



REPUBLIC OF KENYA



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**Mucira (Suing as the Legal Representative of the Estate of Geoffrey Henry Mucira Magondu) v Gichobi (Civil Appeal 13 of 2020) [2025] KEHC 12404 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12404 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL 13 OF 2020  
EM MURIITHI, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**ROSEMARY WAWIRA MUCIRA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF GEOFFREY HENRY MUCIRA MAGONDU). APPELLANT**

**AND**

**PETER MUCHIRA GICHOBI ..... RESPONDENT**

*(Being an Appeal from the Judgment of Honourable G.K. Odhiambo (R.M) delivered on 17/1/2020 at Gichugu PMCC No. 28 of 2019)*

**JUDGMENT**

1. By a plaint dated 4/4/2019, the Appellant sued the Respondent seeking general damages, special damages of Ksh. 137,850 and costs of the suit plus interest. The Appellant pleaded that on or about 25/1/2018, the deceased was lawfully riding his motor cycle Registration No. KMDV 242 K along Kianyaga Kutus Road at Green vine yard area, when the Respondent and/or his authorized driver so carelessly and negligently drove Motor Vehicle Registration No. KCJ 799 S Toyota Probox that it knocked down the deceased, thereby fatally injuring him.
2. The Respondent denied the claim vide his statement of defence dated 30/4/2019 and prayed for the Appellant's suit to be dismissed with costs.
3. Upon full hearing of the case, the trial court apportioned liability at 50% and awarded general damages for pain and suffering of Ksh. 40,000, Ksh. 100,000 for Loss of Expectation of Life, Ksh. 100,000 for Loss of Consortium, Ksh. 1,203,592 for Loss of Dependency and special damages of Ksh. 137,850 together with costs and interest.



## **The appeal**

4. On appeal, the Appellant vide her memorandum of appeal dated 14/2/2020 set out 3 grounds as follows:
  1. The trial magistrate erred in apportioning liability at 50:50.
  2. The trial magistrate erred in law and fact in ignoring the evidence adduced by the investigating officer who visited the scene of the accident.
  3. The trial magistrate erred in law and fact by assessing loss of consortium manifestly low.

## **Duty of the Court**

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).

## **Evidence**

6. PW1 Rosemary Wawira Mucira and the Appellant herein adopted her statement as her evidence in chief and produced the list of documents as exhibits.
7. On cross examination, she stated that, “I was not present when the accident took place. I was called by the sub-area and informed of the accident. The sub-area is called Chomba. The vehicle registration number is KCJ, I don't know the other numbers. I went to Kianyaga hospital. I first went to the scene of accident. The deceased had already been taken to hospital. The deceased was a farm manager at Karumande. He used to earn 15,000 per month. I don't have any documentation to prove this. He would come with the salary at home. I don't know how he was being paid his salary. The deceased was 42 years old. The certificate of death shows he is 47 years old. Receipt exhibit 7 - 9 - I paid the expenses on 30/1/2018 as per the receipts. The neighbors contributed to the funeral. I don't remember if we managed to raise Kshs 137,850. The burial was after five to six days. The cause of death was due to severe head injury. The deceased had a helmet. The deceased motorcycle was insured. Paragraph 5: Particulars of negligence - I was called and informed that vehicle was being driven at a high speed. Janet called the sub-area who called me. I didn't know Janet before.”
8. In re-examination, she stated that, “The registration number of the vehicle is indicated in my statements. It's KCJ 799S. The deceased earned 15,000/=. He would come with the money at home. Receipts exhibit 7 - 9 - they are in my name. I was given the receipt after I had paid for the services. The neighbors assisted us to offset the sums used for catering. I have not included these services in my pleadings. Janet was not known to me before she called our sub-area who called me.”
9. PW2 Janet Murugi Muriuki adopted her statement dated 4/4/2019 as her evidence in chief.
10. On cross examination, she stated that, “I don't have my original ID card in court. I was at my main gate at Kutus Kirinyaga road. The distance from my gate and the road is about two meters. I was on the left side of the road. I was facing the Kutus direction. While facing Kutus I was on the right while facing Kianyaga I was on the left side. The rider passed me where I was standing and he waved at me. I know the deceased. The wife of the deceased doesn't know me. I don't recall the vehicle registration number. The motorcycle was heading to Kutus. When the motorcycle passed me there was another vehicle behind the motorcycle. After the motorcycle passed me an accident occurred after 30 seconds. I saw Mucira using his hand signal that he was joining the road. He used his right hand as a signal. The



deceased also had a luggage. It was a sack weighing about 30 - 35kgs. The deceased waved at me when he passed. I didn't see the vehicle knock the motorcycle. I only heard a loud bang. That is when I turned and I saw the deceased in the air. The deceased fell few meters from the point of impact. The vehicle went to about 100 meters and stopped. The Probox didn't stop after 20 meters from point of impact. This is my statement. I recorded it after 3 months from the date of accident. I was under stress while recording the distance. From where I was standing to where the deceased fell was about 30 meters. In my statement it's indicated 10 meters. I don't know the name of the OCS, I called him and he told me to take the deceased to hospital. I stopped a Nissan matatu and took the deceased to hospital. At the hospital, I called the village elder who notified PW1. The abstract doesn't have my name as a witness. I recorded my statements with the traffic police. Corporal Kioko came to my house and recorded my statement. I recorded my statement with the police at 7.30pm. They came to my home. Corporal Kioko and traffic police of Kerugoya came to my home. We took the deceased to hospital. They then visited the police. The deceased wanted to turn right, he indicated that he was turning right. There is no feeder road. The deceased was knocked down on the lane heading to Kianyaga. He had already turned and the point of impact was on the lane of the motor vehicle. The deceased was thrown on the right side off the road near the ditch. If the owner of the vehicle had braked, he wouldn't have caused the accident. The vehicle was being driven at high speed. I don't know the exact speed of the vehicle.”

11. In re-examination, she stated that, “My statement has the vehicle registration number KCJ. The deceased indicated that he was turning right, he pointed the route he was going. The deceased was on the lane of Kutus. He was knocked while going to Kianyaga road (while turning). I don't know who filled the police abstract. I only know CPL Kioko and not the police of Kerugoya. The deceased fell on the right side of the road at the ditch. The motorcycle was just ahead of him off the road. I didn't measure where I was standing and the place of the accident. What I gave was an estimate. I could however see the scene of the accident. The owner of the Probox was to slow down so that the rider would turn. He was at high speed.”
12. PW3 Cpl Yusuf Sharriff traffic officer attached at Kerugoya traffic base produced the police abstract as Exhibit 1. He testified that, “I have been at station for 2 years. The base commander received summons to attend court. I was summoned to produce the abstract. The accident occurred on 25/1/2018 along Kianyaga Kutus. It involved motor vehicle KCJ 799S make Toyota Probox and motor cycle KMDV 242K make sky-go. Motor vehicle KCJ 799S was being driven by Peter Muchira. It was a fatal road traffic accident. The rider died. He is called Geoffrey Henry Muchira Magondu. It was reported at our traffic base. Investigation was carried out. The case is pending before court. In inquest number 3/2018 at Kerugoya CMC court. The matter has not been finalized. I was paid 10,000/= to attend court.”
13. On cross examination, he stated that, “I don't have the OB. I'm here to produce the abstract. PC Sambo went home Rift valley he is stationed at Kerugoya, he is off-duty. So many abstracts were issued at my station. Witness shown abstract dated 1/2/2018. The motor cycle as per the abstract was uninsured. The matter is before court at Kerugoya. There could be someone to be blamed. If someone was to be blamed for the accident, an inquest wouldn't have been recommended. I don't have the sketch plans in court. The motor cycle was heading to Kutus. There are feeder roads to the main road. The case is before court. I can't tell which direction the motor cycle emerged from the feeder road. I don't know the time of the accident. I can't tell if the rider had a helmet. It's the doctor who could explain the injuries of the deceased. The matter is before court as an inquest.”
14. In re-examination, he stated that, “Police abstract are issued by the base commander. I was sent by the base commander.”
15. DW1 Moses Mureithi Gichobi adopted his statement dated 26/6/2019 as his evidence in chief and produced his driving license and the sketch plan as exhibits. He testified that, “The accident occurred



along Kianyaga-Kutus road. We were heading to Kutus. I was from Kianyaga. I was driving about 30 kilometers per hour. I was driving motor vehicle KCJ 799S. An accident occurred. It happened suddenly. I was on the left side facing Kutus. Suddenly the motor cycle joined the main road from the left side from the feeder road. It's motor cycle KMDU 242K. It came from the feeder road to main road. The motor cycle turned to the feeder road on the right side of the road. The motor cycle was at a high speed. It joined on the main road. It crushed on my motor vehicle. The motor cycle fell on the right side. The vehicle lost control and it moved on the left side towards Kutus. I didn't knock the motor cyclist down. I didn't see anyone at the road. I have been driving a motor vehicle for 8 years. I have not been charged with any traffic case. If I was to be blamed I would have been charged. I do have a sketch plan on how the accident occurred. The rider had not worn a helmet. The rider was at a very high speed. It's the rider who caused the accident. He didn't indicate that he was joining the road. He didn't use any hand signal. I came to know that the rider passed on. This court should dismiss this matter. The motor cycle came from the feeder road. It wanted to cross to the other feeder road. It joined the road from the left side. I was on the left side heading to Kutus. That is when we crashed. The rider wanted to cross the road to the other feeder road on the right side of the road."

