



**Siyah (Suing as Legal Representative of the Estate of the Late Satia Chui Palalang Andrew) v Mwonga & another (Civil Appeal E097 of 2024) [2026] KEHC 2747 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2747 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E097 OF 2024  
WA OKWANY, J  
FEBRUARY 19, 2026**

**BETWEEN**

**PIUS WILSON SIYAH (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE SATIA CHUI PALALANG ANDREW) ..... APPELLANT**

**AND**

**GEORGE MAUNDU MWONGA ..... 1<sup>ST</sup> RESPONDENT**

**ZOHARI LEASING LIMITED. .... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. W. Rading (PM) delivered on 25th July 2024 in Naivasha CMCC No. 322 of 2020)*

**JUDGMENT**

**Background**

1. The Appellants sued the Respondent before the trial court for damages under the *Law Reform Act* and *Fatal Accidents Act* following a road traffic accident that occurred on 24<sup>th</sup> October 2019 and resulted in the death of the deceased aged 47 years.
2. On 16<sup>th</sup> May 2024, parties recorded a consent on liability in the ratio 90%:10% in favour of the appellant.
3. On 25<sup>th</sup> July 2024, the learned magistrate delivered judgment awarding general damages under loss of dependency.
4. The Appellant appeals only on quantum, arguing the award made by the trial court was inordinately low.
5. The Respondents opposed the appeal arguing that the trial court properly exercised judicial discretion.



6. This court, as a first appellate court, is required to re-evaluate the evidence on record and reach its own independent conclusions. In *Kemfro Africa Ltd t/a Meru Express Services & Another v A.M. Lubia & Another (No.2) (1982-88) 1 KAR 727* at p. 703 the Court of Appeal stated:

“The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

7. This principle was also echoed in *Butt vs. Khan [1981] KLR 349* at p. 356, where Law JA 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.”

8. The test in this appeal is therefore whether the award was based on wrong principles or resulted in an erroneous estimate.

#### **Appellant’s submissions**

9. The Appellant submitted that the trial court erred by adopting net salary rather than gross salary for multiplicand and by deducting PAYE and other deductions beyond statutory taxes. The Appellant faulted the trial court for applying multiplier and dependency ratio that was not supported by evidence thereby arriving at an award of Kshs 1,831,448 instead of Kshs 6,383,520.

10. The appellant relied on earnings proved by payslip showing gross pay of Kshs 61,380/=. Reference was made to the case of *Evaline Chepkirui vs. Stella Asuga & Erick Omwenga [2021] eKLR* where the Court of Appeal held: -

“I note from the record that the trial court allowed other deductions over and above the tax payable (PAYE). My understanding of this aspect of law is that, not all deductions in a pay slip are discounted in the ascertainment of the multiplicand for purposes of loss of dependency. I should think that, only the tax element is to be deducted from the gross pay. PAYE is tax payable to government. However, statutory and other deductions whose beneficial owner is the deceased and his estate, are not to be discounted when assessing dependency. There is no dearth of judicial authorities on this point; I have not any wish to multiply. Accordingly, the trial court applied the wrong principle in assessing the multiplicand applicable in loss of dependency in this case. As such, the discretion thereto is amenable to interference by this court. I set aside the multiplicand adopted by the trial court.”

11. Reference was also made to *Charles Mageto & Another vs. Sospeter Ndung’u Kamau [2006] eKLR* where the Court of Appeal held: -

“From the pay slip...we find that the multiplicand that should have been used by the trial court was the deceased’s total earnings less statutory deductions...”

12. The Appellant urged this court to reassess the award upward applying a multiplicand of gross salary less PAYE only, a dependency ratio of 2/3 and multiplier of 13 years



## **Respondents' submissions**

13. The respondents submitted that the trial court properly considered the evidence and submissions and noted that Appellant failed to strictly prove income as required by *Evidence Act* at Section 107 thereof. It was submitted that the absence of pay slip/exhibits justified the global sum approach that was adopted by the trial court in determining loss of dependency. Reference was made to the case of *Frankline Kimathi Maahu & Another vs. Philip Aringu Mitu Mboorthi (2020) eKLR*, where the judge stated:
- “...there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the court should be wary in ascribing a figure as the multiplicand.”
14. The respondents further submitted that judicial discretion should not be interfered with citing *Butt vs. Khan (supra)* and *Rosemary Wairimu Munene vs. Ihururu Dairy Farmers Co-op [2014] eKLR*.
15. Having considered the record of appeal and submissions, I find that the following issues arise for determination: -
- a. Whether income was proved on balance of probabilities.
  - b. Whether the trial court applied wrong principles in adopting the multiplicand.
  - c. Whether the award of damages under loss of dependency was inordinately low.

## **Analysis and Determination**

### **Proof of income**

16. The record of appeal contains a payslip referred at page 24 thereof showing monthly gross earnings. The deduction amounts are also indicated. The learned magistrate accepted earnings of Kshs 22,893 as multiplicand representing net pay.
17. I find that with the production of a pay slip, this was not a case requiring global sum approach.

### **Applicable multiplicand**

18. There is clear jurisprudence distinguishing between statutory Pay as You Earn (PAYE) deductions (deductible) and other deductions (not deductible). In *Evaline Chepkirui vs. Stella Asuga case (supra)* the court stated: -
- “...only the tax element is to be deducted from the gross pay...other deductions...are not to be discounted when assessing dependency.”
19. I therefore find that the trial magistrate erred by deducting additional items besides PAYE, thereby reducing the multiplicand below what the law permits.

### **Multiplier and dependency ratio**

20. The deceased was 47 years old and a police officer whose retirement age is 60. I find that a multiplier of 13 years is reasonable and within authority. Dependency ratio of 2/3 for married man with dependants is not contested.
21. I therefore find that the correct calculation, applying only PAYE deduction yields: -



- i. Gross pay: Kshs 61,380  
Balance (multiplicand): Kshs 50,309.70  
Less PAYE only: Kshs 11,070.3  
Loss of dependency: 5,232,208.8  
 $50,309.7 \times 2/3 \times 13 \times 12 \approx$  Kshs
22. I find that the above sum is substantially higher than award made by the trial court which was inordinately low given the wrong deduction of multiple statutory and voluntary items, thus amounting to misapprehension of the principles of multiplicand assessment.
23. The award must therefore be interfered with.

### **Disposition**

24. Accordingly, I make the following orders: -
  - a. The appeal succeeds on quantum.
  - b. The award for loss of dependency made by the trial magistrate on 25 July 2024 is hereby set aside.
  - c. It is substituted with an award calculated as follows:  
Loss of dependency = Kshs 5,232,208.80
  - d. Less 10% contribution agreed in lower court:  $5,232,208.80 - 10\% =$  Kshs 4,708,987.92
  - e. The appellant shall have costs in this appeal.
  - f. Interest shall accrue at court rates from the date of judgment in the lower court until payment in full.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. W. A. OKWANY**

**JUDGE**

**19/02/2026**

FOR APPELLANT Kiberenge

FOR THE RESPONDENT Miss Karungu

COURT ASSISTANT Karani

30 days stay of execution is granted file close

