

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E054 of 2024

BETWEEN

**THE BOARD OF MANAGEMENT KAMUWONGO MIXED DAY
SECONDARY SCHOOL.....1ST APPELLANT**

JOHN MWANTHI MWANZIA.....2ND APPELLANT

AND

**JOSHUA SENGE MWANZIA & JOSEPHINE NDULULU
MWANZIA (Suing as the legal representatives of the Estate of the
Late AGNES KOKI MWANZIA -Deceased).....RESPONDENTS**

*(Being an appeal from the judgment of the Honorable Paul Wechuli,
Principal Magistrate, delivered in Kithimani PMCC No. E067 of 2023 on
1st February 2024)*

JUDGMENT

Background

1. This appeal arises from the judgment delivered on 2nd April 2022 in Kithimani PMCC No. E067 of 2023 where the trial court apportioned liability in the ratio of 80:20 in favor of the respondents as against the appellants. The court awarded the respondent a sum of Kshs 1,523,015.60 as general and special damages subject to apportionment of liability.

2. Dissatisfied with this decision, the appellants filed a Memorandum of Appeal raising seven (7) grounds reproduced verbatim as follows.

That-:

- a. That the Honorable Learned Trial magistrate erred in law in entering judgment in favor of the respondents whereas the same failed to prove his claim to the required standard.
- b. That the Honourable Learned Trial Magistrate erred in law and in fact in the assessment of damages payable.
- c. That the Honourable Trial Magistrate erred in law and fact in granting $\frac{2}{3}$ dependency ratio to the respondents without them proving evidence on dependency.
- d. That the Honourable Learned Trial Magistrate erred in fact and in law in awarding the respondents Kshs.1,523,015.60/= as loss of dependency which award was too excessive in the circumstances.
- e. That the Honourable Learned Trial Magistrate erred in law and in fact in failing to accord due regard to the appellants' submissions and authorities and authorities on quantum and applicable principles for assessment of damages in similar circumstances.
- f. That the Honourable Learned Trial magistrate erred in law and fact in relying on extraneous evidence on arriving at the decision on quantum.
- g. That the Honourable Learned Trial Magistrate erred in law and in fact by failing to properly evaluate the evidence on record thus reaching to an erroneous decision.

3. For these reasons, the appellants prayed that the appeal be allowed, the award on quantum be reconsidered downwards, the trial court's judgment be set aside and costs of the appeal be awarded to them.
4. The appeal was canvassed by way of written submissions as summarized below;

Appellant's Submissions

5. The appellant faulted the trial court for awarding Kshs.897, 625/= as loss of dependency. They submitted that the court wrongly adopted a multiplicand of Kshs.14,025.40, instead of Kshs. 7,240.95, which was applicable at the time of the accident on 2nd April 2022, since the new wage regulations only came into force on 1st May 2022.
6. They further challenged the $\frac{2}{3}$ dependency ratio, noting that although the chief's letter listed seven dependants, no documentary proof such as birth certificates was provided to confirm their relationship to the deceased. On this basis, they urged the court to adopt a $\frac{1}{3}$ dependency ratio. They also disputed the alleged monthly income of Kshs.25,000, insisting that no documentary evidence supported this claim.
7. In the alternative, the appellants invited the court to abandon the multiplicand approach and apply the global sum approach. They relied on the authorities such as **Mwanzia Ngalali v Mutua Kenya Bus Ltd (cited in Albert Odawa v Gichumu Githenji [2007] eKLR)**, **Moses Mairua Muchiri v Cyrus Maina Macharia [2016] eKLR**, and **Dora Mwawandu Samuel v Shabir M Hassan [2021] eKLR**.

8. In conclusion, the appellants urged the appellate court to set aside the trial court's judgment on quantum and reassess the general damages payable to the respondent.

