



REPUBLIC OF KENYA



**Wairimu & another v Gaitho & another (Civil Appeal E053 of 2022)
[2026] KEHC 3699 (KLR) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E053 OF 2022
CW GITHUA, J
MARCH 19, 2026**

BETWEEN

SALOME WAIRIMU 1ST PLAINTIFF

MWANGI MURIUKI 2ND PLAINTIFF

AND

NAHASHON NJUGUNA GAITHO 1ST DEFENDANT

MWANGI NJERI MARY 2ND DEFENDANT

(Being an appeal against the Judgement of Hon. P. N Maina (CM) dated 31st August 2022 in Murang'a Chief Magistrate's Court Civil Case No. 53 of 2022)

JUDGMENT

1. The genesis of this appeal is a suit which was instituted by the appellants Salome Wairimu and Mwangi Muriuki in their capacity as the legal representatives of the Estate of Simon Kabiru Mwangi against the respondents in the trial court vide a plaint dated 22nd August 2020.
2. In the suit, the appellants sought special damages in the sum of Ksh.140,550 and general damages under both the Law Reform Act and the Fatal Accidents Act following the death of the late Simon Kabiru Mwangi (hereinafter the deceased) in a fatal road accident whose occurrence was blamed on the respondents' negligent driving of motor Vehicle Registration No.KBW 084 C.
3. After a full trial, the learned trial magistrate delivered his judgement on 31st August 2022 and made a finding on liability in favour of the appellants against the respondents at 100%. The appellants were also awarded damages as follows;
 - Damages under the Law Reform Act - Ksh.150,000
 - Damages under the Fatal Accidents Act - Ksh.651,499.20



- Special damages - Ksh.140,550

Total - Ksh.942,049.20

In addition, the appellants were awarded costs of the suit and interests.

4. Aggrieved by the trial court's decision on quantum, the appellants proffered an appeal to this court vide a memorandum of appeal dated 27th August 2022. In their memorandum of appeal, the appellants beseeched this court to set aside the trial court's decision on quantum and to assess damages payable to them afresh.
5. The above prayers were made on grounds that the learned trial magistrate had erred in fact and in law failing to consider the evidence adduced by the appellants and documents on record; by adopting a multiplier of 1/3 as opposed to 2/3 despite the evidence on record; and, by adopting the minimum wage guidelines disregarding the evidence on record.
6. The court record shows that on 21st October 2025, the court directed the parties to file written submissions in prosecution of the appeal. The appellants filed their written submissions dated 10th December 2024 through their advocates on record Ms. Ruchathi Mwaniki & Associates. The respondents failed to file their written submissions within the timelines given by the court. Upon their application, the court gave them another opportunity to file and serve their submissions on or before 5th January 2026. Despite being given ample time and opportunity, the respondents have to date not filed their submissions.
7. A reading of the appellant's submissions reveals that the appellants were not contesting the special damages awarded by the trial court or the damages awarded under the *Law Reform Act*. Their grievance was with the manner in which the trial court computed damages for loss of dependency under the *Fatal Accidents Act*.
8. In their submissions, the appellants asserted that the learned trial magistrate erred in calculating damages for loss of dependency by using a dependency ratio of 1/3 instead of 2/3 considering that it was not disputed that the deceased was married and was survived by a son and an ageing father.
9. The appellants also complained that the trial court dismissed as unreliable the undisputed evidence of PW2 to the effect that prior to his death, the deceased was an employee of Damager Enterprises Ltd earning a monthly salary of Ksh.50,000; that the trial court erred when it used as the multiplicand Ksh.13,572, the minimum wage of an unskilled labourer in the year 2018.
10. This being a first appeal to the High Court, it is an appeal on both facts and the law. The duty of the first appellate court is now well settled. It has been articulated in a plethora of authorities and to summarize, it enjoins the court to thoroughly re-evaluate the evidence presented before the trial court to arrive at its own independent conclusions regarding the soundness or otherwise of the impugned decision.
See: *Selle & Another V Associated Motor Boat Company Ltd* [1968] EA 123; *Sumarla & Another V Allied Industrial Ltd* (2007) 2 KLRJ; among others.
11. As the appeal challenges the trial courts' decision on quantum, it is important to point out at the outset that as a general rule, an appellate court should be slow to interfere with a trial court's discretion in the assessment of damages unless it was satisfied that in arriving at the award, the learned trial magistrate misapplied the law or took into account irrelevant factors or failed to consider relevant ones or that the award was either inordinately low or high as to lead to an inference that it represented an erroneous estimate of the damage suffered.



See: Bashir Ahmed Butt V Uwais Ahmed Khan (1982-88) IKAR I; AG V Nyambu T/A Sisera Store [1990] KLR 534; Kemfro Africa Limited T/A Meru Express Services & Another V Lubia & Another [1987] KLR 30.

