



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ngure v Wangui (Suing as the legal representative of the Estate of Anthony Gachamiu Muthiga - Deceased) (Civil Appeal 118 of 2019) [2025] KEHC 4379 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 118 OF 2019**

**A MSHILA, J  
MARCH 28, 2025**

**BETWEEN**

**BONIFACE MUNGAI NGURE ..... APPELLANT**

**AND**

**ROSE WANGARI WANGUI ..... RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANTHONY  
GACHAMIU MUTHIGA - DECEASED**

*(Being an appeal of the Judgment of Hon. W.O. Rading (SRM) delivered  
on 11/07/2019 at Kiambu Law Courts in CMCC NO. 466 OF 2018)*

**JUDGMENT**

**Background**

1. By a Complaint filed on 25/09/2018, the Respondent herein being the legal representatives to the estate of Anthony Gachamiu Muthiga (Deceased) sued the Appellant claiming compensation for the fatal injuries sustained by the deceased on 8/12/2017 when the deceased who was a lawful pedestrian along the Northern bypass at Kamae area within Kiambu County, when the Appellant's agent while driving motor vehicle KAV 381S on his own accord and/or as an agent of the Appellant so carelessly drove the said motor vehicle causing it to veer off its lane and into the pedestrian's path where it ran over the deceased inflicting severe injuries which he later succumbed.
2. The Appellant filed his statement of Defence denying any liability for the accident. He contended that the Respondent was not a pedestrian and that the alleged accident was caused by the negligence of the Appellant. In any case, it was stated that if any accident occurred the same was solely contributed to by the negligence of the deceased.
3. By consent liability was apportioned at 80:20% in favour of the respondent as against the Appellant.



4. The matter proceeded to a full hearing. At the conclusion of the trial, the Honourable Trial Magistrate awarded damages as follows:-
- Pain and suffering Kshs. 60,000/=
- Loss of expectation of life Kshs. 60,000/=
- Loss of dependency Kshs.5,280,000/=
- Less 20% contribution Kshs.4,224,000/=
- Special damages Kshs. 1,630/=
- Total Kshs.4,164,000/=
5. The Appellant is dissatisfied with the lower Court's judgment and has preferred the present Appeal. In his Memorandum of Appeal, he has listed six grounds of appeal namely:-
- a. That the Learned Magistrate erred in law and in fact in determining the multiplicand thereby arriving at a wrong finding.
  - b. That the Learned Magistrate erred in law and fact in finding that the deceased earned an income and relied on an unauthenticated records to arrive at an inordinately high income which was unsubstantiated and therefore, arriving at a wrong conclusion.
  - c. That the Learned Magistrate erred in law and in fact and used the wrong principles of law in determining the multiplier therefore, arriving at a wrong finding.
  - d. That the Learned Magistrate erred in law and in fact in failing to take into account the submissions on liability and quantum put forth by the defendant while considering her judgment.
  - e. That the Learned Magistrate erred in law and in fact by failing to determine that the Plaintiff had not discharged their evidentiary burden of proving their claim under the *Fatal Accidents Act* Cap 32 and the *Law Reform Act* Cap 26 Laws of Kenya and that no sufficient evidence was put forth to corroborate the plaintiff's assertions.
  - f. That the Learned Magistrate erred in law and in fact in failing to apply the proper legal principles regarding quantum and thus arriving at a bad decision.
6. The court directed the parties to canvass the appeal by way of written submissions.

### **Appellant's Submissions.**

7. The Appellant submits that the trial magistrate erred in awarding Kshs. 60,000/= as the deceased succumbed to his injuries at the scene of the accident as such an award of Kshs. 10,000/= would be sufficient. Reliance was placed in the case of *Mercy Muriuki & another vs Samuel Mwangi Nduati & another* (Suing as the Legal Administrator of the estate of the late Robert Mwangi) (2019) eKLR. It was submitted that the court should look at the circumstances and adopt the appropriate mode of assessing damages. The trial magistrate was erred for applying the multiplicand of Kshs. 30,000/= as the figure was said to be erroneous as it is based on no evidence. The deceased's wife testified that the deceased used to earn Kshs. 25,000/= but produced no receipts to support the earnings and had no documents to prove that the husband owned a pastries retail business. The deceased father's claim that the deceased used to buy him medicine worth Kshs. 10,000/= was also said to be unsupported. Further, the evidence of PW3, the deceased colleague that the deceased used to make Kshs. 4,440/= was said to be unclear as PW3 did not know expenses of the deceased. The trial court estimated that



