

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E076 OF 2024

CROWN PETROLEUM.....APPELLANT

VERSUS

**AGNETTA SHIMULI WAITITI & PENINAH AWUOR
ODHIAMBO**

**(Suing as the Legal Representatives of the Estate of
HARRISON ATEYA WAITITI)**

.....RESPONDENTS

***(Being an appeal from the judgment of Hon. Y. I.
Khatambi (PM) delivered on 12th April 2024 in Naivasha
CMCC No. 59 of 2018)***

JUDGMENT

1. The Respondents herein, as legal representatives of the deceased, sued the Appellant for damages arising from a road traffic accident that occurred on or about 5th May 2017 involving motor vehicles registration numbers 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 for the accident and awarded a total of Kshs. 1,683,323.60 as

damages. Aggrieved, the Appellant filed this appeal, challenging both liability and quantum.

3. By a consent order recorded in related matters, Naivasha HCCA E040/2024 was adopted as the lead file for purposes of canvassing similar issues.
4. The appeal raises seven grounds, five of which relate to 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.

7. Accordingly, the trial court's finding of 100% liability stands.

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 question that this court has to grapple with is whether this appeal meets the high threshold set in the above cited cases.

(i) Proof of Income

11. The Appellant argued that no documentary proof was produced to show that the deceased earned Kshs. 50,000 monthly as a mason. The Respondents, however, relied on the decision 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.”

12. Taking a cue from the above cited authority, I find that lack of formal payslips does not bar acceptance of credible oral evidence for informal sector earnings. I however note that the trial court did not merely adopt the claimed amount of Kshs. 50,000 but instead relied on the **Regulation of Wages (General) (Amendment) Order 2017**, and adopted a minimum wage of **Kshs. 12,926.55**. I am persuaded that this was a very conservative and justifiable approach and find no error in this adoption.

(ii) Proof of Dependency

13. The Appellant challenged proof of marriage and children. The Respondents, on their part, produced the Chief's letter identifying the widow and children alongside the testimony of PW1 who testified about the deceased's role as sole breadwinner.

14. This court is alive to the principle that dependency is a question of fact, and courts are not bound by strict proof of formal marriage or birth certificates where credible evidence is given.

(iii) Applicability of the Multiplier Approach

15. The Appellant argued that income and dependency were speculative, and that the trial court should have adopted a global award. Reference was made to the decisions in

Estate of Phineas Murithi (2020) eKLR and ***Ainu Shamsi Hauliers vs. Moses Sakwa (2021) eKLR*** which allowed global awards where key variables are unknown or speculative.

16. In the instant case, however, I note that age of 32 years was properly established, income basis was also established through the minimum wage order, dependency was similarly demonstrated. The deceased was in good health and in informal employment not restricted by statutory retirement age.
17. The Respondents cited authorities supporting multipliers beyond the age of 60 years for informal workers, including ***Violet Jeptum Rahedi vs. Albert Kubai Mbogori (2013) eKLR***, where the Court held that a private business cannot be limited by any formal retirement age and ***Julian Njeri Muriithi vs. Veronicah Njeri Karanja [2015] eKLR***, where a multiplier of 30 years was applied for a deceased aged 38.
18. Guided by the above authorities, I find that the use of the multiplier of 28 years, a dependency ratio of 1/3 and income of Kshs. Kshs. 12,926.55 resulting in an award of Kshs 1,447,773.60 for loss of dependency was justified. Having found that dependency was proved, I find that dependency ratio should have been at 2/3 instead of 1/3 but since there was no cross appeal, by the Respondent, challenging the trial court's decision on dependency ratio, I will not interfere with that finding.

19. My further finding is that the figure, on loss of dependency, is modest, conservative, and within reasonable judicial range. There is no evidence to show that the trial court misapprehended the facts, applied the wrong principles, or reached a wholly erroneous estimate.
20. I find that the Appellant has not met the high burden required for appellate interference with the trial court's findings.
21. 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 at it may, the law is settled under 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*** where it was held that damages under the Law Reform Act are not to be deducted from those awarded under the Fatal Accidents Act as they are only to be taken into account.
22. In sum, having considered the record, submissions, and applicable law I find that the appeal against the trial court's decision on both liability and quantum is not merited and I accordingly make the following final orders: -
- a) The appeal is dismissed in its entirety.***

- b) The judgment and award of the trial court in Naivasha CMCC No. 59 of 2018 are hereby upheld.***
- c) Costs of the appeal are awarded to the Respondents.***

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH 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