



REPUBLIC OF KENYA



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Mahindi & another v Idama (Suing as the Legal Representative of the Estate of Sera Ondiso Adogo - Deceased) (Civil Appeal E034 of 2023) [2025] KEHC 7478 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E034 OF 2023**

**JN KAMAU, J
MAY 29, 2025**

BETWEEN

LUCY MUHONJA MAHINDI 1ST APPELLANT

WATU NOMINEES COMPANY LTD 2ND APPELLANT

AND

**SAMUEL ADOGO IDAMA (SUIING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF SERA ONDISO ADOGO - DECEASED) RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon R. Ndombi (SPM) delivered at
Vihiga in the Principal Magistrate's Court Case No E014 of 2023 on 21st September 2023)*

JUDGMENT

Introduction

1. In her decision of 21st September 2023, the Learned Trial Magistrate, Hon R. M. Ndombi, Principal Magistrate, apportioned liability at 85-15% in favour of the Respondent herein and entered judgment in his favour against the Appellants herein jointly and severally in the following terms:-

Pain and Suffering Kshs 100,000/=

Loss of expectation of life Kshs 100,000/=

Loss of dependency Kshs 700,000/=

Special Damages Kshs 165,550/=

Kshs 1,065,550/=

Less 15% contributory

negligence Kshs 159,832.50



Kshs 905,717.50

Plus costs of the suit and interest on general damages, special damages and costs of the suit at court rates.

2. Being aggrieved by the said decision, on 24th November 2023, the Appellants herein filed a Memorandum of Appeal of even date. They relied on four (4) grounds of appeal.
3. Their Written Submissions were dated and filed on 28th October 2024 while those of the Respondent were dated 4th December 2024 and filed on 13th December 2024. The Judgment herein is based on the said parties' Written Submissions which they relied upon in their entirety.

Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another vs Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the parties' Written Submissions, it appeared to this court that all the Grounds of Appeal were related and the only issue that had been placed before it for determination was whether or not the quantum that was awarded by the Trial Court was excessive in the circumstances warranting its interference
7. This court therefore dealt with the said issues under the following distinct and separate heads.

I. Global Award Approach Vis A Vis Multiplier-multiplicand Approach

8. The Appellants submitted that the Trial Court should have adopted the multiplier-multiplicand approach instead of the global award approach as the deceased's monthly earnings were pleaded as Kshs 5000/= and she was aged seventy-three (73) years old. They added that since her children were adults, they were not her dependents and that only her husband could be considered as having been dependent on her.
9. They pointed out that her husband was advanced in age and the dependency would not last for long, thus, they proposed a multiplier of five (5) years. Their proposed calculation for loss of dependency was as follows:-

$$\text{Kshs } 5000 \times 1/3 \times 12 \times 5 \text{ years} = 100,000/=.$$

10. On his part, the Respondent placed reliance on the cases of *Kridha Limited vs Peter SALAI Kituri*[2020]eKLR and *United India Insurance Co Ltd vs East African Underwriters (Kenya) Ltd* (1985) EA where the common thread was that an appellate court would not interfere with the discretionary award handed by a trial court unless the judge had misdirected himself in law, he misapprehended the facts, thirdly that he failed to take account of considerations of which he should have taken account or his decision was plainly wrong.
11. He further relied on the case of *Mrarama Mnthieri vs Luke Kiumbe Muriithe* [2015]eKLR where the Court of Appeal upheld the use of a global award approach as opposed to the multiplier approach that



could be more speculative and made an award of Kshs 500,000/= for the lost years where the deceased was thirty (30) years at the time of death.

