

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
CIVIL APPEAL NO. E1354 OF 2024

JOHN GATHARIA KARANJA
APPELLANT

VERSUS

ABDINASIR MUSA ABDILLE (*suing as personal representative of the Estate of Salma Abdinasir - Deceased*) RESPONDENT

(Being an appeal from the the judgment of Hon. H.N. Mwangi (PM) delivered on 29th October 2024 in Milimani CMCC No. E12251 of 2021)

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court where he sued the Appellant/Defendant in his capacity as the father and personal representative of the estate of the deceased, seeking damages under both the Fatal Accidents Act and Law Reform Act.
2. The trial court heard the case and at the end found in favour of the Respondent and held the Appellant wholly liable for the said accident. The trial court awarded the Respondent the total sum of Kshs. 2,360,050/=.
3. The Appellant subsequently lodged this appeal, alleging errors in law and fact by the trial court. The Appellant challenges the trial court's findings on both liability and quantum, primarily disputing the Respondent's capacity

and the authenticity of a birth certificate relied upon to establish paternity.

4. The appeal was canvassed by way of written submissions which I have considered.

The Appellant's Case

5. The Appellant's case was that the Respondent relied on a forged birth certificate to establish paternity as evidence from the Registrar of Births and Deaths showed that the birth certificate entry does not exist.
6. The Appellant submitted that the trial court failed to properly consider evidence of fraud and misrepresentation which was sufficiently proved and should have invalidated the Respondent's claim.
7. It was submitted that the Respondent failed to discharge the burden of proof under the Evidence Act and that the award for loss of dependency lacked evidentiary foundation.
8. The Appellant accused the Respondent of approaching the court with unclean hands, thus disentitling him to equitable relief. According to the Appellant, the Respondent's claim should have been dismissed with costs.

The Respondent's Case

9. The Respondent opposed the appeal and submitted that it amounts to an attempt to re-litigate factual findings already made by the trial court after a full hearing.

10. It was submitted that the trial court properly evaluated the evidence tendered before it, applied the correct legal principles, and exercised sound discretion when determining the case.
11. It was the Respondent's case that the issue of the birth certificate's authenticity is collateral and does not affect the determination of negligence and liability.
12. It was submitted that liability in negligence is established through duty of care, breach of that duty and causation resulting in damage. The Respondent referred to the evidence before the trial court which included a police abstract, witness testimonies, and uncontroverted evidence of the accident which established negligence on the part of the Appellant's driver.
13. The Respondent noted that the Appellant did not rebut evidence of negligence or provide an alternative explanation for the accident. It was submitted that the trial court correctly imposed 100% liability, including vicarious liability on the Appellant as the vehicle owner.
14. The Respondent observed that the authenticity of the birth certificate relates to identity and dependency, not liability, and cannot displace established negligence. It was the Respondent's case that since the issue of locus standi was not raised at trial and it cannot be introduced on appeal. The Respondent emphasized that he holds a valid and unrevoked Grant of Letters of Administration ad litem, which confers capacity to sue on him and added

that any challenge to such grant must be made in succession proceedings, not collaterally in this appeal.

15. The Respondent argued that established legal principles prohibit parties from departing from their pleadings or raising new issues on appeal.

Issues for Determination

16. From the pleadings and submissions, I find that the following issues arise for my determination:

- a) Whether the validity or authenticity of the deceased's birth certificate is relevant to the determination of liability;***
- b) Whether the Respondent's locus standi or capacity to sue was properly raised and is sustainable on appeal;***
- c) Whether the trial court properly evaluated evidence on liability for negligence;***
- d) Whether the award of damages, particularly for loss of dependency, was justified.***

17. This being a first appeal, this Court is required to re-evaluate the evidence presented before the trial court afresh and draw its own conclusions, while bearing in mind that it did not hear or see the witnesses who testified. (See ***Peters vs. Sunday Post Ltd [1958] EA 424***).

18. This court, as an appellate court, must therefore proceed cautiously and only interfere where the trial court misapprehended the evidence, acted on wrong principles, or reached a plainly erroneous conclusion.

Birth Certificate

19. On the issue of the Birth Certificate and whether it affects liability, the Appellant argued that the Respondent relied on a forged Birth Certificate and contended that this invalidated the Respondent's claim and disentitled him to damages.
20. The Respondent, on the other hand, argued that the birth certificate issue does not go to the issue of liability, but to dependency and capacity.
21. it is trite that liability in negligence cases is founded on proof of duty of care, breach of duty, causation, and damage. My finding is that the authenticity of a post-accident document such as a birth certificate does not, by itself, determine whether the accident occurred or whether the Appellant's driver was negligent. Indeed, the trial court's finding on liability was based on evidence relating to the accident, including the police abstract and oral evidence. I note that the Appellant did not tender sufficient contrary evidence to displace the Respondent's account of the accident.
22. I therefore find that the birth certificate issue was not relevant to the question of liability and that it could only be relevant to the Respondent's relationship with the deceased and entitlement to damages under the Fatal Accidents Act.