the deceased would on average earn Kshs. 30,000/= which estimate was said to be unknown. Reliance was placed in the case of *Beatrice W. Murage vs Consumer Transport Ltd & another* (2014) eKLR where it was held that the court should base the earnings on minimum wage where there is no proof of deceased's income. The court was urged to base the earnings of the deceased on minimum wage under the Regulation of Wages (General) (Amendment) Order, 2017 being Kshs. 6,896.15 the respondent having failed to prove the deceased's income. In regard to the multiplier, the court was urged to adopt a multiplier of 15 years as the deceased was 33 years and bearing in mind the vicissitudes of life given that retirement age is 60 years. Reliance was placed on among other cases the case of *Hildan Wanjira Karigo vs Value Park Foods Limited* (2014) eKLR. The court was faulted for deducting Kshs. 60,000/= instead of Kshs. 120,000/= as awards under the *Law Reform Act* must be deducted from those made under the Fatal Accident Act. Reliance was placed on among other cases the case of *Timsales (K) Ltd vs Grace Bosibori* (2010) eKLR. Lastly, the court was faulted for awarding Kshs. 1,630/= for special damages based on no evidence as the respondent only proved Kshs. 550/= being a receipt for motor vehicle search. The court was urged to allow the appeal with costs.

### Respondent's Submissions

8. The Respondent submitted that the award of Kshs. 60,000/= was well within the exercise of discretion as the appellant has not demonstrated that the court took into account irrelevant factors as the court explained its reasoning. Reliance was placed in the case of *Alice O. Alukwe vs Akamba Public Road Services Ltd & 2 others* (2013) eKLR. It was submitted that in adopting a multiplier of 22 years, the court took the uncertainties of life as the deceased was aged 33 years and would have worked for 27 years or more given that the retirement age is 60 years. Reliance was placed in the case of *Nancy Marigu Gabriel vs David Kimani* (2015) eKLR. In regard to the multiplier, the Respondent submits that they produced various receipts from *Misters Bakers Ltd* and various extracts of the deceased's business ledger. The deceased according to his colleague used to make Kshs. 4,400/=. The Respondent disregarded the request by the Appellant to adopt the prevailing minimum wage. Reliance was placed in the case of *Kimatu Mbuvi vs Augustine Munyao* (2006) eKLR. Lastly, the respondent submitted that Kshs. 1,080/= awarded as part of special damages was for filing charges for a grant of letters of administration ad litem and that the same was proved by way of a receipt and that in regard to double award, there is no legal requirement for deduction of all the awards made under the *Law Reform Act* as what is required is for the court to take into account. The court was urged to dismiss the appeal as it has no merit.

### Trial Court's Evidence

9. Rose Wangari Wangui (PW1) wished to adopt her statement. She testified that the deceased used to earn around Kshs. 25,000/= and that they do not have receipts for things like vegetables and rent as they were not given. She prayed for damages citing that her husband is deceased and she has children.
10. In cross-examination, she stated that her husband was a businessman selling cakes along Kiambu Road and that he used to earn Kshs. 4,000/= daily where he used to give her Kshs. 25,000/= for family use. She did not have the record as well as receipts for funeral expenses.
11. Samuel Muthiga Gachamui (PW2) the deceased's father and his Legal representative, testified that his son used to support him prior to his death as well as buy for him medicine worth Kshs. 10,000/= a month.
12. Boniface Kuria Njuguna (PW3) testified that he carries out business of selling cakes and that he worked with the deceased for about six years. He stated that the deceased was hard working as he used to have a gross profit of Kshs. 4,440/= per day.



## Issues for Determination

13. Having read and considered the trial court record and the submissions by both parties, the issues framed for determination are;-
  - i. Whether the trial court erred in the apportionment for damages for pain and suffering,
  - ii. Quantum of damages

## Analysis

14. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* (1968) EA 123, this principle was enunciated thus  

“...this Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
15. In the case of *Butler v. Butler* (1982) KLR 277 it was observed that a Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion.
16. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -  

