



Msafiri v Wangui & another (Suing as and on behalf of the Dependents of the Estate of Lawrence Njenga Warito - Deceased) (Civil Appeal E1066 of 2023) [2025] KEHC 9137 (KLR) (Civ) (26 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1066 OF 2023

AN ONGERI, J

JUNE 26, 2025

BETWEEN

STEPHEN MACHARIA MSAFIRI APPELLANT

AND

EDWARD NJOROGE WANGUI & MARY WANJIRU WARITHO (SUING AS AND ON BEHALF OF THE DEPENDENTS OF THE ESTATE OF LAWRENCE NJENGA WARITO - DECEASED) RESPONDENT

(Being an appeal from the Judgment of Hon. Rawlings Liluma (SRM) in Milimani CMCC Case No. E156 of 2022 delivered on 22nd September 2023)

JUDGMENT

1. The Appellant was sued in Milimani CMCC Case No. E156 of 2022 by the Respondent who was suing on behalf of the Estate of Lawrence Njenga Warito [deceased] who died on 20th September 2021 following a road traffic accident involving motor vehicle registration No. KAW 027J owned by the Appellant and the deceased who was a pedestrian.
2. The parties entered into a consent on liability and apportioned liability at 70:30% in favour of the Respondent against the Appellant.
3. The trial court assessed general damages as follows:-
 - i. General damages for pain and suffering Kshs. 50,000/=
 - ii. Loss of expectation of life Kshs. 120,000/=
 - iii. Loss of dependency Kshs. 2,500,000/=



- iv. Special damages Kshs. 55,365/=
 - Total Kshs. 2,725,365/=
 - Less 30% contributory negligence the amount payable to the Respondent was Kshs. 817,609.50
4. The Appellant has appealed against quantum on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact by awarding the Respondent excessive general damages contrary to the evidence that was adduced.
 - ii. That the learned trial Magistrate erred in law and in fact by adopting a global award on loss of dependency without any basis.
 - iii. That the learned trial Magistrate erred in law and in fact by wholly relying on the submissions by the Plaintiff and disregarding the Defendant's submissions.
 - iv. That the learned trial Magistrate erred in law and in fact by considering irrelevant factors while leaving out relevant ones in arriving at his decision on quantum.
 - v. That the learned trial Magistrate's judgment was arrived at in a cursory and perfunctory manner without any legal justification and the awards on general damages are excessive and oppressive to the Appellant.
 5. The parties filed written submissions as follows;
 6. The appellants challenged the trial court's award of Kshs. 2,500,000 as a global sum for loss of dependency, arguing that the magistrate erred in principle by failing to justify the figure.
 7. They contended that the deceased, aged 35, had no spouse or children, leaving only his mother and siblings as survivors, none of whom qualify as dependents under the law.
 8. The appellants emphasized that without proof of the deceased's earnings or dependents, the award is excessive.
 9. Citing precedent, including *Moses Mairua Muchiri v Cyrus Maina Macharia*, they argued that where earnings cannot be ascertained, courts should adopt a modest global sum rather than speculative calculations.
 10. Relying on *Kwamboka v Okiro*, where Kshs. 1,000,000 was awarded for a deceased with a wife but no children, they propose Kshs. 800,000 as a reasonable substitute.
 11. They further sought costs of the appeal in their favor. The core grievance is that the trial court's award lacks a factual basis and disproportionately compensates non-dependents.
 12. The respondents opposed the appeal on two main grounds.
 13. Firstly, they argue that the appellant failed to annex the decree or order from the trial court, rendering the appeal incompetent under Sections 65–69 of the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules.
 14. Citing *Lucas Otieno Masaye v Lucia Olewe Kidi* [2022], they contend that the absence of a decree is fatal to the appeal and urge its dismissal on this technicality.
 15. Secondly, should the court overlook the procedural defect, the respondents defend the trial court's award of Kshs. 2,500,000 for loss of dependency, arguing it aligns with precedent.



