



REPUBLIC OF KENYA



KENYA LAW

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**Nyauma & another (Suing as the administrators on behalf of Beatrice Moraa Nyamboki) v
Mwakaya (Civil Appeal 27 of 2020) [2026] KECA 348 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KECA 348 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 27 OF 2020
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
FEBRUARY 27, 2026

BETWEEN

**PHILIP NYAMBOGI NYAUMA & NYAMBOKI ORIOKI HILLARY (SUING
AS THE ADMINISTRATORS ON BEHALF OF BEATRICE MORAA
NYAMBOKI) APPELLANT**

AND

AGNES WAKIO MWAKAYA RESPONDENT

*(Being an appeal from the Judgment and decree of the High Court of Kenya at
Nyamira, (Maina, J.) dated 7th November, 2019 in HCCA NO. 14 OF 2018)*

JUDGMENT

1. The genesis of this second appeal is a plaint filed in the Senior Resident Magistrate’s Court at Keroka in Civil Suit No. 81 of 2017 by Philip Nyambongi Nyauma and Nyamboki Orioki-Hillary, “the appellants”, suing as administrators of the estate of the late Beatrice Moraa Nyamboki, “the deceased”.
2. The suit was instituted under the *Law Reform Act* and the *Fatal Accidents Act*, seeking damages arising from a fatal road traffic accident that occurred along the Kisii–Keroka road at Keumbu. It was pleaded that the deceased was lawfully walking off the aforesaid road when she was fatally knocked down by Motor Vehicle Registration Number KCG 293K, which was under the management and control of Agnes Wakio Mwakaya, “the respondent ‘or her driver, agent, servant, and or employee’” and was caused by the negligent manner in which the motor vehicle was driven, particulars whereof were given.
3. It was also averred that the deceased was aged 44 years at the time of her death, was a businesswoman earning approximately Kshs.30,000 per month. That her death resulted in loss of dependency and damage to her estate. The dependants mentioned included her husband and four children. Special damages amounting to Kshs.90,000, covering the cost of obtaining the grant of letters of administration and funeral expenses were also claimed.



4. The suit was defended by the respondent. Through her statement of defence, she denied all material allegations in the plaint. She disputed the occurrence of the accident, denied ownership or control of the motor vehicle, and put the appellants to strict proof. In the alternative, she averred that if any accident occurred, it was wholly or substantially caused by the negligence of the deceased and gave the particulars of negligence thereof.
5. Prior to the hearing of the suit, parties recorded a consent on liability in a ratio of 70:30 in favour of the appellants. The suit thereafter proceeded to hearing on quantum only. At the conclusion thereof, the trial court made the following awards in favour of the appellants:

-Liability 70/30.
-Pain and suffering...70,000.00
-Loss of expectation of life...100,000.00
-Loss of dependency...3,200,000.00
-Loss of consortium...100,000.00
- Special damages...40,000.00. Subtotal3,510,000.00.
Less 30% contribution...1,053,000.00
TOTAL... 2,457,000

6. Unhappy with the award, the respondent preferred a first appeal in the High Court of Kenya at Nyamira, limited to quantum. In its determination, the first appellate court found that special damages were properly awarded based on receipts produced for the coffin and legal fees, totaling Kshs.40,000.
7. Regarding general damages, the first appellate court applied the principles enunciated in *Kemfro Africa Limited t/a Meru Express Services (1976) & Another v Lubia & Another (No2) [1983] KECA 137 (KLR)*, and adjusted the multiplicand to Kshs.10,000 as opposed to 15,000 that had been invoked by the trial court, based on general wage estimates, and upheld the multiplier of 16 years. The court therefore awarded Kshs.1,280,000 for loss of dependency. The dependency ratio of 2/3 was deemed appropriate given the deceased's marital status and children. The court awarded Kshs.1,280,000 for loss of dependency, Kshs.70,000 for pain and suffering, Kshs.100,000 for loss of consortium, and Kshs.100,000 for loss of expectation of life. However, the latter was deducted from the total as it had not been factored into the dependency computation. The final adjusted award ended up as hereunder:

-Liability 70%30.
-Pain and suffering 70,000.00
-Loss of expectation of 100,000.00.
-Loss of dependency 1,280,000.00
-Loss of consortium 100,000.00
-Special damages 40,000.00
Total 1,590,000.00
Less loss expectation of life 100,000.00
Grant total 1,034,000.00

The respondent was awarded half the costs of the appeal.