12. I have carefully considered the grounds of appeal and the written submissions filed by the appellants. I have also considered the evidence on record and the judgement of the learned trial magistrate.

The record reveals that only the appellant's adduced evidence in support of their case during the trial which was not controverted as the respondents did not offer any evidence in support of their defence.

13. In her evidence, PW1 who was the deceased's widow adopted her written statement as her evidence in chief. In the statement, she stated that at the time of his death, the deceased was 43 years old. He was working a business supervisor at Damager Enterprises Ltd earning a monthly salary of Ksh.50,000 which he used to support her together with his son and father.
14. PW2, the Operations Manager at Damager Enterprises Ltd confirmed PW1's claim that the deceased was prior to his death employed by the aforesaid company as a business supervisor. He produced as P Exhibit 10 a letter dated 30th June 2025 which was on the company's letter head proving that the deceased was indeed an employee of the company and used to earn a monthly salary of Ksh.50,000 all inclusive.
15. In his judgement, the learned trial magistrate referred to PW1's and PW2's evidence and the deceased's employment letter dated 30th June 2018 but dismissed the letter on grounds that there was no evidence showing the deceased's academic qualifications and his actual profession; that it was also not clear whether his statutory deductions were made from that all inclusive salary and what remained as his net income. He concluded by making a finding that the deceased's earnings could not be ascertained hence his use of the minimum wages for an unskilled labourer as the multiplicand.
16. In my considered view, the learned trial magistrate's findings on the deceased's income being unascertainable was erroneous since it was contrary to the evidence on record. PW1 and PW2's evidence was very clear regarding the deceased's income prior to his death. The trial court's dismissal of the employment letter on grounds that it was not backed by evidence showing the deceased's academic qualifications or profession amounted to consideration of irrelevant factors since what was in issue was the deceased's income not his academic and professional qualifications.
17. It is true that the deceased's salary was indicated to be all inclusive and did not therefore show the monthly statutory deductions made therefrom. However, this was not sufficient reason to disregard the evidence adduced in support of the deceased's income because the learned trial magistrate should have deducted 20% of the salary to account for his statutory deductions and use the difference as the multiplicand. It is important to remember that the standard of proof in civil cases is on a balance of probabilities not beyond reasonable doubt.
18. Regarding the dependency ratio, though the learned trial magistrate appreciated PW1's evidence that she was dependent on the deceased together with their son, he found that the appellants failed to establish the extent of their dependency on the deceased.
- The evidence on record however reveals that in her witness statement which, as I have stated earlier, PW1 adopted as her evidence in chief, PW1 had stated that the deceased was the sole bread winner for herself, their son and his father.
19. In her evidence under cross-examination, PW1 testified that the deceased's son was at the time of the trial 15 years old which means that he was about 13 years old at the time of the deceased's untimely demise. This evidence was not disputed by the respondents. It is common knowledge that a thirteen or



fifteen year old cannot have an income of his own and must be solely reliant on his parents or guardian for provision of all basic needs. Given that it was not disputed that the deceased's family relied on him for their livelihood, I find no basis for the trial court's finding that the appellants failed to prove the extent of their dependency on the deceased. And as there was evidence that the deceased was supporting a wife, a young son and his father, the dependency ratio that was appropriate in this case was 2/3 not the 1/3 ratio used by the trial court.

20. . With respect to the multiplier, I note that although the trial court had settled on a multiplier of 10 years which was not contested by the appellants, the learned trial magistrate perhaps due to inadvertence calculated damages payable under loss of dependency using a multiplier of 12 years. The multiplier of ten years was in my view reasonable given the deceased's age and the vicissitudes of life.

21. Given the findings I have made above, damages for loss of dependency will work out as follows;

$$40,000 \times 12 \times 10 \times \frac{2}{3} = 3,200,000$$

The award made by the trial court under this head is consequently set aside and is substituted with an award of Ksh.3,200,000.

22. For the foregoing reasons, I find merit in this appeal and it is hereby allowed.

Since the award on special damages and damages awarded under the Law Reform Act were not contested on appeal, the same will remain undisturbed.

Consequently, damages payable to the appellants will now be as follows;

(i) Damages under the law Reform Act - Ksh.150,000

(ii) Damages for loss of dependency - Ksh.3,200,000

(iii) Special damages - Ksh.140,000

Total - Ksh.3,490,000

23. The award of special damages will attract interest at the rate of 12% from the date the suit was filed until payment in full. The award of general damages will attract interest at the same rate from date of this judgement until payment in full.

24. Costs follow the event and are at the discretion of the court. As the appellants have succeeded in their appeal, they are awarded costs of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 19TH DAY OF

March, 2026.

HON. C. W. GITHUA

JUDGE

In the presence of:

Mr.Mwaniki for the appellants

Mr. Morara for the respondents

Ms. Susan Waiganjo, Court Assistant.

