Wahome v Njoroge (Suing as the legal administrators of the Estate of Ibrahim Ngumba Kihugu - Deceased) (Civil Appeal E031 of 2025) [2026] KEHC 5834 (KLR) (4 May 2026) (Judgment)

Neutral citation: [2026] KEHC 5834 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYANDARUA

CIVIL APPEAL E031 OF 2025

KW KIARIE, J

MAY 4, 2026

BETWEEN

PAUL NDEGWA WAHOME ..... APPELLANT

AND

JOHN W NJOROGE (SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF IBRAHIM NGUMBA KIHUGU - DECEASED) ..... RESPONDENT

(Being an appeal from the judgment and decree in the Ol Kalou Senior Principal Magistrate's Court, MCCC No. E013 of 2025 by Hon. Judicaster Nthuku – Principal Magistrate)

JUDGMENT

1. Paul Ndegwa Wahome, the appellant, was the defendant in the Ol Kalou Senior Principal Magistrate's MCCC No. E013 of 2025. The respondent had sued for a claim of general and special damages following a road traffic accident involving motor vehicle KAP 119P and the deceased, who was a pedestrian along the Dundori-Oljoro Orok road. As a result of the accident, the deceased sustained fatal injuries. The learned trial magistrate held the appellant 70% per cent liable. The respondent was awarded Kshs. 3,007,009.00 in general damages before factoring in the contribution.

2. The appellant was dissatisfied with the judgment and appealed through Githuku & Githuku LLP Advocates. He raised the following grounds for appeal:

    a. The learned magistrate erred in fact and in law in disregarding the plaintiff's witnesses' testimonies regarding the defendant's liability, and in consequence arrived at an erroneous conclusion.

    b. The learned magistrate erred in fact and in law in shifting the onus of proof to the defendant, while it is/was the plaintiff's duty to prove the defendant's negligence, and in so doing arrived at an erroneous conclusion.

c. The learned magistrate erred in fact and in law in applying the doctrine of rep ipsa loquitur, while the plaintiff's witnesses, PW2, a police officer and thus an expert in matters of liability herein, squarely placed blame on the deceased for the accident.

d. The learned magistrate erred in fact and in using the dependency ratio 2/3 while the deceased was an unmarried male of 34 years with no family of his own.

e. The learned magistrate erred in fact and in law in using the multiplier method in determining the quantum of damages for loss of dependency. At the same time, neither the deceased's occupation nor his actual earnings were proved to the required standard.

f. The learned magistrate erred in fact and in law in using the minimum wage for agricultural workers as the deceased's monthly income. At the same time, it was not proved that the deceased was actually engaged in income-generating agricultural activities at the time of death.

g. The learned magistrate erred in fact and in law in failing to give the relevant weight to the plaintiff's witnesses' testimonies at the hearing and thus arrived at an erroneous decision.

3. The respondent opposed the appeal through Waichungo Martin & Company Advocates. It was contended that:

a. The trial court's liability determination was correct.

b. The trial court properly used negligence principles and evidential inference, given the lack of evidence from the appellant.

c. The award was lawful and justified.

4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.

5. To reach an informed conclusion on liability, the trial court analyses the available evidence on how the accident occurred. CPL. Edwin Sum (PW2) explained that the deceased was knocked down while crossing the road. The accident was on the lane of the appellant's motor vehicle.

6. It is trite law that no liability can be liability without fault. The Court of Appeal in Kiema Mutuku vs Kenya Cargo Hauling Services Ltd [1991] 2KAR 258 stated that:

> There is, as yet, no liability without fault in the legal system in Kenya, and a plaintiff must prove negligence against the defendant when the claim is based on negligence.

