Gatinu v Karanja (Suing as the legal representatives of the Estate of Nancy Mungai Muigai -Deceased) (Civil Appeal 29 of 2023) [2025] KEHC 1715 (KLR) (Civ) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1715 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYANDARUA

CIVIL

CIVIL APPEAL 29 OF 2023

KW KIARIE, J

FEBRUARY 27, 2025

BETWEEN

SAMUEL GATINU ..... APPELLANT

AND

MICHAEL MUNGAI KARANJA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF NANCY MUNGAI MUIGAI -DECEASED) . RESPONDENT

(Being an Appeal from the judgment and decree in Engineer Principal Magistrate's PMCC No. 59 of 2019 by Hon. Rawlings Liluma – Resident Magistrate)

JUDGMENT

1. The appellant, Samuel Gatinu, was the defendant in Engineer Principal Magistrate's PMCC No. 59 of 2019. He was sued for a claim of general damages and special damages following a road traffic accident involving motor vehicle KCL 829D, which veered off the road and fatally injured the deceased. The learned trial magistrate held the appellant 100 per cent liable. The respondents were as follows:

    a. Loss of dependency Kshs. 300,000.00

    b. Loss of expectation of life Kshs.100,000.00

    c. Pain and suffering Kshs.10,000.00

    d. Funeral expenses Kshs.30,000.00

2. The appellant was aggrieved by the judgment and filed this appeal through Kimondo Gachoka & Company Advocates. She raised the following grounds of appeal:

a. The learned magistrate erred in fact and in law when he failed to consider the appellant's evidence and submissions on points of law and facts in finding that the appellant was wholly liable for the accident, which was the subject matter of the suit.

b. The learned magistrate erred in law and fact when he failed to consider the appellant's evidence and submissions on points of law and facts in finding that the respondent was entitled to General Damages of Kshs. 440,000/=, which is inordinately high in the circumstances.

c. The learned magistrate erred in fact and in law when he failed to consider the appellant's evidence on liability, tendered by the defence, during the hearing of the suit and the submission filed.

d. The learned magistrate erred in fact and in law when he over-relied on the respondent's submissions.

e. The learned magistrate erred in fact and law by weighing the respondent's case in isolation from the appellant's case and precluded himself from assessing the magnitude of liability impartially

f. The learned magistrate erred in fact and law by weighing the respondent's case in isolation from the appellant's case, which precluded him from impartially assessing the magnitude of damages.

g. The learned magistrate erred in law and fact by disregarding the evidence of the appellant's witnesses, thus precluding himself from impartially assessing the magnitude of liability.

h. The learned magistrate erred in law and, in fact, in aiding the respondent's case as against the appellant's case.

i. The learned magistrate erred in law and fact when he relied on erroneous principles of law in arriving at an excessive award on quantum.

j. The learned magistrate erred in fact and law in failing to apply the relevant and pertinent judicial principles, precedents and trends regarding the quantum award.

k. The learned magistrate grossly misdirected himself by superficially retreating the evidence and submissions before him on liability and consequently arriving at a wrong decision without any basis in law or fact.

l. The learned magistrate grossly misdirected himself by superficially treating the evidence and submissions before him on quantum and consequently arriving at a wiring decision without any basis in law or fact.

m. The learned magistrate erred in law and fact in finding that the respondent had proved this case on a balance of probabilities because of the evidence on record.

n. The learned magistrate erred in fact and law, failing to accord the Appellant evidence and submissions due consideration.

o. The learned Magistrate's findings on liability and the quantum of damages are not supported by facts or law; hence, they are irregular.

3. The respondents opposed the appeal through Shem Kebongo & Company Advocates. They contended that the appeal lacked merits.

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 v 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. . the deceased and her mother, Jacinta Waithera, were passengers in a motor vehicle with registration number KCL 829D. The driver collided with an ox-drawn cart diverting to the left side. This was according to the evidence provided by PC John Karuri (PW2).

6. Jacinta Waithera (PW4) testified that when the collisions occurred between motor vehicle registration number KCL 829D and the ox-drawn cart, the vehicle driver was at high speed.

7. The driver of the motor vehicle registration number KCL 829D was not called to testify. The court had only the respondent's version to determine liability.

8. The learned trial court's finding on liability cannot be faulted.

9. The appeal is on the quantum assessed in general damages. Before an appellate court can interfere with an award of damages, it must be satisfied that the applied a wrong principle of the law, considered some irrelevant factors or left out some relevant ones or that the award is so inordinately low or so inordinately high. These principles were laid down by the Privy Council in Nance vs British Columbia Electric Railways Co. Ltd. [1951]AC 601 on page 613, where it held:

   The principles which apply under this head are not in doubt. Whether the assessment of damages is by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have granted a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of the law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages (Flint v Lovell [1935] 1KB 354) approved by the House of Lords in Davis v Powell Duffryn Associated Collievers Ltd. [1941]AC 601.

10. When the deceased passed away, she was seven months old. In Albert Odawa v 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.

11. The best approach in such a case would be the global sum award.

12. I have looked at the decisions relied upon by the parties in the trial court and in this appeal. The appellant relied on Civiscope Limited v Gilbert Kimatare Nairi & Lilian Napudoi Nairi (Suing as Personal Representatives of the Estate of Gilbert Nairi Lemayian (Deceased) [2021] eKLR where the High Court while upholding the award by the trial court said:

    I do not think the appellant has reason to complain here. The trial court applied the global approach and awarded a figure of Kshs. 400,000. The court cited relevant and binding decisions on this.

According to the trial court, there was no way of knowing what the deceased, then two years old, would grow up to be. The court did not use both multiplier and global approaches in assessing damages, as the appellant argued. I, therefore, find no merit in this ground of appeal.

13. This decision differs from the impugned judgment's approach to awarding damages but is consistent with the quantum.

14. I, therefore, set aside the award under different headings, which is replaced by a global sum of Kshs. 440,000.00.

15. The appeal, therefore, is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE