



REPUBLIC OF KENYA

IN THE HIGH REPUBLIC OF KENYA

CIVIL APPEAL NO. E031 OF 2023

MINI BAKERIES (NBL) LIMITED..... APPELLANT

VERSUS

PAULINE ATIENO OMOLLO & BRANYS AZIZA OCHIENG

(Suing on their own behalf' and as the administrators of the Estate

of the late NELSON OCHIENG ODUMBE (deceased).....RESPONDENT

*[Being an appeal from the judgment of Hon. A. Lorot H.R Chief magistrate delivered on
17/3/2023 in the original suit Wang'uru CMCCC No. 89 of 2020.]*

JUDGMENT

[1] The Appellant herein MINI BAKERIES (NBI) LIMITED being aggrieved by and dissatisfied with the judgement on quantum delivered by the Hon. A. Lorot H.R, Chief Magistrate on 17th March, 2023 appeals against part of the said judgement on the following main grounds amongst other grounds to be adduced at the hearing hereof, namely:

1. That the learned Trial Magistrate erred in law and in fact in awarding quantum on general damages which award was manifestly excessive and inordinately high and a departure from decided cases.
2. That the learned Magistrate erred in law and in fact by applying wrong principles of law in assessing the general damages to be awarded to the Respondent and therefore, arrived at the wrong award.
3. That the learned magistrate erred in law and in fact by failing to take into account the submissions filed on behalf of the Appellant while arriving at his judgment.

Brief facts

- [2] The Respondents, suing as legal representatives of the estate of the Deceased, filed a suit at the Trial Court by Plaint dated 29th June, 2020, seeking general and special damages arising from injuries sustained in a road traffic accident that occurred on 12th October, 2019, along the Embu—Mwea Road at Murubara area, involving motor vehicles registration numbers KBV 558E (owned by the Appellant) and KBX 203Z, in which the Deceased was a passenger.
- [3] The learned trial court found in favour of Respondent (Plaintiff in the trial court) against Appellant (Defendant in the trial court) and entered judgment finding the Appellant 100% liable and on quantum of damages made the following awards:

Damages Under the Law Reform Act

- a) Pain and suffering Kshs. 100,000.00
- b) Loss of Expectation of Life Kshs. 100,000.00

Damages Under the Fatal Accidents Act

- a) Loss of dependency Kshs. 2,954,294.56
- b) Add special damages Kshs. 636,205

Total Kshs. 3,790,499.56

- [4] The Respondent was also awarded costs and interest at court rates.
- [5] Aggrieved, the Appellant filed this appeal on quantum only.

Appellant submissions

- [6] Under the Law Reform Act, the damages awarded are two under two (2) heads, that is:
- i) Pain and suffering
 - ii) Loss of Expectation of life
- [7] On pain and suffering, it is not in dispute that the deceased died four (4) days after the accident. They reiterate that an award of Kshs. 50,000/ under this head would be sufficient relying on *DMM (Suing As The Administrator And Legal Representative of the Estate Of L K M v Stephen Johana Njue & another* [2016] eKLR where the deceased died four (4) days after the accident and the estate was awarded Ksh. 50,000/= for pain and suffering.
- [8] On loss of expectation of life, they submit that the award of Kshs. 100,000 was reasonable.

[9] They submit that under Fatal Accidents Act the Plaintiff seeks damages for loss of dependency. When assessing damages under this head, three (3) elements must be considered:

- a) Dependency Ratio: they do not challenge the trial court's finding on a dependency ratio of two thirds (2/3) as evidence was led that the deceased was a family man with a wife and 3 children.
- b) Multiplicand: They submit that the correct calculation would have been the gross salary less statutory deductions; that is PAYE (Kshs. 1,510.96), NSSF (Kshs. 200) and NHIF (Kshs. 750) making it a total of Kshs. 23,916.67. They propose that this court considers this amount in calculating the award under this head.
- c) Multiplier: The deceased was 46 years old at the time of death. He was gainfully employed by Kenblest Limited as a sales representative. Being formally employed he would have retired at 60 years of age. In **Patricia Mona & Another v Samuel OPott Omondi & Another [2014] eKLR - a multiplier of 9 years was applied for a deceased who was 47 years old.**

[10] They urge the court to consider a multiplier of 9 years. On special damages, they do not challenge the special damages of Kshs. 636,205 awarded. In the end, they urge the Court to interfere with the trial court judgment and make judgment as follows:

- a) Pain and suffering - Kshs. 50,000
- (b) Loss of expectation of life – Ksh 100,000
- (c) Loss of dependency -Kshs. 1,722,000 (Kshs. 23,916.67x 9x12*2/3)

Respondent submissions

[11] On pain and suffering, the award of Kshs. 100,000/= by the Trial Court under this head thus accords with current judicial trend and should not be interfered with, as Appellate Courts only vary such awards where the Trial Court acted on wrong principles or the award is manifestly excessive. **Retco East Africa Limited v Josephine Kwamboka Nyachaki & Another [2021] eKLR, where Hon. E. N. Maina J upheld the Trial Magistrate's award of Kshs. 100,000/= for a deceased who died 30minutes after the accident.**

[12] On loss of dependency, the Respondent submits that the contentions by the Appellant is misplaced, both in law and in fact. Re-evaluation of the evidence on record reveals that the trial Court's award under this head was well founded.

[13] The 1st Respondent proved that the Deceased was employed as a salesman at Kenblest Limited earning a salary of Kshs. 26,377,63/= per month. The 1st Respondent proved that the Deceased had San income through his payslip.

