

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E049 OF 2024

DAVID NJOROGE KIMANI & JANE WANGUI NJOROGE
(Suing as the personal representatives of the estate of
SAMUEL GITHIRE NJOROGE) APPELLANTS

VERSUS

SAMSON OMWOYO MOENGA MASAKI RESPONDENT

(Being an appeal from the judgment of Hon. J. Ndenger'i
delivered on 2nd May 2024 in Naivasha CMCC No. E124
of 2021)

JUDGMENT

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 8th August 2019 and resulted in the death of the deceased.
2. Parties recorded a consent on liability at 90%:10% in favour of the Appellants. The trial therefore proceeded on quantum only.
3. At the end of the case, the trial magistrate awarded the Appellants damages as follows: -

- a) ***Loss of dependency (Fatal Accidents Act)..... Kshs. 600,000***
 - b) ***Pain & suffering + loss of expectation of life (Law Reform Act)... Kshs. 200,000***
 - c) ***Special damages Kshs. 133,886***
4. The Appellants were dissatisfied with the assessment of damages and filed this appeal contending that: -
- a) ***The trial court wrongly applied the global award instead of multiplier/multiplicand method.***
 - b) ***Awards under the Law Reform Act were unreasonably low.***
 - c) ***Evidence on earnings and dependency was not considered.***
5. The Respondent opposed the appeal and urged this court to dismiss it.
6. The appeal was canvassed by way of written submissions which I have considered. I find that the main issue for my determination is whether the trial court properly assessed the damages.

Analysis and Determination

7. This being a first appeal, the court is mandated to re-evaluate the evidence and draw its own independent conclusions. (See ***John Patrick Machira T/A Machira & Co. Advocates vs. East African Standard [2001] eKLR***).

8. The general rule on interference with quantum is set out in the well-known case of ***Kemfro Africa Ltd vs. A.M. Lubia & Another*** [1957] KLR 27 and reaffirmed in ***David Kinoti M'Munyiri vs. Mogire Oscar Ocuri alias Oscar Moeve Omiti*** (Civil Appeal E124 of 2023) [2024] eKLR, where it was held: -

“The principles to be observed by an appellate Court in deciding whether it is justified in disturbing the quantum of damages awarded by the trial Judge were laid down by the Court of Appeal... the award must be so inordinately high or so inordinately low that it must be a wholly erroneous estimate of damages.”

9. The Appellants submitted that the deceased was aged 31 years, working as a sand harvester and earning approximately Kshs. 60,000 per month. They proposed a multiplicand of Kshs. 60,000, a multiplier of 49 years and a dependency ratio of $\frac{1}{2}$ which makes a total of Kshs. 17,640,000.

10. They argued that the trial court erred in rejecting the multiplicand for lack of documentary evidence and in awarding a global sum of Kshs. 600,000. They cited the decision in ***Jacob Ayiga Maruja & Another vs. Simeon Obayo*** [2005] eKCA 202, where the Court of Appeal stated: -

“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 to prove earnings is equally the production of documents. That kind of stand would do a lot of injustice to many... who may keep no records and yet earn their livelihood.”

11. They also relied on the decision in ***Priscilla Muyathemba vs. Simon Kaibunga & Another Civil Appeal No. 132 of 2018 [2018] eKLR***, where the Court held: -

“It is quite clear that in rural Kenya, people rarely keep books of accounts nor do they file returns. They however do live and cater for their own livelihood... To expect them to meticulously keep records of their income and expenditure would... be unrealistic.”

12. The Respondent, on the other hand, submitted that there was insufficient proof of stable income to warrant the use multiplicand/multiplier approach and that the trial court was therefore justified in adopting the global award approach since the deceased’s income was uncertain. They cited several decisions including the case of ***Moses Mairua Muchiri vs. Cyrus Maina Macharia [2016] eKLR*** where it was held that the multiplier approach is

only useful where the deceased's income and dependency can be ascertained without undue speculation.

