

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E037 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

(Being an appeal arising from the Judgment and Decree of Senior Resident Magistrate, Hon. G.Sagero, delivered on 9th December 2024 in Narok CMCC No. E186 of 2023)

RISPER NYAMBANE MACHAGE

(Sued as the Legal Representative of

the Estate of ENOCK MOBISA MACHAGE) APPELLANT

VERSUS

JOB BOSIRE NYARANGI

(Suing as the Legal Administrator of the Estate of

CARREN BARONGO BOSIRE – DECEASED) RESPONDENT

JUDGMENT

12/03/2026

INTRODUCTION

- 1) This is the first appeal arising from the judgment and decree of the Senior Resident Magistrate, Hon. G. Sagero, delivered on 9th December 2024 in Narok CMCC No. E186 of 2023 between the Respondent herein (as plaintiff) and the Appellant herein (as defendant).
- 2) The suit arose from a fatal road traffic accident involving motor vehicle registration number KCN 490V and motor vehicle registration number KDA 746X, in which the deceased, Carren Barongo Bosire, was a pillion passenger and sustained fatal injuries.

3) Liability was settled by consent at 90:10 in favor of the Respondent. The matter thereafter proceeded for assessment of quantum. The trial court awarded damages as follows:

- i. Pain and suffering – Kshs. 30,000/=
- ii. Loss of expectation of life – Kshs. 100,000/=
- iii. Loss of dependency – Kshs. 1,200,000/= (global sum)
- iv. Special damages – Kshs. 131,150/=

Total less 10% contribution – Kshs. 1,315,035/=

4) The present appeal challenges the award on quantum only.

5) This being a first appeal, this Court is obliged to reconsider and re-evaluate the evidence and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses testify: See **Selle & Another v Associated Motorboat Co. Ltd & Others [1968] EA 123** and **Peters v Sunday Post Ltd [1958] EA 424**.

MEMORANDUM OF APPEAL

6) The Appellant appeals against the judgment on the following grounds:

- i. *The learned trial magistrate erred in law and fact in adopting wrong principles in the assessment of damages under both the Fatal Accidents Act and the Law Reform Act.*
- ii. *The learned magistrate erred in awarding excessive damages for pain and suffering in view of the evidence that the deceased died on the spot.*
- iii. *The learned magistrate erred in adopting the global award approach instead of the multiplier method in assessing damages for loss of dependency.*
- iv. *The learned magistrate erred in awarding a global sum of Kshs. 1,200,000/= for loss of dependency, thereby arriving at an erroneous and excessive award.*

- v. *The learned magistrate failed to properly consider the Appellant's submissions on quantum.*

APPELLANT'S SUBMISSIONS

- 7) The Appellant submits that this being a first appeal, this Honorable Court is under a duty to re-evaluate the evidence on record and arrive at its own independent conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify. The Appellant contends that this Court is entitled to interfere with the award of damages where it is demonstrated that the trial court acted on wrong principles of law or that the award made was so inordinately high or low as to amount to an entirely erroneous estimate. Reliance is placed on ***Butt v Khan* [1981] KLR 349** and ***Ken Odondi & 2 Others v James Okoth Omburah t/a Okoth Omburah & Company Advocates* [2013] eKLR, Civil Appeal No. 84 of 2009 (Court of Appeal)**, where the principles governing appellate interference with quantum were clearly articulated.
- 8) On the issue of pain and suffering, the Appellant submits that the deceased died on the spot and therefore did not endure prolonged pain prior to her demise. It is argued that the award of Kshs. 30,000/= under this head was excessive in the circumstances. The Appellant maintains that where death is instantaneous, courts have generally awarded nominal sums. In support of this position, reliance is placed on ***West Kenya Sugar Co. Ltd v Philip Sumba Julaya (Suing as the Administrator and Personal Representative of the Estate of James Julaya Sumba (Deceased))* [2019] eKLR (High Court)**, where the court emphasized modest awards where death was immediate, and on ***Florence Awuor Owuoth v Paul Jackton Ombaya* [2020] eKLR (High Court)**, in which an award of Kshs. 10,000/= was made where the deceased died on the spot. The Appellant therefore urges this Court to reduce the award for pain and suffering to Kshs. 10,000/=.