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”
17. On the issue of the award under pain and suffering, the Appellant submits that the trial magistrate erred in awarding Kshs. 60,000/= as the deceased succumbed to his injuries at the scene of the accident as such an award of Kshs. 10,000/= would be sufficient.
18. The award under this heading ranges from Kshs.10,000/ to Kshs.100,000/- and as the deceased died on the spot, this court finds the sum of Kshs. 60,000/- to be manifestly excessive.
19. This court is satisfied that this ground of appeal has merit and it is hereby allowed; this court finds good reasons to interfere with the trial courts award; an award of Kshs.20,000/- is found to be sufficient
20. With regard to the multiplicand adopted by the trial court, the deceased’s wife testified that the deceased used to operate a pastry business where he earned Kshs. 4,000/= a day and he used to give her Kshs. 25,000/= on a monthly basis. PW2 testified that the deceased used to provide Kshs. 10,000/



- = to him to buy medicine. The Appellant on his part, submits that the Respondent was unable to prove by way of receipts how much money the deceased was making and exactly which business he was engaging in.
21. The Appellant suggested that the deceased should be put under the category of a general labourer with a minimum monthly wage of Kshs. 6,896.15/= under the Regulation of Wages (General) (Amendment) Order, 2017 as the Respondent failed to prove the income of the deceased.
  22. The evidence of PW3 was that he had sold cakes with the deceased for six (6) years; therefore the deceased would best be described as a confectioner as opposed to a general labourer; Under this category the minimum wage is listed as Kshs.13,309/80.
  23. This Court is satisfied that there is good reason to interfere with the trial court's decision and adopts the sum of Kshs.13,309/80/- as the multiplicand.
  24. The Appellant was also dissatisfied with the multiplier of 22 years adopted by the court. The deceased at the time of his death was aged 33 years. The trial Appellant proposes a multiplier of 15 years while the respondent proposes a multiplier of 15 years. The trial court in arriving at the multiplier of 22 years took into account the average living index, the vagaries of life. Given that the retirement age is 60 years and bearing in mind the deceased had 27 more years before attaining the age of retirement as well as taking into account the vicissitudes of life, this court does not wish to interfere with the multiplier of 22 years adopted by the trial court as the same is not unreasonable.
  25. This ground of appeal has no merit and it is disallowed. Refer to the case of Francis Njeru v Geoffrey M Ndegwa Muiruri (Suing as the legal representative of the Estate of Alex Mugo Muiruri (Deceased) (2020) eKLR where a multiplier of 22 years was used where the deceased died aged 35 years.
  26. The trial court was also accused of failing to deduct the award made under the Law Reform Act from the award made under the Fatal Accident Act. The trial court was faulted for deducting Kshs. 60,000/= instead of Kshs. 120,000/=. The Respondent on his part submitted that there is no legal requirement for deduction of the awards made under the Law Reform Act.
  27. It is this court's considered view that there is no legal requirement for the court to deduct the amount awarded under the Law Reform Act from the award made under the Fatal Accident Act. In the circumstances, this court finds that the trial court erred in deducting Kshs. 60,000/= from the deceased's award under the Fatal Accidents Act.
  28. Refer to the case of Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenja (Deceased) vs Kiarie Shoe Stores Limited (2015) eKLR.
  29. Lastly, the Appellant argues that the Respondent failed to prove part of the special damages pleaded for the sum of Kshs. 1,080/=. A perusal of the record shows that the Respondent provided a receipt for Kshs. 1,080/= being the payment of the court fees for the application for a grant of letters of administration ad litem.
  30. Refer to the Court of Appeal case in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where it was held that;  
  
"Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves."



31. When the circumstances relate to Fatal Accidents and burial expenses the courts tend to be lenient and tend to loosen the strict proof requirements in such instances; The amount is negligible and this Court is satisfied with the trial courts award for special damages and it stands as having been proved as pleaded.

### **Findings and Determination**

32. For the forgoing reasons this court makes the following findings and determinations;

- i. The appeal is partially merited;
- ii. The the Judgment of Hon. W.O. Rading (SRM) delivered on 11/07/2019 at Kiambu Law Courts in CMCC No. 466 of 2018 is hereby set aside and substituted with the following judgment in favour of the Respondent/Plaintiff;

Pain and suffering Kshs.20,000/=

Loss of expectation of life Kshs. 60,000/=

Loss of dependency

(13,309.80x12x22x2) Ksh.2,342,524.80

3

Sub – total Kshs.2,422,524.80

Less 20% contribution Kshs. 484,504.96

Sub-total Kshs.1,938,019.84

Add Special damages Kshs. 1,630/=

Total Kshs.1,939,649.84

- iii. In the lower court suit the Respondent shall have costs and interest on the award at court rates.
- iv. Each party to bear their own costs on appeal

Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Gathaara - For appellatant

Kibiku for the Respondent

