



Kaumbutho Investment Limited v Lichoro (Suing as the Administrator of the Estate of Elias Karithi - (Deceased)) (Civil Appeal E048 of 2024) [2025] KEHC 7022 (KLR) (28 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E048 OF 2024
SM GITHINJI, J
MAY 28, 2025**

BETWEEN

KAUMBUTHO INVESTMENT LIMITED APPELLANT

AND

JOSEPH MWENDA LICHORO RESPONDENT

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF ELIAS KARITHI -
(DECEASED)**

*(Being an Appeal from the Judgment of J. Macharia (SPM) in
Tigania PMCC No. E098 of 2022 delivered on 5th March, 2024)*

JUDGMENT

1. This Appeal arises from the judgment of the learned Senior Principal Magistrate Hon. J. Macharia delivered on 5.03.2024 in Tigania Civil Suit No. E098 of 2022 wherein judgment was entered in the following terms;
 1. Pain and Suffering Ksh. 20,000
 2. Loss of Expectancy of life Ksh. 100,000
 3. Lost years Ksh. 3,071,800
 4. Special Damages Ksh. 88,050
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 4th April, 2024;



1. The learned trial Magistrate erred in law by adopting the multiplier approach which method was not applicable in the circumstances and thereby arrived at an award for loss of dependency that is inordinately excessive.
 2. The learned trial magistrate erred in fact and law by adopting a multiplicand of Kshs. 15,359 which was not applicable in the circumstances and thereby arrived at an award for loss of dependency that is inordinately excessive.
 3. The learned trial magistrate erred in law and fact by awarding damages for loss of dependency in the sum of Kshs. 3,071,800 which award is inordinately excessive considering that the deceased died at the age of 20 years, without income and was still in school.
 4. The judgment of the learned trial magistrate with regard to the award for loss of dependency is against the law and weight of evidence on record.
3. On 5/12/2023, the parties recorded a consent on liability at the ratio of 80:20 in favour of the Respondent against the Appellant, and the matter proceeded for quantification of damages.
 4. Pw1 Joseph Mwenda Lichoro, the Respondent herein and the Plaintiff in the trial court adopted his statement dated 13/10/2022 as his evidence in chief and produced the Police Abstract, Motor Vehicle Copy of Records, Invoice, Certificate of Death, Post Mortem Form, Chief's letter dated 1/9/2022, Identity Card, Receipt No. FSAO-XXXXXXX, Grant, and Receipts in support of special damages as exhibits. He told the court that his son, the deceased herein, was a student at Meru Technical Training College aged 20 years, undertaking an artisan course. The deceased was involved in a fatal road accident on 22/3/2022 and he was survived by his father, his mother Tabitha Ncece Festus and his son namely Prince Munene aged 2 years. He used Ksh. 150,000 in funeral expenses and paid his advocate Ksh. 45,000 to apply for a limited grant. They had hopes that the deceased would complete his artisan course, get employed and support them.
 5. The Appellant closed its case without calling any witnesses.

Appellant's Submissions

6. The Appellant through the firm of Mithega & Kariuki Advocates filed submissions dated 14th October, 2024. Counsel faulted the trial court for adopting a multiplicand of Ksh. 15,359, for a 20 year old deceased who was a student without any source of income, and cited Gilbert Kimatare Nairi & another (suing as personal representatives of the Estate of Lemayian Richard Kimatare (Deceased) v Civiscope Limited (2021) eKLR, Albert Odawa v Gichumu Githenji (2007) eKLR and Moses Mairua Muchiri v Cyrus Maina Macharia (Suing as the personal representative of the Estate of Mercy Nzula Maina (deceased) (2016) eKLR. Counsel beseeched the court to award a global sum of Ksh. 800,000 for loss of dependency, and relied on Florence Mumbua Ndoos & Francis Kioko (suing as the Administrator and Personal Representative of the late Alfred Safari) v Ezra Korir Kipngeno & another (2017) eKLR and Elvina Nyevu Garama & another v Samson Kahindi Kitsao & another (2020) eKLR.
7. The Respondent through the firm of Nkunjia & Company Advocates filed submissions dated 7/4/2025. Counsel cited AINU SHAMSI HAULIERS LIMITED v MOSES SAKWA & ANOTHER (suing as the Administrators of the Estate of Ben Siguda Okach (Deceased) (2021) eKLR, Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR, Gitobu Imanyara & 2 Others v Attorney-General [2016] KECA 557 (KLR) and Idi Ayub Omari Shabani v City Council of Nairobi [1985] KLR 518, on the principles upon which an appellate court will interfere with the award of general damages by the trial court. Counsel also relied on Nairobi Bottlers Ltd & Another v MW (Suing as the legal representative of the estate of KMW [2021] KEHC 2142