Respondent's Submissions

9. The respondent opposed the appeal emphasizing that the assessment of damages is a discretionary function of the trial court, exercised judicially and guided by prevailing conditions and relevant precedents. They relied on **Southern Engineering Company Ltd. v Musingi[1985] KLR 730** and **Bashir Ahmed Butt v Vwais Ahmed Khan (1982-88) KAR** which affirm that appellate courts should not interfere with awards unless they are based on wrong principles or are inordinately high or low.
10. They argued that their evidence at trial was uncontroverted, as the appellants failed to produce any rebuttal. Citing **Trust Bank Ltd v Paramount Universal Bank Ltd & 2 Others**, they maintained that unchallenged evidence must be accepted as proved. They further referenced **Board of Trustees Meru Diocese Kirimara Parish v Does Wanja Bore [2020] eKLR** to support their position that the appellants cannot now challenge the sufficiency of proof.
11. On pain and suffering, they submitted that damages are recoverable by the estate and that the Kshs.10,000/- awarded was consistent with conventional awards, though the court could vary it upwards given the circumstances.
12. On loss of expectation of life, they noted the deceased was 58 years old, healthy, and living peacefully before her sudden death. They

supported the trial court's award of Kshs.100,000/-, but urged the appellate court to consider Kshs.120,000/-. Authorities such as **Hyder Nthenya Musili & Another v China Wu Yi Ltd [2017] eKLR** were relied upon.

13. On dependency, they produced a chief's letter listing seven dependants, including a student who relied entirely on the deceased. While acknowledging they did not produce birth certificates, they argued such documents are not mandatory, and cited the case of **Re Estate of Ambutu Mbogori [2018] eKLR**. They urged the court to uphold the $\frac{2}{3}$ dependency ratio and the multiplicand of Kshs. 14,025.40, as adopted by the trial court. They also relied on **Jacob Ayiga Maruga & Another v Simeon Obayo [2005] eKLR** to support the position that income need not be proved strictly by documents.
14. On special damages, they submitted that the sum of Kshs. 515,390/- was specifically pleaded and proved, and should be upheld.
15. Finally, they urged the court to dismiss the appeal with costs, maintaining that the trial court's judgment was sound and supported by evidence.

Analysis and Determination

16. I have considered the grounds of appeal, examined the record, and reviewed the submissions of the parties. It is evident that this appeal challenges only the quantum of damages awarded by the trial court. From the proceedings, liability was apportioned by consent in the ratio of 80:20 on 23rd November 2023, and that consent was duly

adopted as an order of the court. Liability is therefore not in dispute. The appellants are aggrieved solely by the award on quantum, particularly the assessment of loss of dependency.

17. Accordingly, the issues for determination are whether the awards made by the trial court namely; Ksh.10,000 for pain and suffering, Ksh.100,000 for loss of expectation of life, Ksh.897,625.60 for loss of dependency, and Ksh.515,390 for special damages; were erroneous, unjustified, or excessive in the circumstances of this case.
18. In determining whether the award was sound, just, and lawful, this court is guided by the principles laid down by the Court of Appeal in **Ken Odondi & 2 Others v. James Okoth Omburah t/a Okoth Omburah & Company Advocates [2013] KECA 252 (KLR)**, where it was held:

“We agree that this court will not ordinary interfere with the findings of a trial judge on an award of damages merely because this court may take the view that had it tried the case it would have awarded higher or lower damages different from the award of the trial judge. To so interfere this court must be persuaded that the trial judge acted on wrong principles of law or that the award was so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled.”