7. None of the two witnesses who testified for the respondent was an eyewitness. There was no evidence of how the accident occurred. The court was called to invoke, albeit tacitly, the doctrine of res ipsa loquitur. The doctrine was explained in the case of Susan Kanini Mwangangi & another vs Patrick Mbithi Kavita [2019] eKLR, as follows:

> The doctrine of res ipsa loquitor is one in which a plaintiff, by proving that an accident occurred in circumstances in which an accident should not have happened, thereby discharges, in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident. The plaintiff, in those circumstances, does not have to show any specific negligence but merely indicates that

> an accident of that nature should not have occurred in those circumstances, which leads to the inference, the only inference, that the only reason for the accident must therefore be the negligence of the defendant...The defendant can avoid liability if he can show either that there was no negligence on his part which contributed to the accident, or that there was a probable cause of the accident which does not connote negligence of his part, or that the accident was due to the circumstances not within his control.

8. The appellant did not testify, which prevented the court from obtaining enough information to determine liability. When circumstances are such as in this case, the Court of Appeal in Hussein Omar Farah vs Lento Agencies [2006] eKLR stated:

> In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also in other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame. In the case of BARCLAY – STEWARD LIMITED & ANOTHER VS WAIYAKI [1982-88] 1 KAR 1118, this Court said:-
>
> The bare narrative of the accident gives rise to a number of possibilities. Either Waiyaki was driving on his correct side and the Datsun hit his vehicle on its correct side or Mr. Cottle was driving on his correct side where the Range Rover crushed it.

The Court further said:

The collision is a fact. It is, however, not reasonably possible to decide on the evidence of Waiyaki & Gitau who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame.

9. I therefore find that in the circumstances of this case, the learned trial magistrate errored at the finding on liability. The same is set aside and replaced with a finding that both the appellant's driver and the deceased were equally to blame. Each party should bear 50% liability.

10. Before an appellate court can modify a damages award, it must determine that a wrong legal principle was used, irrelevant factors influenced the decision, relevant factors were overlooked, or the award is excessively low or high. These standards were set by the Privy Council in Nance v. British Columbia Electric Railways Co. Ltd. [1951] AC 601, page 613, which stated:

> The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (Flint vs Lovell [1935] 1KB 354), as affirmed by the House of Lords in Davis vs Powell Duffryn Associated Collieries Ltd. [1941] AC 601.

11. The deceased passed away at the age of 34. The learned trial magistrate applied the minimum agricultural wage and used a 24-year multiplier to assess the loss of dependency. When courts are confronted with a scenario in which actual earnings are not proven, they have used the global sum

approach or the minimum wage approach, as was the case here. In Albert Odawa vs Gichimu Githenji, Nakuru HCCA No.15 of 2003 (2007), eKLR Justice Ringera expressed himself as follows:

> The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.

12. In the case of Sidi Kazungu Gohu, another (Legal Representatives of the Estate of George Yongo Katana (Deceased) v Fatuma Abdi Mohamed another 2021KEHC7854 (KLR), the appellant was awarded kshs. 2,304,000/= for loss of dependency. The court applied the minimum wage in assessing the same. The appellant was married and had a family of his own.

13. In the immediate appeal, the deceased was unmarried and had no family of his own. It was therefore contended that using the dependency ratio of $^{2}/3$ was incorrect. It is trite law that dependency is a question of fact to be established in each case. This has been held in several cases. In Boru v Onduu [1982-1988] KAR 299, the Court stated that:

> The extent to which the family is being supported must depend on the circumstances of each case. To ascertain it the judge will analyze the available evidence as to how much the deceased earned and how much he spent on his family. There can be no rule or principle in such a situation.

14. Since the deceased was not married, and there was no evidence of dependence, the correct dependency ratio is $^{1}/3$. The award of dependence by the trial court is hereby set aside and substituted. The calculation will therefore be as follows: 14,427.13 x 12 x 24 x 1/3 = 1,385,004.48.

15. This analysis concludes that the appeal is partially successful regarding liability. Consequently, the appellant will bear half of the appeal costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 4TH DAY OF MAY 2026

KIARIE WAWERU KIARIE

JUDGE