8. Being aggrieved by the judgment of the first appellate court, the appellants are before this Court on second appeal on grounds that the first appellate court erred in using a multiplicand of minimum wage guidelines having found that the deceased had no profession and in deducting from the total award the figure for loss of expectation of life.
9. When the appeal came up for plenary hearing, Ms. Nyandoro, learned counsel appeared for the appellants, whereas, Mr. Kamau, learned counsel represented the respondent. Both counsel opted to rely solely on their written submissions that they had filed and exchanged.
10. Counsel for the appellants submitted that the first appellate court erred in interfering with the trial court's assessment of damages, particularly the multiplicand used in computing loss of dependency and the deduction of the award for loss of expectation of life from the eventual award. She contended that the trial court had properly exercised its discretion in adopting a multiplicand of Kshs.15,000, based on oral and documentary evidence that the deceased was a businesswoman earning approximately Kshs.30,000 per month. That the first appellate court wrongly substituted this with the general minimum wage of Kshs.10,000, citing lack of documentary proof directly linking the pleaded monthly income to the deceased. That this was an erroneous basis for interference, as there was no legal requirement that earnings must be proved solely through documentation.
11. In support thereof, the appellant relied on *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR, where the court held that proof of a person's profession or earnings need not be confined to formal documentation such as certificates or financial records. That the first appellate court ought to have recognized that many Kenyans earn their livelihood through informal means and may not maintain written records, yet their income and occupation can still be credibly established through oral testimony and circumstantial evidence.
12. Counsel further submitted that the court failed to demonstrate any misdirection in principle or evidence by the trial court, which was a necessary condition for appellate court's interference with an award of damages. In support of this position, counsel relied on *Butt v Khan* [1977] 1 KLR, where the court affirmed that an appellate court should only disturb a trial court's award of damages if it is satisfied that the award is inordinately high or low as to constitute a wholly erroneous estimate of the damages, and where it is evident that the trial court either applied incorrect principles or materially misapprehended the evidence. Counsel maintained that the first appellate court did not identify any such error in the trial court's reasoning or findings, and therefore lacked legal justification to interfere with the quantum of damages awarded.
13. Counsel submitted that the first appellate court erred in law in deducting the award for loss of expectation of life from the final award. She relied on *Hellen Waruguru Waweru v Kiarie Shoe Stores Ltd* [2014] eKLR saying that the court's deduction of Kshs.100,000 for loss of expectation of life was contrary to the settled jurisprudence and amounted to double penalization. She urged this Court to restore the trial court's award in full, reinstate the original multiplicand, and reverse the deduction, asserting that the trial court's findings were grounded on evidence and sound legal principles.
14. In response, counsel for the respondent submitted that the appeal was devoid of merit and that the judgment and decree of the first appellate court should be upheld. Counsel maintained that the first appellate court exercised its discretion properly in reassessing the quantum of damages, particularly in adopting a multiplicand based on the applicable minimum wage guidelines and in deducting the award for loss of expectation of life to prevent double compensation.
15. Counsel submitted that the first appellate court was correct in applying a multiplicand of Kshs.10,000, representing the minimum general wage at the time, due to the absence of credible evidence proving the



- deceased's actual income. The court found that the documents presented did not identify the deceased nor reflect her net earnings. In support, the respondent cited *Silverstone Quarry Ltd & Manji Hirji Chhabhandiya v Beatrice Mukulu Kang'uta & Zakayo Mwaka Muthoka* [2020] KECA 867 (KLR), where this Court held that in the absence of documentary proof of income, it is reasonable to apply the gazetted minimum wage guidelines. Similarly, in *Muita v Njoroge & Another* [2024] KEHC 6305 (KLR), the court held that where income is unproved, the Regulation of Wages Order provides a lawful basis for determining the multiplicand.
16. Counsel also relied on *Petronila Muli v Richard Muindi Sayi & Catherine Mwendu Mwindu* [2021] KEHC 6932 (KLR), in which it was held that in informal employment settings where income is difficult to verify, the minimum wage guidelines is the appropriate standard. In *Italbuild Imports Ltd v Mutinda & Another* [2023] KEHC 26631 (KLR), the court adopted the minimum wage guidelines for a general laborer in the absence of proof of occupation. Counsel emphasized that the deceased's occupation was inconsistently described as a trader and or a farmer, and no reliable evidence was adduced to establish her actual earnings. So, reliance on minimum wage guidelines was both lawful and reasonable.
 17. On deduction of the award for loss of expectation of life to avoid double compensation, counsel cited *Wangui Kiberenge Kibugi v Peter Kinyanjui* CA 2899 of 1993, as cited in *Sidi Kazungu Gohu & Another v Fatuma Abdi Mohamed & Another* [2021] KEHC 7854 (KLR), where Ringera J. (as he then was) laid down the principle that where the beneficiaries under the *Law Reform Act* and the *Fatal Accidents Act* are the same, the award under the former must be offset to avoid overcompensation. The respondent argued that this principle is well-established and was correctly invoked by the first appellate court.
 18. In conclusion, counsel submitted that the first appellate court considered all relevant legal principles and evidence in arriving at its decision. The appellant had failed to demonstrate any error of law or misdirection that would justify our interference. Accordingly, he prayed that the appeal be dismissed with costs.
 19. This is a second appeal and under Section 72 of the *Civil Procedure Act*, our mandate is confined to consideration of matters of law only. This scope has been delineated in many decisions of this Court including but not limited to *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR, where the court held that:

“In a second appeal, the Court confines itself to matters of law unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or that the decision is plainly perverse.”
 20. Having carefully reviewed the record, the submissions of counsel, the judgments of the two courts below, the authorities cited and the law, we are satisfied that the appeal turns on a single issue of law: whether the first appellate court erred in interfering with the trial court's discretion in assessing the quantum of damages, specifically in substituting the multiplicand and deducting the award for loss of expectation of life from the final award.
 21. It is trite that the assessment of damages is a discretionary function of the trial court. This Court in *Butt v Khan* (supra) held that an appellate court should not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate, or where the trial court acted on wrong principles or misapprehended the evidence.



22. This Court has also cautioned against appellate court’s interference with concurrent findings of fact or discretionary determinations unless the findings are unsupported by evidence or are plainly wrong in law. See *Mbogo v Shah* [1968] EA 93.
23. In the present appeal, the trial court adopted a multiplicand of Kshs.15,000 based on oral evidence that the deceased was a businesswoman earning approximately Kshs.30,000 per month. The first appellate court, however, substituted this with the general minimum wage guidelines of Kshs.10,000, citing lack of documentary proof directly linking the income to the deceased. It also deducted the award for loss of expectation of life on the basis that it had not been factored into the dependency computation and to avoid double compensation.
24. The appellants argue that this was an unwarranted interference with the trial court’s discretion. However, the first appellate Court was entitled to re-evaluate the evidentiary basis of the trial court’s awards, and in doing so, it applied the correct legal standard. In *Silverstone Quarry Ltd & Manji Hirji Chhabhandiya v Beatrice Mukulu Kang’uta & Zakayo Mwaka Muthoka* (supra), this Court held that in the absence of credible proof of income, the court is entitled to apply the gazetted minimum wage guidelines. The deceased’s occupation was inconsistently described either as a trader and or a farmer, and no reliable evidence was adduced to establish her actual earnings and profession. The first appellate Court’s approach was therefore well grounded in law, and we find no error in principle to warrant our interference.
25. Further, it’s deduction of the award for loss of expectation of life to avoid double compensation, on the basis that it had not been factored into the dependency computation cannot be faulted. Though the appellants argue that this deduction was contrary to the holding in *Hellen Waruguru Waweru v Kiarie Shoe Stores Ltd* (supra), where this Court clarified that awards under the *Law Reform Act* and the *Fatal Accidents Act* are distinct and need not be mathematically deducted unless duplication is evident. However, the first appellate Court was alive to this principle and expressly found that the award had not been considered in the dependency computation and the duplication was obvious therefor. In such circumstances, the deduction was justified to avoid overcompensation, in line with the reasoning in *Wangui Kiberenge Kibugi v Peter Kinyanjui and Sidi Kazungu Gohu & Another v Fatuma Abdi Mohamed & Another* (all supra).
26. We are not persuaded that the first appellate court misdirected itself in law or misapprehended the evidence. The court exercised its appellate discretion judiciously and within the bounds set by precedents.
27. Accordingly, we find no merit in this appeal and dismiss it with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF FEBRUARY, 2026.

ASIKE MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