i. Award on loss of Dependency

19. The appellant contends that the court erred by applying the multiplier approach instead of the global approach. It argues that there was no proof of income and no basis for determining the multiplier. The respondent maintains that the trial court was correct in adopting the multiplier method.
20. It is settled law that the choice between the multiplier and global approaches lies within the discretion of the trial court, but such discretion must be exercised judiciously, guided by established principles, evidence, and the facts of the case. A court must provide clear reasons for its choice. Where no reasonable justification is given, an appellate court is entitled to interfere.
21. The multiplier approach is appropriate where the court can, with some degree of certainty establish or estimate the deceased earnings and age, and then estimate the number of years the deceased would have continued working, subject to contingencies of life. In this case, the deceased was 58 years. Other than stating that he was a farmer and operated a kiosk in Tala, a metropolitan zone, the respondents produced no documentary evidence of his earnings. None of the documents produced demonstrated the deceased's actual earnings.
22. In its judgment, the court did not explain why it adopted the multiplier approach. The learned magistrate stated that the deceased was a farmer and added that the minimum wage proposed for a general laborer was too low without stating why she considered it as too low. There was no evidence of the expenditures like school fees, rent and utility bills which in my view would have given an indication of the dependency level.

23. The trial court then applied Kshs 14,025.40 as the income which according to it was a reasonable multiplicand and 8 years as the multiplier, justifying this on the basis that the deceased could have worked beyond retirement. With due respect, the trial court reached the decision on multiplier and multiplicand through speculation and thus reached a wrong approach. A court of law should be guided by law and evidence and not conjecture.
24. Where income of the deceased is uncertain, courts have consistently held that the appropriate approach to adopt is the global sum approach. In **Mary Khayesi Awalo and Nickson Vielitha v Mwilu Malungu & another (1999) KEHC 44 (KLR)**, the court cautioned against estimates without evidence preferring a lump sum award. Similar in **Frankline Kimathi Baariu & another v Philip Akungu Mitu Mborothi (suing as the Administrator and Personal Representative of Antony Mwitikari Gakungu Deceased) (2020) KEHC 5897 (KLR)** the court emphasized that in the absence of proof of income, reliance on arbitrary figures is unsafe, and the global sum or minimum wage should be applied.
25. Having evaluated the circumstances of this case and owing to the uncertainty of the deceased's income and lack of proof of level and extent of dependency, I find that the trial court erred in principle by adopting the multiplier approach without proof of income or dependency. The appropriate approach was a global award, guided by factors such as the deceased's age, health, lifestyle and the number of dependants, as observed in ***Nzioka (Suing on her own behalf and as Administrator of the Estate of Gideon***

Mwanthi Nguyo - Deceased) v Mwangangi & another (2022) KEHC 15711 (KLR), where the court held that;

“In making a global award, apart from comparison with previous trends or precedents, courts will also consider other factors such as the general health of the deceased before he met his death, his age and the number of dependents, particularly children below the age of eighteen years.”

26. Likewise in ***Amazon Energy Limited v Josephine Martha Musyoka & another (2019) KEHC 6359 (KLR)***, the court held and which I agree with that;

“I have already expressed my discomfiture with the lump sum/global award approach. In making a global award, the trial court should always ask itself whether the award made is close to an award that could have been made using the multiplier approach taking into account the age of the deceased, and using the minimum wage of a general worker, where the earnings of the deceased cannot be ascertained. It will be unjust for the lump sum to be much higher than the award to the estate of a deceased whose earnings have been established and a multiplier approach used.”

27. I have also looked at the following authorities which I find fairly comparable to the circumstances of this appeal;

- a. In **Philip Wanjera & another vs. Ahmed Liban & Shukri Ahmed Liban (suing for and on behalf of the Estate of Habiba Liban)** [2016] KEHC 1645 (KLR), the deceased, aged 60 years old, was awarded Kshs. 280,000.00.
- b. In **Korir v Rotich & another (Suing as the Legal Representatives of Joseph Kiprotich Ngeno (Deceased)) [2025] KEHC 5628 (KLR)** the appellate court guided by the global award approach where the deceased 58 years old was survived by a widow and four children was awarded Kshs.700,000/-

28. In the present case, only one of the deceased's four children was below majority age. The deceased was engaged in farming, an activity that the family could continue. At 58 years, the period of dependency for the youngest child would reasonably have been about five years. Taking these factors into account, the award of Kshs.897,625.60 was excessive. A global award of Kshs.700,000 is, in my view, fair and just in the circumstances.

ii. Award on pain and suffering

29. On the issue of pain and suffering, the Court has considered the submissions by the Respondent together with the applicable principles guiding awards under this head. It is well settled that

damages under this head depend on the period the deceased endured pain before death. Where death is instantaneously, courts generally award nominal damages, while higher awards are reserved for cases involving evidence of prolonged suffering.