16. On cross examination, he stated that, "I have told the court the truth. Witness referred to exhibit 2. The exhibit was drawn after the accident on 25/1/2018. I was doing 60 kilometers per hour as per the sketch plan. I'm telling the court the truth I didn't lie to the investigator. The sketch plan has two roads on the right and left. These are the feeder roads. There is a main road from Kutus to Kianyaga. There is a road on the left. It's a feeder road. On the right side there is a road. It's not a junction. .... On the left side of the main road there is a road. It doesn't cross to the other end of the road (main road). There are two different junctions on the road. I didn't see the motor cycle when it joined the road. The road (main road) was clear. The feeder has some bushes. The motor cycle came from the feeder road from the left side. It suddenly emerged on the road. I swerved to the overtaking lane to avoid colliding with the motor cycle. It's the motor cycle that crashed on my vehicle. It hit me on the left front corner at the vehicle's headlamp. I have been a driver for 8 years. The motor cycle was being driven at a high speed. If you apply emergency breaks the vehicle still has to move for a distance. In exhibit 2 it is not indicated that I hooted. Where the accident occurred there's a school called green yard. It's about some meters ahead. The entrance on the right of the sketch plan is not the entrance to green yard school. There are homes nearby. Nobody saw the accident. People came after the accident. I didn't go for the vehicle from the police station. After the accident, I escaped to Kianyaga police station. I recorded my statement with the police on 27/1/2018. The accident occurred on 25/1/2018. I was given a notice to attend court at Kerugoya. I have testified in court. Other people have testified in those proceedings. I didn't see the village in charge testify in Kerugoya. I was not behind the motor cycle. The motor cycle didn't show that it wanted to turn to green yard school. The rider died. I saw the accident occur. I was at the scene with the rider. I have not seen the police abstract that was to the owner of the vehicle I don't know if the police had finalized their investigations. PEX1: Abstract - The matter had been referred to court as inquest. The inquest is still pending in court. The inquest determines who was to blame for the accident."
17. In re-examination, he stated that, "I have been shown two abstracts. PEX1 - The name of witness part. Janet Murugi is not a witness. 2<sup>nd</sup> abstract shown to witness. Witnesses listed are Moses Mureithi. Sketch Plan It showed the position of the vehicle and motor cycle. The speed as per sketch plan is estimated speed. The motor cycle was from the left side heading to the right side. It didn't reach the feeder road an accident occurred at the middle of the road. I escaped because motor cycle riders came to the scene they wanted to burn the vehicle. My life was in danger. I went to the police station. The motor cycle did hit my vehicle on the left side at the headlamps. I was not behind the motor cycle. The



rider didn't show any signal when he turned. If I was to be blamed for the accident there would have been no need for the inquest.”

### **Submissions**

18. The Appellant urges that liability is only apportioned equally where there is no concrete evidence to determine who is to blame between the two drivers, as was observed in *Hussein Omar Farar v Lento Agencies* (2006) eKLR. She urges that there was overwhelming evidence that the Respondent was 100% liable for the accident, since no negligence on the part of the rider had been proved. She urges that the award of Ksh. 100,000 for loss of consortium was manifestly low, and cites *PBS & Another v Archdiocese of Nairobi Kenya Registered Trustees & 2 Others* (2016) eKLR.
19. The Respondent did not file any submissions despite opportunity to do so.

### **Analysis and determination**

20. From the grounds of appeal as framed, the issues for determination are whether the apportionment of liability at 50% was proper and whether the award of Ksh. 100,000 for loss of consortium was manifestly low.

