

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CIVIL APPEAL NO. E032 OF 2023

FRANCIDS P. MWANGI KAMUNYA AND RESPHAH WAIYIGO

MWANGI (Suing as the Administrators of the Estate of

ALEX ROBERT IRUNGU MWANGI.....

APPELLANTS

VERSUS

SUSAN WANGECHI WARUI ALIAS SUSAN WARUI...

RESPONDENT

*(Being an appeal from the Judgement of Honourable Magistrate
VINCENT MASIVO Senior Resident Magistrate delivered on the 14th
September, 2023 at the Chief Magistrate Court at Nanyuki)*

IN

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NANYUKI

CIVIL SUIT NO E096 OF 2022

**FRANCIS P. MWANGI KAMUNYA AND RISPHAH WAIYIGO
MWANGI (Suing as the Administrators of the Estate of
ALEX**

ROBERT IRUNGU MWANGI..... APPELLANTS

=VERSUS=

**SUSAN WANGECHI WARUI ALIAS SUSAN
WARUI.....RESPONDENT**

JUDGEMENT

- 1.** The Appellants, dissatisfied with the quantum of damages awarded in the Judgement of the Lower Court passed on 14th September, 2023, lodged this Appeal specifically challenging the trial court's finding on damages under the Fatal Accidents Act and the final computation of damages whereby damages for pain and suffering and for loss of expectation of life were omitted in the final computation despite being awarded.
- 2.** The matter had proceeded by way a consent on liability apportioned at 90:10 in favour of the Appellants

- 3.** I have considered the evidence tendered before the trial court on the issue of damages under the Fatal Accidents Act. Liability having been agreed at 90:10 in favour of the Plaintiff, the only remaining question was the appropriate quantum of damages under the Fatal Accidents Act.
- 4.** The evidence on record demonstrated that the deceased was not a person of unknown occupation or uncertain means. PW2 testified that the deceased was employed by Neno Age Solutions Limited and earned a monthly salary of Kshs. 30,000/=. In addition, PW1 produced documentary evidence including business permits and sales record books showing that the deceased also operated a butchery business. That evidence was neither rebutted by contrary evidence nor seriously shaken in cross-examination.
- 5.** In the circumstances, the trial court fell into error in resorting to a global award under the Fatal Accidents Act despite the existence of credible evidence upon which multiplicand and dependency could reasonably be assessed.
- 6.** The law does not demand mathematical precision in proof of earnings, particularly where the deceased engaged in

informal business activities. Courts are entitled to make reasonable estimates based on the evidence placed before them.

7. In **Albert Odawa v Gichimu Githenji [2007] eKLR**, the court held that assessment of damages is not an exact science and that courts should adopt a reasonable approach where evidence of income, though not perfect, is available. Having regard to the uncontroverted evidence of employment and business income, the trial court ought to have assessed damages using the multiplier approach rather than making a global award.

8. Taking into account the evidence on record, the deceased earned an income from two streams, namely employment income of Kshs. 30,000/= per month and proceeds from the butchery business said to average about Kshs. 40,000/= monthly. While the documentary evidence produced established the existence and operation of the business, the exact net earnings could not be ascertained with precision. Equally, the court must bear in mind the uncertainties attendant to future business performance and continuity of employment.

9. In the circumstances, and doing the best I can with the material placed before the court, I am persuaded that a reasonable estimate of the deceased's monthly earnings for purposes of dependency would be Kshs. 50,000/= inclusive of both employment and business income. That figure fairly balances the proved earnings against the inevitable contingencies and vicissitudes of life. I therefore find that the learned trial magistrate erred in making a global award and substitute the same with an award calculated using the multiplier approach based on the said multiplicand of Kshs. 50,000/= per month, subject to the agreed contribution ratio of 90:10 in favour of the Plaintiff.

10. The deceased was aged 29 years at the time of death. Considering the retirement age of 60 years, the working life remaining would have been about 31 years. However, taking into account the uncertainties and vicissitudes of life, including possible loss of employment, ill health, or fluctuations in business performance the multiplier must go lower than the 31 years of expected capacity to earn.

11. I have also considered that the deceased was survived only by his parents, namely his mother and father as

dependants. In such circumstances, a dependency ratio of 1/3 would be appropriate as opposed to the conventional 2/3 applicable where the deceased leaves behind a spouse and children.

12. Further, while parents are recognised dependants under the Fatal Accidents Act, dependency in such circumstances cannot be presumed to extend throughout the entirety of the deceased's expected working life. The advanced age of the dependants is a relevant factor in assessing the period and extent of dependency. Doing the best I can in the circumstances, I find that a dependency ratio of 1/3 and a moderated multiplier of 20 years would fairly compensate the estate while taking into account the age of the dependants and the uncertainties surrounding future dependency.

13. The award for loss of dependency is therefore calculated as follows:

$$\text{Kshs. } 50,000 \times 12 \times 20 \times 1/3$$

$$= \text{Kshs. } 4,000,000/=$$

Applying the agreed liability ratio of 90:10 in favour of the Plaintiff:

Kshs. 4,000,000 × 90%

= Kshs. 3,600,000/=

14. The trial court awarded kshs. 100,000 for pain and suffering and Kshs. 100,000 for loss of expectation of life. As pointed out in this appeal, the 2 heads of damages were not included in the final computation of damages awarded.

15. With the result that the appeal herein has merit and is allowed to the extent aforesaid. The judgement of the trial court is set aside and substituted thereof with an order for judgement for the Appellants in the following terms;

a. Liability at 90:10 in favour of the Appellant.

b. Pain and suffering Kshs. 100,000.

c. Loss of expectation of life Kshs. 100,000.

d. Loss of dependency Kshs. 3,600,000/=

Total 3,800,000

e. The Appellant shall have the costs of the appeal and at the lower court.

**Dated signed and delivered virtually this 14th day of May
2026**

A.K. NDUNG’U

JUDGE