30. This position was aptly captured in *Mercy Muriuki & Another – Vs– Samuel Mwangi Nduati & Another (2019) eKLR*, where the Court held that:

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Ksh.100,000/= while for pain and suffering the awards range from Ksh.10,000/= to Ksh.100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.”

31. The Respondent argued that the award of Kshs.10,000/= made by the trial court was within the conventional range and if the court pleases may vary it upwards.
32. Upon re-evaluated the evidence on record, this Court finds no evidence that the deceased endured prolonged pain and suffering prior to death. In the absence of such evidence, the conventional approach of awarding nominal damages must apply.
33. Accordingly, the award of Kshs.10,000/= by the trial court is consistent with established precedent and falls within the accepted range for cases of instantaneous death. It cannot be said to be

inordinately low or unjust so as to warrant interference. The award is therefore upheld.

iii. Award on loss of expectation of life

34. The trial court considered the age at which the deceased died and pegged the loss of expectation of life at Ksh 100,000. I seek to rely on the case of **Hyder Nthenya Musili & Anor v China Wu Yi Limited & Anor [2017] eKLR** which states as follows:

“.....the conventional award for loss of expectation of life is Kshs. 100,000/= while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death....”

35. I cannot fault the trial court’s award under this limb and find it to be just and not excessive.

iv. Award on special damages.

36. The trial court awarded Ksh.515, 390/- as special damages. The respondents submit that they had specifically this amount, while the appellants argued that some receipts were not produced.

37. It is firmly established that special damages must not only be specifically pleaded but also strictly proved, before they can be awarded. The Court of Appeal in **Hahn V. Singh, Civil Appeal No. 42 of 1983 [1985]** KLR 716, at P. 717, and 721 held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

38. From the record that the respondents claim for special damages in their plaint was for Ksh 515,390/- being police abstract Ksh 200/-, death certificate Ksh.50/-, funeral expenses Ksh 484,640/-, Motor Vehicle Search Ksh.500/-, and legal fees for obtaining limited grant ad litem Ksh.30,000/-. However, upon scrutiny of supporting documents only kshs.229,100/- was strictly proved. The respondents supplied invoices dated 10th April 2022 in the sum of Kshs.85,340/- and Kshs. 19,700/-. Invoices alone are not proof of payment. It is trite law that an invoice indicates a demand and cannot, without evidence of settlement, establish actual expenditure. Consequently, the claim for special damages is set aside and replaced with Kshs.229,100/-.

39. This appeal therefore succeeds in part. The trial court award for loss of dependency is set aside and substituted with a global award of Kshs.700,000. The award for pain and suffering at Kshs.10,000 is upheld. The award for loss of expectation of life at Kshs.100,000 remains undisturbed. The award for special damages is reduced to Kshs.229,100, being the amount strictly proved.

40. Accordingly, the trial court’s judgment on quantum is set aside and substituted with judgment as follows;

- a) Pain & suffering..... Kshs. 10,000/=
- b) Loss of expectation of life.....Kshs. 100,000/=
- c) Loss on dependency..... Kshs. 700,000/=
- d) Special damages.....Kshs 229,100.00/=
- SUB TOTAL..... Kshs.1,039,100/=
- Less 20% contribution
- Net Damages..... Kshs. 831,280/-

Since the appeal partially succeeded there shall be no orders as to costs.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of April, 2026.

RHODA RUTTO
JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

COPY