[14] On multiplier, the Deceased was 46 years old when he passed away. The retirement age in Kenya is sixty (60) years. The Deceased had fourteen (14) years of his active working life. The 1st Respondent testified before the Trial Magistrate that her and their three (3) children were supported by the Deceased and at the time all the three children were in school.

[15] The Appellant did not lead any evidence to controvert the Respondents evidence.

[16] In his judgement, the Learned Magistrate considered all the evidence adduced before him and concluded that the award under Fatal Accidents Act to be calculated as follows:

$$26,377.63 \times 14 \times 12 \times 2/3 = 2,954,294.56/=$$

[17] The case of *West Kenya Sugar Co. Ltd v Wachiye & Other (Suing as The Legal Representative/Administrator of The Estate Of Elias Simiyu (Dcd))* (Civil Appeal E036 of 2023) [2024] Keh 1 449 KLR was cited that the Court examined pay slip deductions and cautioned against excluding employment benefits that effectively constituted part of the deceased's remuneration for purposes of dependency calculation. The Respondents further than relying on the fact that the Deceased was formally employed and had 14 more years till retirement at the age of 60 years, submit that the adoption of 14 years was reasonable. Lastly, the Respondents thus submits that the Appellant has not laid a basis for this court to interfere with the award by the Learned Magistrate.

[18] **Issues for determination are:**

1. Whether the award for pain and suffering was excessive.
2. Whether the award for loss of dependency was based on proper principles.
3. Whether this Court should interfere with the total award.

Analysis

[19] This being a first appeal, this Court is obligated to re-evaluate the evidence on record and arrive at its own independent conclusions while bearing in mind that it did not see or hear the witnesses. This principle was well stated in ***Selle & Another v Associated Motor Boat Co. Ltd*** [1968] EA 123.

Pain and Suffering

[20] The deceased died four (4) days after the accident. The trial court awarded Kshs. 100,000. The Appellant proposes Kshs.50,000 relying on ***DMM v Stephen Johana Njue & Another*** [2016] eKLR, where a similar period resulted in an award of Kshs. 50,000. The Respondents rely on ***Retco East Africa Limited v Josephine Kwamboka Nyachaki & Another*** [2021] eKLR, where Kshs. 100,000 was upheld even where death occurred shortly after the accident.

[21] Awards under this head vary depending on the duration and degree of suffering. Courts have generally awarded between Kshs. 50,000 and Kshs. 150,000. Considering that the deceased survived for four days, I find that the award of Kshs. 100,000 was within acceptable limits and cannot be said to be excessive. There is no reason to interfere with this award.

Loss of Expectation of Life

[22] The trial court awarded Kshs. 100,000. This is a conventional award and courts have consistently upheld it unless there are special circumstances.

Loss of Dependency

(i) Multiplicand

[23] The trial court adopted a monthly income of Kshs.26,377.63 based on the deceased's payslip. The Appellant argues that statutory deductions (PAYE, NHIF, NSSF) ought to have been deducted. The Court of Appeal in ***Kenya Breweries Ltd v Saro*** [1991] KLR 408 held that dependency is based on the net earnings available to the dependants. However, courts have also cautioned against excessive deductions where the payslip reflects actual income benefiting the family. In ***West Kenya Sugar Co. Ltd v Wachiye*** (2024) KLR, for instance, the court emphasized that some benefits form part of the dependency. In this case, statutory deductions are mandatory and reduce disposable income. The Court, therefore, finds that the multiplicand ought to

have been based on net income. The proposed net figure of **Kshs.23,916.67** is reasonable and supported by the record.

(ii) Multiplier

[24] The deceased was 46 years old and in formal employment with a retirement age of 60 years. The trial court adopted a multiplier of 14 years, while the Appellant proposes 9 years. In ***Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku & Another*** [2014] eKLR, the court held that the multiplier is a matter of judicial discretion, taking into account contingencies of life. They urge that while retirement age suggests 14 years, courts must factor in uncertainties such as illness, loss of employment, and other vicissitudes. The Respondents rely on the fact that the deceased was formally employed and had 14 more years till retirement at the age of 60 years, and submit that the adoption of 14 years was reasonable.

[25] The Court considers that the multiplier of 14 years is not unreasonable in the circumstances of the case, and there is no reason to interfere.

iii) Dependency Ratio

[26] The ratio of 2/3 was not contested and is upheld. Loss of dependency is, therefore, recalculated as follows:

$$\mathbf{Kshs.23,916.67} \times 14 \times 12 \times 2/3 = \mathbf{Ksh.2,678,592/=}$$

Special Damages

[27] The award of Kshs.636,205 was not challenged and is upheld.

ORDERS

[28] Accordingly, for the reasons set out above, the Court finds merit in the appeal to the extent of the amount of loss of dependency and the award of the trial court is varied as necessitated by the change in the multiplicand, as follows:

Head of Damages	Award
Pain and suffering	Kshs. 100,000
Loss of expectation of life	Kshs. 100,000
Loss of dependency	Kshs. 2,678,592
Special damages	Kshs. 636,205
Total	Kshs. 3,314,797

[29] The appeal partially succeeds to the extent of adjustment of the award for loss of dependency.

[30] Each party shall bear its own costs as the appeal has only partially succeeded.
Order accordingly.

DATED AND DELIVERED THIS 16TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kiranga for the Applicant.

Ms. Naututu for the DPP/Respondents.