12. He further cited the case of *Oyugi Judith & Another vs Fredrick Odhiambo & Others* [2014]eKLR where it was held that the multiplier approach was inappropriate and the court proceeded to give a global award of Kshs 700,000/=. It was his contention that the global award of Kshs 700,000/= was appropriate in the circumstances of this case.
13. This court looked at the decisions that the Respondent had submitted but was not able to trace *Mrarama Mntheri vs Luke Kiume Muriithe* (Supra) and *Oyugi Judith & Another vs Fredrick Odhiambo & Others* (Supra) in the KLR Website.
14. Right at the outset, this court wished to point out that while a trial court could exercise its discretion to award quantum based on the material that was adduced during trial, nothing stopped an appellate court from re-evaluating the evidence that had been adduced vis-a-vis considering comparable awards and coming to its own conclusion as was held in the cases of *Selle & Another vs Associated Motor Boat Co Ltd & Others* (Supra) and *Kenya Ports Authority vs Kushton (K) Ltd* (2009) 2 EA 212.
15. The question that arose under this head related to the method a court should adopt in determining the multiplier and multiplicand where the earnings of a deceased person could not be ascertained, with certainty.
16. This court had due regard to the case of *Mwanzia vs Ngalali Mutua Kenya Bus Ltd* cited in *Albert Odawa vs Gichumu Githenji* [2007]eKLR, where the court observed that:-

“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.”
17. Similarly, in the case of *Moses Mairua Muchiri vs Cyrus Maina Macharia* (Suing as the personal representative of the estate of *Mercy Nzula Maina* (deceased) [2016]eKLR, it was held as follows:-

“It has been held elsewhere that where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.”
18. In *Frankline Kimathi Maariu & Another vs Philip Akungu Mitu Mborothi* (suing as administrator and personal representative of *Antony Mwiti Gakungu* deceased [2020]eKLR, the court applied a global sum approach where there was no satisfactory proof of the monthly income.
19. Notably, the Trial Court found that there was no satisfactory proof of the monthly income of the deceased and proceeded to apply a global sum approach. Guided by the principles advanced in the above cited cases, this court could not fault the Trial Court for having adopted the global sum approach rather than the multiplicand or multiplier method in determining the amount to be awarded for loss of dependency. Indeed, the Respondent who testified as PW 1 at the Trial Court stated that the deceased



was not on salary and nothing was produced in court as proof of her earnings. The question was whether the global sum of Kshs 700,000 was reasonable in the circumstances of the case.

20. The deceased was said to have been a farmer earning Kshs 5,000/= per month. There was no evidence of the said income. However, the Appellants did not appear to object to the fact that she earned the said sum as a farmer. Their argument was that the court ought to have adopted a multiplier approach.
21. This court found guidance in the decisions in *China Civil Engineering & Another vs Mwanyoha Kazungu Mweni & another* [2019] eKLR where the Court on Appeal upheld a global sum award of Kshs 700,000 for loss of dependency where the deceased was aged seventy nine (79) years old and in *Moses Maina Waweru vs Esther Wanjiru Githae* (Suing as the personal representative of the Estate of the late David Githae Kiririo Taiti [2022] eKLR the deceased died at the age of sixty-eight (68) years and left one dependant, the court made an award of Kshs 800,000 for loss of dependency.
22. Bearing in mind the aforesaid cases, this court came to the firm conclusion that the figure of Kshs 700,000/= was inordinately high so as to warrant the interference of this court. Indeed, the deceased was elderly and there was no evidence that the Respondent was her dependent. Even if she was engaged in gainful work from the farm, it would not have been long because she was already elderly.
23. In that regard, this court found and held that a sum of Kshs 500,000/= was fair as a global figure. The court awarded this sum on the basis that the life of elderly persons also mattered and it was immaterial that they were old or not gainfully engaged. The figure of Kshs 500,000/= could not by any standard be commensurate with the life of the deceased. However, this court found the figure of Kshs 100,000/= that had been proposed by the Appellants herein was too low and could be deemed not to have valued the deceased's life after so many years of her life here on earth.

II. Pain And Suffering

24. The Appellants asserted that the award of Kshs 100,000/= for pain and suffering was excessive in the circumstances. They proposed an award of Kshs 50,000/= under this head.
25. On his part, the Respondent submitted that the court's discretion came into play in determining the appropriate award for pain and suffering. He asserted that the Trial Court took into account that the accident took place on 23rd June 2022 and the deceased died on 25th June 2022. He pointed out that the deceased must have endured a lot of pain before she finally died. In this regard, he placed reliance on the case of *Mwalla Katana Mwangongo vs Kenya Post & Lelcom Mombasa HCCA 16 of 1997* (eKLR citation not given) where an award of Kshs 100,000/= for pain and suffering was upheld.
26. In the cases of *Acceler Global Logistics vs Gladys Nasambu Waswa & Another* [2020] eKLR and *Sukari Industries Limited vs Clyde Machimbo Juma* [2016] eKLR as quoted in the case of *Wachira Joseph & 2 Others vs Hannah Wangui Makumi & Another* [2021] eKLR, the courts therein awarded a sum of Kshs 50,000/= for pain and suffering.
27. Notably, the deceased did not die on the spot. PW 1 testified that she died on the third day after the accident. Bearing in mind the inflationary trends and the fact that the deceased did not die on the spot, this court found and held that the Trial Court's award of Kshs 100,000/= was reasonable in the circumstances. This court therefore left the same undisturbed.