16. They reference cases like *Ainu Shamsi Hauliers Limited v Moses Sakwa* [2021] and *Ndeti v Mwangangi* [2022], where similar awards were upheld for deceased persons aged 35–40.
17. While the appellant proposed a reduction to Kshs. 800,000, the respondents cite *Mursal v Manese* [2022] and *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi* [2004] to demonstrate that higher awards are neither inordinate nor exceptional.
18. They emphasized that the trial magistrate applied correct principles, as affirmed in *Catholic Diocese of Kisumu v Tete* [2004], which restricts appellate interference unless the award is based on misapprehended evidence or irrelevant factors.
19. In conclusion, the respondents urged the court to dismiss the appeal with costs, maintaining that the trial court’s decision was justified and consistent with judicial precedent.
20. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. In *Selle v Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High 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.

In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

21. The sole issue for determination is whether the assessment of damages was excessive.
22. The appellate court can only interfere with the trial court’s assessment if the trial court relied on wrong principles and arrived at an erroneous decision or where the award is too low or too high as to warrant interference.
23. The deceased was 35 years old. The court granted a global figure of Kshs. 2,500,000/= for loss of dependency.
24. The trial court relied on cases of:-
 - i. *Ainu Shamsi Hauliers Limited v Moses Sakwa & Another* [suing as the administrator of the estate of Ben Siguda Okach [deceased] [2021] eKLR where a global figure of Kshs. 2,000,000/= was considered where the deceased was aged 40 years old.
 - ii. *Ndeti [deceased] v Mwangangi* [2022] KLR where a global figure of Kshs. 2,500,000/= was awarded where the deceased was 35 years.
25. This appeal hinges on whether the trial court’s assessment of damages, particularly the global award of Kshs. 2,500,000 for loss of dependency, was excessive or based on erroneous principles.



26. Under Kenyan law, an appellate court will only interfere with an award of damages if the trial court acted on wrong principles, misapprehended the evidence, or if the award is so inordinately high or low as to constitute an erroneous estimate [see *Butler v Butler* [1984] KLR 225 and *Mbaka Nguru & Another v James Rakwar* [1998] eKLR].
27. The Appellant contended that the award was excessive, arguing that the deceased, aged 35, had no spouse or children, and thus his mother and siblings did not qualify as dependents under the *Fatal Accidents Act* [Cap. 32].
28. However, Kenyan courts have consistently held that parents and siblings can qualify as dependents where there is evidence of financial support [see *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR].
29. While the Appellant cited *Moses Mairua Muchiri v Cyrus Maina Macharia* [2018] eKLR to advocate for a modest global sum where earnings are unproved, the trial court relied on comparable precedents, including *Ainu Shamsi Hauliers Limited v Moses Sakwa* [2021] eKLR [Kshs. 2,000,000 for a 40-year-old] and *Ndeti v Mwangangi* [2022] KLR [Kshs. 2,500,000 for a 35-year-old], which align with the award herein.
30. The Respondent further defended the award by referencing *Mursal v Manese* [2022] eKLR and *Anne Wambui Ndiritu v Joseph Kiprono* [2004] eKLR, where similar awards were upheld.
31. The absence of a decree, raised by the Respondent, is a procedural oversight but not fatal to the appeal's merits, as substantive justice prevails over technicalities under Article 159[2][d] of *the Constitution*.
32. On quantum, the trial court's award was neither inordinately high nor based on misapprehended evidence.
33. The global sum was justified by precedent and the deceased's age, and the court properly applied the principles in *Catholic Diocese of Kisumu v Tete* [2004] eKLR, which limits appellate interference unless the award is manifestly erroneous.
34. Consequently, the appeal lacks merit. The trial court's assessment of damages was grounded in sound judicial precedent and did not warrant interference.
35. The appeal is dismissed with costs to the Respondent.
36. The trial court's award of Kshs. 2,500,000 for loss of dependency is upheld.
37. The Appellant shall bear the costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant

.....for Respondents