Locus Standi

23. On the issue of the Respondent's locus standi/capacity to institute the suit before the trial court, I note that the

Respondent sued as personal representative of the estate of the deceased. The Respondent submitted that he holds a Grant of Letters of Administration ad litem.

24. Section 54 of the Law of Succession Act provides that court may, according to the circumstances of each case, limit any grant of representation. The Fifth Schedule to the Act permits a limited grant for purposes of filing or defending proceedings on behalf of an estate.

25. Section 76 of the Law of Succession Act, on the other hand, provides for revocation of grants on grounds including defective proceedings, fraud, concealment of material facts, or failure to proceed diligently.

26. In the present case, the Appellant did not demonstrate that the grant issued to the Respondent had been revoked. It is my finding that a grant remains valid until set aside by the succession court.

27. I also note that the Appellant did not properly raise the issue of locus standi before the trial court by way of pleadings or preliminary objection. It is trite that a party is generally bound by its pleadings. This is the position that was taken in the case of ***Raila Amolo Odinga & Another vs. IEBC & 2 Others [2017] eKLR***, where the Supreme Court stated, in substance, that parties are bound by their pleadings and that evidence outside pleadings is generally not available for consideration.

28. It is my finding that the Appellant's quest to challenge the Respondent's capacity on appeal is therefore a collateral attack on a grant that remains valid as such a

challenge ought to have been mounted before the succession court.

29. I find that the Respondent had capacity to institute the suit and that the challenge to locus standi is not properly sustainable in this appeal.

Liability

30. The Respondent's case before the trial court was that the deceased died as a result of a road traffic accident involving the Appellant's motor vehicle. The evidence included a police abstract and testimony linking the Appellant's vehicle to the accident. The Appellant did not offer a persuasive alternative account of how the accident occurred.

31. It is trite that where evidence of negligence is unrebutted, the court is entitled to draw an inference of liability against the defendant. The Respondent's case was that the deceased was a lawful pillion passenger on motor cycle registration number KMFQ 353U travelling along Thika Road when the Appellant's driver (2nd Defendant) drove the Appellant's motor vehicle recklessly and negligently thereby permitting it to lose control and cause an accident in which the deceased sustained fatal injuries. It is my finding that having been a pillion passenger on the said motor cycle, there is no way that the deceased could have contributed to the accident as liability could only be distributed between the motor vehicle owner and the owner of the motorcycle.

32. The Appellant was sued as the owner of the motor vehicle and I therefore find that vicarious liability attaches where the negligent driver was driving the vehicle with the authority of the owner or in the course of employment or agency.
33. I find no basis to interfere with the trial court's finding that liability was proved against the Appellant. The finding of 100% liability was supported by the evidence.

Damages

34. The trial court adopted the global sum approach and awarded Kshs. 2,000,000/= for loss of dependency. The said court also made other conventional awards, leading to a total of Kshs. 2,360,050/=.
35. The principles guiding appellate interference with damages are settled. In **Butt vs. Khan [1981] KLR 349**, the Court of Appeal held that an appellate court will not disturb an award of damages unless it is so inordinately high or low and in **Kemfro Africa Ltd t/a Meru Express Services & Another v A.M. Lubia & Another**, the court stated that interference is justified where the trial court the court took into account an irrelevant factor, or left out of account a relevant one.
36. In the instant case, I note that the deceased was a young adult even though there was no conclusive proof of earnings. In such cases, courts have taken the position that they may adopt a global/lump sum approach rather than the multiplier method.

37. The global approach is appropriate where earnings are uncertain or unproved. The approach avoids speculative arithmetic and allows the court to make a reasonable award based on age, prospects, dependency, and comparable awards.

38. I find that the award of Kshs. 2,000,000/= for loss of dependency was not shown to be so excessive or so erroneous as to warrant interference. The Appellant did not demonstrate that the trial court applied a wrong principle, ignored relevant evidence, or made an entirely erroneous estimate. I therefore find no basis to interfere with the award on quantum.

39. Having regard to the findings and observations that I have made in this judgment, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

HON W. A. OKWANY
JUDGE

In the presence of
Khanalla for Appellant
Ms Atieno for Respondent
Abdirzak - Court Assistant