III. Special Damage

28. The Appellants urged the court to set aside the Trial Court's award on special damages as the same was not proved and substitute it with a sum of Kshs 50,000/= for funeral expenses so as to discourage people from turning funerals into feasts and passing on the bill to defendants. They added that it



should be considered that friends, relatives and well-wishers routinely contributed towards funeral expenses and the same was not borne by the bereaved family exclusively.

29. They placed reliance on the case of Migori HCCA No 85 of 2017 Wilson Saiya vs David Wanga Odongo (eKLR citation not given) without highlighting the holding they relied on therein.
30. On his part, the Respondent cited the case of Alice Ombachi & Another vs Jerusha Kemunto Mokaya & Another [2019]eKLR where the court rejected the receipt of Kshs 433,344/= for funeral expenses and in place awarded Kshs 150,000 which the court opined to have been fair and reasonable expenses to rest the deceased person. He contended that the award by the Trial Court in the circumstances of this case was reasonable.
31. A perusal of the Complaint dated 30th November 2022, showed that the Respondent specifically pleaded Special Damages totaling Kshs 169,550/= made up of Letters of administration at Kshs 35,000/=, official search at Kshs 550/= and funeral expenses at Kshs 134,000/=. A perusal of the record showed the receipts for a Grant of Letters of Administration and the official search which amounted to Kshs 35,550/=.
32. However, the Respondent did not produce the receipts to prove payment of funeral expenses. Although it was trite law that special damages had to be specifically pleaded and specifically proven, it did not mean that the Respondent did not incur funeral expenses. It is generally agreed that in African customs, although the family could incur some monies in arranging for the funeral, funerals were a community affair with the bulk of the contributions came from extended family members and the community.
33. Bearing in mind that Kshs 35,550/= was expended to obtain the Grant of Letters of Administration and the Official Search, some monies were also used to get the Certificate of Death and Police Abstract Report. As there were no specific receipts to prove funeral expenses, this court allowed a sum of Kshs 50,000/= to cater for the funeral expenses giving a total sum of Kshs 85,550/= as special damages.

Disposition

34. For the foregoing reasons the upshot of this decision was that the Appellants' appeal that was lodged on 24th November 2023 was partly merited.
35. The effect of this is that the Judgment of Kshs 905,717.50 that was entered by the Learned Trial Magistrate in Vihiga SPMCC No E014 of 2023 on 21st September 2023 in favour of the Respondent herein against the Appellants herein be and is hereby set aside and/or vacated and the same be and is hereby replaced with a decision that Judgment be and is hereby entered in favour of the Respondent herein against the Appellants jointly and severally for the sum of Kshs 667,717.50 made up as follows:-
Loss of Dependency Kshs 500,000.00
Loss of expectation of life Kshs 100,000.00
Pain and Suffering Kshs 100,000.00
Special Damages Kshs 85,550.00
Kshs 785,550.00
Less 15% contribution Kshs 117,832.50
Kshs 667,717.50



Plus costs and interest thereon. For the avoidance of doubt, interest on special damages will accrue at court rates from the date of filing suit until payment in full while damages under the [Law Reform Act](#) Cap 26(Laws of Kenya) and under the [Fatal Accidents Act](#) Cap 32 (Laws of Kenya) will accrue interest at court rates from the date of judgment of the lower court until payment in full. The order that interest would accrue on costs be and is hereby set aside and/or vacated.

36. As the Appellants were partly successful in their Appeal, each party will bear its own costs of the Appeal herein.

37. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF MAY 2025

J. KAMAU

JUDGE