### **Liability**

21. The age-old principle of law is that he who alleges must prove.
22. The testimony of the police officer, PW3 was at best hearsay because he was neither an eyewitness nor the investigating officer.
23. The 2 eye witnesses in this case, PW2 and DW1 gave conflicting accounts of how the accident occurred.
24. PW2 stated on thorough cross examination that, “The motorcycle was heading to Kutus. When the motorcycle passed me there was another vehicle behind the motorcycle. After the motorcycle passed me an accident occurred after 30 seconds. I saw Mucira using his hand signal that he was joining the road. He used his right hand as a signal. The deceased also had a luggage. It was a sack weighing about 30 - 35kgs. I didn't see the vehicle knock the motorcycle. I only heard a loud bang. If the owner of the vehicle had braked, he wouldn't have caused the accident. The vehicle was being driven at high speed.” In re-examination, she stated that, “The deceased was on the lane of Kutus. He was knocked while going to Kianyaga road (while turning). The owner of the Probox was to slow down so that the rider would turn. He was at high speed.”
25. On his part, DW1 maintained that, “I was driving about 30 kilometers per hour. I was on the left side facing Kutus. Suddenly the motor cycle joined the main road from the left side from the feeder road. It came from the feeder road to main road. The motor cycle turned to the feeder road on the right side of the road. The motor cycle was at a high speed. It joined on the main road. It crushed on my motor vehicle. The motor cycle fell on the right side. The rider had not worn a helmet. He didn't indicate that he was joining the road. He didn't use any hand signal. The rider wanted to cross the road to the other feeder road on the right side of the road.”
26. The deceased rider was clearly negligent for suddenly emerging from a feeder road into the main road at high speed and without giving any proper indication. On the flipside, DW1 was not entirely free from blame because he failed to take reasonable evasive action, such as braking, swerving, hooting or generally keeping proper look out, that could have averted the accident or mitigated the impact.



27. In *Hussein Omar Farah v Lento Agencies* [2006] KECA 388 (KLR), cited by the Appellant, the Court of Appeal espoused that;

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame... The trial court, as we have said, had two conflicting versions of how the accident occurred. Both parties insisted that the fault lay with the other side. As no side could establish the fault of the opposite party we would think that liability for the accident could be equally on both the drivers. We therefore hold each driver equally to blame.”

28. Similarly in *Welch v Standard Bank Ltd* (1970) EA 116 the court, in holding both drivers equally to blame for the accident expressed itself thus;

“Notwithstanding that the accident probably occurred because of negligence on the part of one or the other or both drivers, there are no means to enable a choice to be made between these possibilities so that it may be said, not as mere conjecture but with a degree of assurance acceptable to a tribunal acting judicially, that as a proper inference one of these alternatives is the correct answer in fixing the blame for the collision. The court’s dilemma is there is nothing to enable it to say the accident happened in some particular way. There are no witnesses, no marks on the road, no data to strike a balance of probabilities, no usual conflict of expert evidence, no expert evidence, no evidence at all; nothing save for speculative inferences to be gleaned from the indecisive mute testimony of the damage to the two cars or from the measurements shown in the sketch plan of the scene. In this dilemma should the court surrender its functional duty of determining the controversy by taking an easy way out and telling the parties the action must fail for lack of probative material; or should it say because a collision does not normally take place without negligence on someone’s part, it is incumbent that the court perform its operative task of reaching a decision notwithstanding.”

29. In the circumstances therefore, this court finds that both the deceased rider and DW1 were to blame for the accident, and the trial court’s apportionment of liability equally between them was appropriate.

### **Inordinately low award for loss of consortium**

30. The Appellant was the wife of the deceased, who was aged 47 years at the time of his untimely death, and she thus lost his companionship, affection, support and care.

31. The Court of Appeal held in *Salvatore De Luca v Abdullahi Hemed Khalil & another* (Civil Appeal 73 of 1994) [1994] KECA 80 (KLR) (27 January 1994) (Judgment), has guided that loss of consortium may be awarded, each case being judged on its own facts:

“So far as consortium is concerned, there is evidence that the appellant loved his wife and so did their children. The appellant has not re-married. No doubt, he had lost his wife’s companionship. There is, moreover, an impairment in the social life of the appellant and his young children who, too, have lost love, care and devotion of their mother. The learned judge clearly erred, in our view, in failing to award any damages for loss of consortium and servitium. Bearing in mind the fact that each case should be judged on its own facts, we



would think that an award of Shs. 40,000/= is a fair measure for this head of damages and we award the appellant this sum with interest from the date of judgement in the superior court until payment in full.”

32. In the recent decision of Attorney General & another v Wayongo (Suing as Personal Representative of the Estate of Phelisters Wamalwa Walubengo) (Civil Appeal E39 of 2022) [2025] KEHC 1298 (KLR) (27 February 2025) (Judgment), the court (RPV Wendoh J.) upheld a trial court’s award of Ksh.150,000 for loss of consortium.
33. This court finds that the accident deprived the Appellant of a shared life with the deceased and emotional support, and the award of Ksh.100,000 for loss of consortium was not inordinately low for the immensurable loss she suffered to warrant intervention by the appellate court.

#### **Orders**

34. Accordingly for the reasons set out above, the court finds the appeal to be without merit and it is dismissed.
35. The Respondent’s Counsel indicated that he had not instructions on the appeal and the Respondent did not file any submissions in response to the appeal and there shall, therefore, be no order as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms. Naliaka for Mr. Kiama for the Appellant.

N/A for the Respondent.

