

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**CIVIL APPEAL NO. E042 OF 2024**

**CROWN**

**PETROLEUM.....APPELLANT**

**VERSUS**

**TIMOTHY ANYANGO MAPESA & DINAH MUSUNJI**  
***(Suing as the Legal Representatives of the Estate of***  
***CAROLINE AKHEMWENDE***  
***SHIUNDU).....RESPONDENTS***

***(Being an appeal from the judgment of Hon. Y. I. Khatambi (PM) delivered on 12th April 2024 in Naivasha CMCC No. 480 of 2017)***

**JUDGMENT**

- 1.** The Respondents herein sued the Appellant before the trial court, in their capacity as the legal representatives of the deceased, for damages arising from a road traffic accident which occurred on or about 5th May 2017 involving motor vehicles KBQ 032E and KBR 425T/ZF 0051, allegedly driven negligently by the Appellant's servant or agent.
- 2.** The trial court held the Appellant 100% liable and awarded a total of Kshs. 3,211,792.40 for damages for loss of dependency, together with costs and interest. Aggrieved by the said decision, the Appellant filed this appeal, challenging the trial court's findings on both liability and quantum.
- 3.** By consent of the parties, a related case being **Naivasha HCCA No. E040 of 2024**, was adopted as the lead file for

purposes of determining issue of liability arising from the accident series.

4. The instant appeal raises seven grounds, five of which relate to the findings on quantum, particularly the award for loss of dependency. The Appellant argues that: -
  - i) The learned magistrate erred in holding the Appellant 100% liable.***
  - ii) The trial court applied a multiplier approach without proof of income or dependency.***
  - iii) The sum awarded for loss of dependency was inordinately high.***
  - iv) The magistrate relied on speculative evidence regarding the deceased's earnings, marital status, and dependants.***
5. The appeal turns on two issues, namely; whether the trial magistrate erred in holding the Appellant wholly liable and whether the award on loss of dependency was based on wrong principles, misdirection, or was inordinately high to warrant appellate interference.

## **Analysis and Determination**

### **Liability**

6. This court has already addressed and upheld the trial court's decision on the issue of liability in the lead file being Naivasha HCCA E040/2024 with directions that judgment in the said file shall apply in this case and all the related

cases. I have, in the said judgment, found that the trial court arrived at the correct finding on liability.

7. Accordingly, the trial court's finding of 100% liability is hereby upheld.

### **Quantum of Damages**

8. Both parties cited the controlling authority in ***Kemfro Africa Ltd t/a Meru Express Services (1976) & Another vs. Lubia (No.2) [1985] eKLR***, where the Court of Appeal stated that: -

***“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 an irrelevant factor or leaving out a relevant one), or misapprehended the evidence in some material respect, and so arrived at a figure so inordinately high or low as to represent an erroneous estimate.”***

9. The above principle was reiterated in ***Butt vs. Khan [1981] KLR 349***, where Law JA held: -

***“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 acted on a wrong principle of law or misapprehended the evidence.”***

- 10.** The Appellant submitted that the award of Kshs. 2,688,722.40 was inordinately high because proof of earnings of Kshs. 80,000 or Kshs. 30,000 was not produced as there were no receipts or documents to show that the deceased sold cereals or worked as a tailor. The Appellant also noted that there was no proof of age, marriage, or dependency other than a chief's letter. It was submitted that the trial court applied an unsupported multiplier of 26 years and that the Respondent's own evidence was contradictory.
- 11.** The Appellant urged this court to adopt the global sum approach in making an award for loss of dependency.
- 12.** The Respondent, on the other hand, maintained that the deceased was a healthy 34-year-old businesswoman earning Kshs. 80,000 per month. It was the Respondent's case that where earnings are unproven, courts may rely on minimum wages of Kshs. 12,926.55 under the **Regulation of Wages (General) (Amendment) Order, 2017**.
- 13.** It was submitted that a dependency ratio of 2/3 was appropriate since the deceased supported her husband and two children. The Respondent added that a multiplier of 36 years was reasonable, as supported by the cases of ***Violet Jeptum Rahedi vs. Albert Kubai Mbogori [2013] eKLR*** and ***Julian Njeri Muriithi vs. Veronica Njeri Karanja & another [2015] eKLR***,
- 14.** The Respondent argued that the trial court's award was modest and well within the correct legal principles.