- 9) With respect to loss of dependency, the Appellant's principal grievance concerns the trial court's adoption of the global sum approach. It is submitted that the multiplier approach ought to have been applied since the deceased's age (55 years) was known, her dependants were identified, and her occupation as a farmer was stated on record. The Appellant argues that the multiplier approach is the preferred method where the age and earnings of the deceased are ascertainable, as stated in **Kenya Breweries Ltd v Saro [1991] KLR 408 (Court of Appeal of Kenya)**. Conversely, the global approach is only appropriate where income is speculative or unascertainable, as observed in **Albert Odawa v Gichimu Githenji [2007] eKLR (High Court)** and **Mwanzia v Ngalali Mutua & Another [2001] eKLR (High Court)**.
- 10) Although the deceased's alleged monthly income of Kshs. 45,000/= was not supported by documentary evidence; the Appellant submits that the court ought to have adopted the statutory minimum wage as the multiplicand rather than resorting to a global award. In this regard, reliance is placed on **Jacob Ayiga Maruja & Another v Simeon Obayo [2005] eKLR (Court of Appeal)**, where the Court of Appeal held that lack of documentary proof does not necessarily bar compensation for persons working in the informal sector. The Appellant proposes a multiplicand of Kshs. 8,109.90, a multiplier of 3 years, and a dependency ratio of one-third, noting that the deceased's children were adults, two of whom were married, and that dependency was not strictly proved.
- 11) On special damages, the Appellant concedes the award of Kshs. 131,150/=, acknowledging that the same was specifically pleaded and strictly proved in accordance with the principles set out in **Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited [2016] eKLR (Court of Appeal)**.

RESPONDENTS' SUBMISSIONS

- 12) The Respondent submits that this Honourable Court should not interfere with the award of damages unless it is shown that the trial court acted on wrong principles or that the award was so inordinately high or low as to amount to an entirely erroneous estimate. Reliance is placed on **Rook v Rairrie [1941] 1 All ER 297 (Court of Appeal, England)** and **Butt v Khan**, which set out the well-established principles guiding appellate interference with quantum.
- 13) On the award for pain and suffering, the Respondent contends that the sum of Kshs. 30,000/= was modest and within the acceptable range. It is submitted that there is no fixed tariff for such awards and that courts exercise discretion based on the circumstances of each case. In **Bwire v Wayo & Sailoki [2022] KEHC 7 (High Court of Kenya)**, an award of Kshs. 50,000/= for a deceased who died on the spot was upheld on appeal. The Respondent therefore argues that the award in the present case cannot be said to be excessive and should not be disturbed.
- 14) Regarding loss of dependency, the Respondent submits that the trial magistrate properly exercised judicial discretion in adopting a global sum because the multiplicand was not proved by evidence. It is argued that the multiplier method is not a principle of law but merely a method of assessment that may be abandoned where the facts do not facilitate its application. Reliance is placed on **Mary Wanjiru Maina (Suing as Administrator Ad Litem of the Estate of the Late Jane Wanjiru Maina) v Lilian W. Macharia & Another [2019] eKLR (High Court)**, where the court observed that the multiplier approach must be abandoned where the facts do not allow its proper application.
- 15) Further guidance is drawn from **Francis Righa v Mary Njeri (Suing as Legal Representative of the Estate of James Kariuki Nganga (Deceased)) [2021] eKLR**

(Court of Appeal), where the Court of Appeal emphasized that in choosing a multiplier and multiplicand, the court must consider factors such as income, working life, and prospects. The Respondent maintains that in the present case, the deceased's income was unproven, the children were adults, and dependency was uncertain. In those circumstances, the global award of Kshs. 1,200,000/= was fair, reasonable, and within the discretion of the trial court.

16) The Respondent therefore urges this Honourable Court to dismiss the appeal with costs.

ISSUES FOR DETERMINATION

1. Whether this Court should interfere with the award for pain and suffering.
2. Whether the trial court erred in adopting the global sum approach for loss of dependency.
3. Whether the award for loss of dependency was excessive.

ANALYSIS AND DETERMINATION

1. Pain and Suffering

17) The deceased died on the spot. Awards in such cases range between Kshs. 10,000/= and Kshs. 50,000/=. The award of Kshs. 30,000/= falls within the acceptable range and cannot be said to be inordinately high.

18) Applying the principle in **Butt v Khan**, this Court finds no basis for interference.

2. Whether the Global Approach Was Proper

19) The evidence on income was purely oral and unsupported. While courts may adopt a minimum wage, they are not bound to do so.

20) As stated in **Albert Odawa v Gichimu Githenji**, the multiplier approach may be abandoned where the facts do not facilitate its application.

21) Given the deceased's age (55), lack of proof of income, and adult children, the trial court did not misdirect itself in resorting to a global sum.

3. Whether Award Was Excessive

22) The award of Kshs. 1,200,000/= must be assessed against comparable awards and the circumstances of the case. Considering the deceased's age and uncertain dependency, the award does not appear inordinately high or based on wrong principles.

FINAL ORDERS

- i. The appeal on pain and suffering fails.**
- ii. The appeal on loss of dependency fails.**
- iii. The award of special damages is upheld.**
- iv. The appeal is dismissed with costs to the Respondent.**

23) It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS

APPLICATION, THIS 12TH DAY OF MARCH 2026

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CHARLES KARIUKI

JUDGE