijah Shamalla Bimomo & 2 Others (2004) eKLR***, the Court of Appeal held 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 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. ...”

- 10.** The Appellants’ case was that the award made by the trial court was too low. They contended that the deceased was employed as a driver at the time of the accident and presented his driving license and the death certificate as exhibits. It was submitted that the deceased’s occupation was not controverted or rebutted by the Respondent and that the trial court had no basis for applying the minimum wages of a general worker in adopting the multiplier method to assess the award.
- 11.** Reference was made to the case of Board of ***Trustee Meru Diocese Kirimara Parish vs. Dores Wanja Bore (2020) eKLR*** where the court held that the Respondent had discharged its burden of proof because the defendant/appellant did not controvert their evidence. It was also submitted that the trial court did not consider the applicable wage of Kshs. 30,627.45 as per the Regulation of Wages (General Amendment) Order 2022.
- 12.** In contrast, the Respondent submitted that the Appellants did not produce evidence to prove that the deceased was employed as a driver. The Respondent cited the decision in ***Ena Investments Limited vs. Onyaguti suing as the legal representative of the Estate of Jared Ocharo Nyagwaya - Decesed, Civil Appeal No. 099 of 2022 (2024) KEHC 2842*** where Odera J. applied the minimum wage in computing loss of dependency because no payslip

or other evidence was presented to prove the deceased's earnings.

13. The applicable awards in a fatal accident claim are; damages for pain and suffering, loss of expectation of life under the Law Reform Act and loss of dependency under the Fatal Accidents Act on the other hand. I note that the only contention in this Appeal is the issue of loss of dependency under the Fatal Accidents Act.

14. Assessment of damages under the Fatal Accidents may be done by adopting the multiplier method or the global sum approach. In the case of **Mwanzia vs. Ngalali Mutua quoted in Albert Odawa vs. Gichumu Githenji [2007] eKLR** it was held thus:-

“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 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. Similarly, in **Moses Mairua Muchiri vs. Cyrus Maina Macharia (Suing as the personal representative of**

the Estate of Mercy Nzula Maina (deceased) [2016] eKLR, it was held as follows: -

“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.”

16. In ***Frankline Kimathi Maariu & Another vs. Philip Akungu Mitu Mborothi (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR*** the court held that:-

“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.” ...the global sum approach would be an estimate informed by the special circumstances of each case.”

- 17.** In the present case, it was not in disputed that the deceased was employed as a driver at the time of his death. This evidence was not rebutted by the Respondents. I however note that the Appellants did not adduce any evidence of his exact earnings. I have considered the **Regulation of Wages (General Amendment) Order 2022** cited by the Appellants in support of their case for the applicable monthly minimum wage for a driver.
- 18.** I note that the Regulations provide for the wages for the specific regions that the said employment is carried out. In this case, the Appellants did not only fail to state how much the deceased earned, but did not also adduce evidence of which area or route that the deceased operated from so as to assist the Court in assessing the minimum wage stipulated according to the Order. I therefore find that it would be speculative for this Court to determine the deceased's area of operation based on the location of the accident, in the absence of tangible evidence.
- 19.** It is trite that the legal burden of proof is discharged by way of evidence. It is therefore my finding that the Appellants did not discharge this burden and that the multiplier method employed by the trial court was not justified in the circumstances of this case. Accordingly, I shall consider the global sum awards made in similar cases: -
- (a) In ***Ainu Shamshi Hauliers Limited vs. Moses Sakwa & Another (Suing as the Administrators of the estate of Ben Siguda Okach (Deceased) (2021) eKLR*** a global sum of Kshs. 2,000,000/= was

upheld on appeal for the death of a 40-year old man who left behind a 29 year old wife and two young children aged 6 and 4 years.

(b) In **Kisii HCCA No. 39 of 2014; *Marwanga Jeffern vs. Jeckton Ochieng' & Anor***, an award of Kshs 1,600,000/= was made for loss of dependency where the deceased died at the age of 30 and was survived by a widower and a 10-year old son.

(c) In ***Mogusu & Another (Suing as the Legal Representatives of the Estate of Peter Isoe Oyugi - Deceased) vs. Nganga & another (Civil Appeal 19 of 2019) [2024] KEHC 2656 (KLR)***, A.K. Ndung'u J. set aside the award of Kshs. 600,000/= where the deceased was 30 years old at the time of his death and was survived by one wife and one son who was 5 years old together with his father and mother. The court awarded Kshs. 1,000,000/= on appeal.

20. Taking into consideration the fact that the deceased died at the age of 43 years old and was survived by his wife and three children aged 18, 9 and 4 years old it is my view that an award of Kshs. 2,500,000/= for loss of dependency would be an appropriate award under this heading.

21. In sum, I find that the Appeal is merited and is hereby allowed by setting aside the award of the trial court in its place enter judgment as follows:

Liability set at 80:20 by consent in favour of the Appellants

Damages under the Law Reform Act

(i) Pain and Suffering - Kshs. 50,000/=

**(ii) Loss of Expectation of Life - Kshs.
100,000/=**

Damages under the Fatal Accidents Act

(i) Loss of Dependency - Kshs. 2,500,000/=

Total Sum - Kshs. 2,650,000/=

Less 20% liability - (Kshs. 530,000)

Kshs. 2,120,000/=

Add Special Damages - Kshs. 113,550/=

Grand Total - Kshs. 2,233,550

**Costs of the suit and interests at court rates till
payment in full.**

22. The Appellants shall also have the costs of the appeal which I hereby assess at Kshs. 40,000.

23. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH
DAY OF MARCH, 2026.**

HON. W. A. OKWANY

JUDGE

05/03/2026

**FOR APPELLANT OWUOR
FOR RESPONDENT KAHIGA**

ORIGINAL