13. I have carefully reconsidered the findings of the trial court and the evidence. It was not disputed that the deceased was a sand harvester whose exact earnings were not supported by payslips, receipts, contracts, or corroborating witnesses.
14. While this court appreciates the social realities affirmed in **Jacob Ayiga** and **Priscilla Muyathemba** cases (supra) which indicate that lack of documents does not defeat a claim, the claimant was still required to lead credible evidence to support the earnings asserted.
15. In the present case, I note that besides stating that the deceased earned Kshs. 2,000 per day, the Appellants did not present any corroboration. In such instances, courts have consistently held that it is not safe to apply the multiplicand/multiplier method. Courts in Kenya have increasingly adopted the global sum approach for loss of dependency where the deceased is a relatively young adult engaged in informal employment and strict proof of income is lacking. I therefore find that the trial court was justified in adopting the global sum approach which is the method that is widely accepted in cases involving deceased persons who were in casual, informal or unstructured income.
16. The next issue for my determination is whether the award of the global sum of Kshs. 600,000 was appropriate in the circumstances of this case. The answer to this issue

will call for this court to consider past comparable awards in order to determine if the trial court's award aligns with the said past awards.

17. In ***Gachie vs. Muiruri & 2 Others [2025] eKLR***, the trial court's award of a global sum of Kshs 2,500,000 was reduced to Kshs. 2,000,000 on appeal. In this case, the deceased was aged 24 years, had parents as dependants and his income was not proved.
18. In ***Kidiga & Another vs. Onguna & Another [2025] eKLR*** the deceased was a 29-year-old, alleged to be a graduate/part-time teacher earning a monthly income of Kshs 40,000. Income was however not proved and dependants were stated to be parents, a fiancée and one child. The court upheld a global sum award of Kshs. 3,000,000 for loss of dependency.
19. In ***Kirimi & another (Suing as the Administrators and Legal Representatives of the Estate of Agnes Ntinyari Murungi - Deceased) vs. Kithinji & another [2023] KEHC 17732 (KLR)*** the Court awarded Kshs 2,000,000 as a global sum for a 32-year-old with unproven income.
20. Likewise, in ***Nyamu & Another vs. Aloo & Another (Civil Appeal No. E050 of 2022) [2025] KEHC 15185 (KLR) (27 October 2025)*** the multiplier approach was rejected as speculative and a global award of Kshs 2,500,000 adopted for a 34-year-old casual earner who had dependants.

21. Having regard to the awards made in the above cited authorities, one can say that the trial court's award for loss of dependency is on the lower side and does not conform with the past awards made under similar circumstances.
22. In the present case, considering that the deceased was unmarried and had no children or proven dependants, and further, given that the evidence did not establish any substantial financial support given to other relatives, I find that the sum of Kshs. 2,000,000 is an appropriate quantum for loss of dependency under the global sum approach.

Awards under the Law Reform Act

23. The trial court awarded Kshs. 50,000 for pain and suffering and Kshs. 150,000 for loss of expectation of life respectively. I find that the said awards fall within the range adopted in ***Hyder Nthenya Musili & Another vs. China Wu Yi Limited* [2017] eKLR**, where awards of Kshs. 50,000–150,000 were considered reasonable. I find that no misdirection or wrong principle has been demonstrated.

Special Damages

24. The trial court awarded Kshs. 133,886, rejecting the additional Kshs. 26,940 for lack of proof. I find that the Respondent correctly cited ***Jacob Ayiga Maruja*** case (supra) which held that funeral expenses must be proved

by receipts unless exceptionally explained. The record however shows that the Appellants produced receipts only for the awarded amount. I find that special damages were correctly assessed.

Conclusion

25. Accordingly, for the reasons set out hereinabove, I find that the appeal is merited and I therefore allow it and set aside the judgment of trial court, albeit only to the extent to the sum awarded for loss of dependency. I therefore substitute the award of Ksh.600,000/- with an award of Ksh.2,000,000/-. The other awards made by the trial court shall remain unaffected.

26. As the appeal has only partially succeeded, I award the Appellants half the costs of the appeal and interest on the total award at court rates till payment in full.

27. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

19/03/2026

FOR APPELLANT Mwihia

FOR RESPONDENT Ms Nyangi

COURT ASSISTANT Karani

30 days stay of execution granted
File closed

ORIGINAL