(KLR), where it was held that the choice of multiplier or global award approach is entirely a matter of discretion of the court as dictated by circumstances. It was submitted that the trial court's decision to adopt the multiplier method was firmly grounded on precedent and sound judicial reasoning. Counsel contended that a case had not been made out for the disturbance of the award of lost years by the trial court, and relied on *Gedion Sirya & another v Mwanamisi Ali* (suing in her own Capacity and as the Administratrix of the Estate of the Late Samuel Ngegi Njihia [2021] eKLR, *YH Wholesalers Ltd & Another v Joseph Kimani & Another* [2017] eKLR, *Kenya Bus Services Limited & Another v Githae Gatururi* [2013] eKLR and *Nzioka Leah & Another v Patrick Kisai & Another* [2022] KEHC 6579 (KLR).

Analysis and Determination

8. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions on the same.
9. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA the court held as follows: "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."
10. I have considered the appeal herein, the trial court's judgment which is the subject of this appeal as well as the submissions by counsels.
11. From the grounds of appeal, the singular issue for determination is whether the adoption of a multiplicand of Ksh. 15,359 rendered the award of Ksh. 3,071,800 inordinately excessive.
12. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were extensively dealt with by Ringera, J (as he then was) in *Marko Mwenda v Bernard Mugambi & another* Nairobi HCCC No 2343 of 1993 that: "In adopting a multiplier the court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased...The multiplier approach is just a method of assessing damages and not a principle of law or 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 ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown 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. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."
13. The uncontroverted evidence on record is that the deceased herein was a 20 year old student undertaking an artisan course at Meru Technical College. It is said that the deceased was a single parent to his 2 year old son, who is now under the care of the Respondent. The deceased was therefore survived by his said son and his parents, who reasonably expected that he would complete his studies, be gainfully engaged either in the formal or the informal sector and support them in their old age.



- Those expectations were completely shattered by his untimely death, occasioned by the Appellant's negligence.
14. Whilst the deceased was not gainfully employed at the time of his death, he had a defined career path, owing to the artisan course he was pursuing in College, and his future cannot thus be said to have been uncertain and speculative.
 15. Courts have countlessly emphasized the need to consider the profession a deceased was pursuing in the assessment of damages for lost years. In *Rosemary Mwasya v Steve Tito Mwasya & another* [2018] eKLR, the Court of Appeal noted that; "As for the multiplicand, the only guide the learned Judge had before him was the survey on salaries. The Judge settled for the salary applicable to accountants as that was the profession the deceased would have pursued had death not claimed her life. The figure chosen of Kshs. 118,546/= took into consideration yearly increments had the deceased successfully followed her career. The only error we note the trial Judge committed in arriving at the final figure was the failure to factor in, the element of taxation and other compulsory statutory deductions which in our view would have amounted to one third of the figure chosen as the multiplicand which would work out as Kshs. $118,546/= \times 1/3 = 39,512$. When factored into the figure chosen as the multiplicand, it gives a final figure of Kshs 79,034/=."
 16. I find that the trial's court adoption of the minimum wage of Ksh. 15,359 for an artisan as the multiplicand was justified.
 17. Nonetheless, I find, respectfully so, that the dependency ratio of $2/3$ was improper, because it was not shown that the Respondent and his wife would have entirely depended on the deceased for their livelihood, since they would ordinarily be expected to have their own means of survival. It was pleaded that the deceased was unmarried, but with a 2 year old son who would fully depend on him.
 18. The Court of Appeal in *Dickson Taabu Ogutu (Suing as the legal representative of the estate of Wilberforce Ouma Wanyama v Festus Akolo & another* [2020] eKLR reiterated that; "The onus was on the appellant to prove that their aged parents were indeed dependent on the deceased and the extent of loss they have suffered considering the fact at the time of the hearing the appellant, also their son, had a job at the County Governor's office...The appellant did not plead in the Plaint that the deceased had a wife nor prove the extent to which his aged parents were dependent on the deceased nor the loss suffered. In those circumstances we find that the learned Judge did misapprehend the facts nor apply the wrong principles of law in holding that the appropriate life dependency ratio is $1/3$. He did not err and we have no basis to interfere with his decision."
 19. Likewise, I find that a dependency ratio of $1/3$ would be appropriate in this case.
 20. The upshot from the foregoing is that the appeal partially succeeds. The dependency ratio of $2/3$ is set aside and substituted with $1/3$. The award for lost years would thus be Ksh. $15,359 \times 25 \times 12 \times 1/3$, totaling to Ksh. 1,535,900. The other awards remain unchanged.
 21. Each party to bear own costs of the appeal.

DATED, AND DELIVERED THIS 28TH DAY OF MAY, 2025.

S. M. GITHINJI

JUDGE

Appearances :

Mr. Kariuki for the Applicant.



Miss Gacheri holding brief for Mr. Nkunjia for the Respondent.