## **Analysis and Determination**

### **Loss of Dependency**

- 15.** In this case, the only proof of the deceased's income was oral testimony as no business licences, sales records, receipts or bank statements were produced. I find that this makes reliance on Kshs. 80,000 as monthly earnings from the alleged business speculative.
- 16.** I however find guidance in the position adopted by the Court of Appeal in ***Jacob Ayiga Maruja & another vs. Simeon Obayo (Suing as the administrator of the Estate of Thomas Ndaya Obayo) [2005] eKLR*** where it was held that documentary evidence is not the only way to prove occupation or earnings as oral evidence and other circumstantial material may suffice on a balance of probabilities, though documents are useful where available. In the said case, the court rendered itself as follows: -

***“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any***

***contention that only documentary evidence can prove these things.”***

- 17.** Courts have taken the position that where a claimant’s earnings are not strictly proved by documentary evidence, the court is not precluded from making an award for loss of dependency or lost earnings, and may instead adopt the applicable statutory minimum wage as a reasonable guide. This position was affirmed by the Court of Appeal in ***Jacob Ayiga Maruja*** case (supra) where the Court held that the absence of documentary proof of earnings does not justify denying a claimant damages, noting that courts must do justice on the basis of available material.
- 18.** Similarly, in ***Mwanzia vs. Ngalali Mutua & Kenya Bus Services (Msa) Ltd [2004] eKLR***, Ringera J. (as he then was) observed that where income is not proved, the court may resort to a global sum or other reasonable estimation. More recently, the High Court in ***Kilonzi & 2 others vs. Matoi & another [2022] KEHC 15036 (KLR)*** expressly considered the **Regulation of Wages (General) (Amendment) Order, 2017**, and accepted Kshs. 12,926.55 as the applicable minimum wage to guide assessment where actual earnings were unproven. The same approach has been adopted in several High Court decisions, including ***Mercy Wanjiru Nyaga vs. Josphat Kiura & another [2020] eKLR*** and ***Oduor vs. Njagi [2024] KEHC***, where the courts reiterated that statutory

minimum wages provide an objective and fair benchmark in the absence of proof of income.

- 19.** In the present case, I find that the trial court correctly applied the minimum wage of Kshs. 12,926.55. I however find that the deceased's dependency was not fully proven, and a multiplier of 26 years high in the face of unclear evidence about health, work stability and future prospects. I find a multiplier of 20 years more reasonable given the evidential uncertainties. I therefore recalculate the award as follows: -  $12,926.55 \times 2/3 \times 20 \times 12 = \text{Kshs. } 2,070,248$ .
- 20.** Turning to the Appellant's claim on double compensation, I note that the same did not form part of the grounds of appeal and cannot be entertained at this late stage. Be that as it may, the law is settled that claims under the Law Reform Act and Fatal Accidents Act are distinct, and while they must be considered together, they need not be mathematically deducted. I am guided by the decision in ***Pleasant View School Ltd vs. Rose Mutheu Kithoi (2017) eKLR*** and ***Kemfro Africa Ltd vs. Lubia*** (supra) where it was held that awards under the Law Reform Act need only be considered, not deducted from those awarded under the Fatal Accidents Act.

## **Disposition**

- 21.** Flowing from the foregoing analysis, I find no basis to interfere with the trial court's finding on liability, which is hereby upheld in its entirety. However, I am satisfied that the award made under the head of loss of dependency was

based on a misapprehension of the evidence and an application of a multiplier that was not fully supported by the record. To that limited extent only, the appeal succeeds.

**22.** Consequently, the award for loss of dependency is hereby set aside and substituted with an award of Kshs. 2,070,248, while the awards made by the trial court under the other heads of damages remain undisturbed and as follows: -

- a)** Loss of expectation of life....Kshs. 150,000
- b)** Pain and suffering .....Kshs, 100,000
- c)** Special Damages.....Kshs, 273,070
- Total .....Kshs, 2,523,318

**23.** In view of the partial success of the appeal, and bearing in mind the circumstances of the case, I direct that each party shall bear its own costs of the appeal, while the costs awarded by the trial court shall remain as ordered. The total award shall attract interest at court rates till payment in full.

**24.** Orders accordingly.

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

**HON. W. A. OKWANY  
JUDGE  
19/03/2026**

**FOR APPELLANT** Miss Mwangi

**FOR RESPONDENT** Ms Keberenge

**COURT ASSISTANT** Karani

30 days stay of execution granted

File closed

ORIGINAL