



Mumbi & another v Wambugu (Suing as the Legal Administrator of the Estate of Joseph Wambugu Wang’ombe - Deceased) (Civil Appeal E003 of 2023) [2025] KEHC 6923 (KLR) (Civ) (28 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

CIVIL

CIVIL APPEAL E003 OF 2023

KW KIARIE, J

MAY 28, 2025

BETWEEN

JOSHUA KIMITA MUMBI 1ST APPELLANT

SOLOMON MBUGUA NJOROGE 2ND APPELLANT

AND

JOHN WANG’OMBE WAMBUGU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOSEPH WAMBUGU WANG’OMBE - DECEASED) RESPONDENT

(Being an appeal from the judgment and decree in Ol Kalou Senior Principal Magistrate’s Court, SPMCC No. E002 of 2022 by Hon. R. Yator– Senior Principal Magistrate)

JUDGMENT

1. Joshua Kimita Mumbi and Solomon Mbugua Njoroge, the appellants, were the defendants in Ol Kalou Senior Principal Magistrate’s SPMCC No. E002 of 2022. The respondent had sued for a claim of general and special damages following a road traffic accident involving motor vehicle KCM 290Q and a motorcycle registration number KMDC 808Y, on which the minor was a pillion passenger. As a result of the accident, the minor sustained fatal injuries. The learned trial magistrate held the appellant 100 per cent liable. The respondents were awarded Kshs. 337,500.00 in special damages and Kshs. 4,038,192.00 in general damages.
2. The appellants were dissatisfied with the judgment and submitted this appeal through Kenyanjui Njuguna & Company, Advocates. They raised the following grounds for appeal:



- a. The assessment and award of general damages for pain, suffering, and loss of amenities is inordinately high.
 - b. The learned trial magistrate erred in assessing damages for loss of dependency, failed to apply the correct principles, and hence arrived at an erroneous estimate of damages
 - c. The learned trial magistrate misapprehended the evidence and misapplied, misunderstood and or overlooked the correct legal principles and judicial precedent and the submissions by parties that he made an award for loss of dependency that was erroneous and inordinately high.
 - d. The learned trial magistrate erred in law and failed to apply the proper legal principles regarding quantum, thus making a bad decision.
 - e. The learned trial magistrate erred in fact and law by disregarding the appellants' submissions and relying entirely on the respondent's submissions.
 - f. The learned magistrate erred in law and fact in failing to make any proper findings on quantum in accordance with the facts placed before her and in light of the submissions.
3. The respondent opposed the appeal through Achieng Owuor & Company Advocates. It was contended that:
- a. The trial court did not err in determining liability and the quantum of damages.
 - b. At this stage, the appellants introduced authorities they had never relied on during the trial.
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. The appellants appealed on quantum on various heads of general damages. The finding on liability was not contested.
6. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it 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.
7. The deceased passed away at the age of 32. He was not married. He was described as an electrician who was earning Kshs 60,000 per month. However, no documentary evidence was presented to the court. Where proof of earnings has not been established, the best approach is the global sum award. 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.

A global sum award is the appropriate approach in this case.

8. In their submissions to the trial court, the defendants proposed an award of Kshs. 1,144,518.80. They relied on the decision in the following cases.
 - a. Tom Oluoch Oloo (suing as the administrator and legal representative of the estate of George Ochieng Ngoche (deceased) vs African Safari Club [20119] eKLR. The High Court affirmed the trial court's decision not to award damages for loss of dependency.
 - b. Chen Wembo & 2 others v I K K & another (suing as the legal representatives and administrators of the estate of C R K (Deceased) [2017] eKLR. The deceased was aged 12 years at death. The court awarded Kshs 630,000 in July 2017.
9. The respondent's submissions were not included in the record of appeal.
10. I have examined the decisions relied upon by the parties in the trial court and the awards made therein. I have also reviewed other relevant decisions. In the case of David Mbuba & another v Victoria Mwangeli Kimwalu & another [2018] eKLR, an award of Kshs. 2,500,000.00 was granted under the *Fatal Accidents Act*. In the present case, I am persuaded that the award by the learned trial magistrate was excessively high. I substitute as follows:

Damages under the *Fatal Accidents Act* 3,000,000

Damages under the *Law Reform Act* 100,000

Sub Total 3,100,000

Special damages 337,300

Total 3,437,300

11. The appellant will have half the costs since the appeal has partially succeeded.

DELIVERED AND SIGNED AT NYANDARUA THIS 28TH DAY OF MAY 2025

KIARIE WAWERU KIARIE

JUDGE

