



**Pelton Transporters Limited & another v Gichohi & another (Civil Appeal E028 of 2024) [2025] KEHC 12405 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12405 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E028 OF 2024  
EM MURIITHI, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**PELTON TRANSPORTERS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**ZEPHANIAHS SAUL OSANYU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DORCAS WAIRIMU GICHOHI ..... 1<sup>ST</sup> RESPONDENT**

**JAMES MAINA GICHOHI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment of Honorable S.M Nyaga (P.M)  
delivered on the 14/3/2024 at Baricho PMCC No. E090 of 2023)*

**JUDGMENT**

**JUDGMENT**

1. By a plaint dated 2152023, the Respondents sued the Appellants seeking general damages under the *Law Reform Act* and the *Fatal Accidents Act*, special damages of Ksh. 33,500 and costs of the suit plus interest. The Respondents pleaded that on or about 1862022, Charles Gichohi Muita, the deceased herein, was a lawful passenger aboard motor vehicle registration No. KCS 459J along Karatina - Sagana road at Kibirigwa area, when the Appellants, their driver, servant and/or agent so negligently drove, managed and controlled Motor Vehicle Registration No. KBC 481 M that it rammed into the vehicle he was travelling in, as a result of which he sustained fatal injuries. At the time of his death, the deceased was a 65 year old retired teacher enjoying a good life and a farmer earning Ksh. 5,000 per month, and by his death, his dependants and his estate suffered loss and damage.
2. The Appellants denied the claim vide their statement of defence dated 572023 and prayed for the Respondents' suit to be dismissed with costs.



3. The parties recorded a consent judgment on liability at the ratio of 10:90 in favour of the Respondents against the Appellants and upon full hearing on quantum, the trial court awarded Ksh. 50,000 for pain and suffering, Ksh. 100,000 for loss of expectation of life, Ksh. 800,000 for loss of dependency and special damages of Ksh. 33,500 together with costs and interest.

### **The appeal**

4. On appeal, the Appellants vide their memorandum of appeal dated 842024 set out 6 grounds as follows:
  1. The learned trial Magistrate erred in law and fact by awarding excessive damages in quantum against the appellant.
  2. The learned trial Magistrate erred in law and fact by overlooking overwhelming and compelling evidence rendered by the Appellant.
  3. The learned trial Magistrate erred in law and fact in failing to analyse exculpatory matters that were before the court before it arrived at the eventual determination.
  4. The learned trial Magistrate erred in law and fact in reaching a determination that was marred by a series of errors of fact.
  5. The learned trial Magistrate erred in law fact by failing to consider the submissions by the Defendants.
  6. The learned trial magistrate erred in law and fact by reaching a determination that was mainly influenced by bias.

### **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).
6. The case was heard by way of written submissions and the Respondents' documents produced by consent.

### **Submissions on the Appeal**

7. The Appellants propose a global award of Ksh. 500,000 for loss of dependency, and cite *Dora Mwawandu Samuel* (Suing on her behalf and on behalf of the Estate of Samuel Muweliani Jumamosi - Deceased) v *Shabir M. Hassan* [2021] KEHC 8665 (KLR) and *Shalom Transporters v Omare & another* (Suing as the legal representative of the Estate of Martha Moraa); *Nyamo Investment & another (Third Party)* (Civil Appeal 4 of 2020) [2023] KEHC 27267 (KLR) (27 November 2023) (Judgment). They cite *Abok James Odera TA A.J Odera & Associates v John Patrick Machira TA Machira & Co. Advocates* [2013] KECA 208 (KLR), *Kenya Ports Authority v Kuston (Kenya) Limited* (2009) 2 EA 212 and *Kemfro Africa Limited ta "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] KECA 137 (KLR) on the duty of the first appellate court.
8. The Respondents urge that the global award of Ksh.800,000 was justified as it took into account the inflation rate, and cite *Ndungu & another v Munene* (Civil Appeal 31 of 2020) [2022] KEHC 3023 (KLR) (21 April 2022) (Judgment), *Peter Wainaina & another v Lucia Ndulu Muindi & another*



[2021] KEHC 1986 (KLR and Kara Commodities Limited v Muyendi (Suing as the administrator of the Estate of Onesmus Ndilivu Muyendi) (Civil Appeal E001 of 2021) [2024] KEHC 1237 (KLR) (7 February 2024) (Judgment).

### **Analysis and determination**

9. From the grounds of appeal as framed, the issues for determination are whether the awards were excessive and whether the Appellants' submissions were considered.

### **Excessive damages**

10. This court has previously considered the principles for appellate interference with an award of damages by a trial court in *Crown Bus Services Ltd & 2 others v BM (Minor suing through his mother & Next Friend) SMA* [2020] eKLR as follows:

“The well-known principles for interference with an award of damages by a trial court are laid down by the Privy Council in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601, 613 and applied in East Africa by Sir K. O'Connor (with whom Sir Alastair Forbes, V.-P. and Newbold, J.A. agreed) in *Henry H. Ilanga v. M. Manyoka* [1961] EA 705, 713 as follows: “The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking in some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell*, [1935] 1 K.B.), approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.”

11. According to the Post mortem Report, the deceased succumbed to the injuries while receiving treatment at Karatina Sub-County Hospital. It is therefore reasonably expected that he endured excruciating pain, and the award of Ksh. 50,000 awarded by the trial court for pain and suffering was thus appropriate.
12. The trial court cannot be faulted for awarding the conventional amount of Ksh. 100,000 for loss of expectation of life.
13. The special damages of Ksh. 33,500 awarded by the trial court were specifically pleaded and strictly proved. The Respondents produced 3 receipts from Nanyuki Cottage Hospital of Ksh. 27,500, Ksh. 400 and Ksh. 5,600.
14. The deceased herein was 65 years old enjoying a happy and healthy life. It is urged that the deceased was farming on the side to support his wife and 3 adult children aged 39, 37 and 29 years old. It is not conceivable that the deceased was supporting the grown up children and cogent evidence is necessary to prove such actual dependency. The Court may adopt a reasonable global figure for dependency in the circumstances.
15. In *Moses Maina Waweru v Esther Wanjiru Githae* (Suing as the Personal Representative of the Estate of the Late David Githae Kiririo Taiti [2022] KEHC 1330 (KLR), the court (J.N Njagi J.) substituted a trial court's award for loss of dependency of Ksh.2,000,000 with Ksh.800,000 for a 68 year old deceased who was survived by a wife and adult children.



16. In *Nderi & another (Suing as Legal Representatives of the Estate of Sebera Karimi Nderi) v Njiru & another (Civil Appeal E071 of 2023) [2025] KEHC 7821 (KLR) (4 June 2025) (Judgment)*, the court (R. Mwangi J) awarded Ksh. 800,000 for loss of dependency for a 60 year old deceased who was survived by 2 adult children.
17. On the principle of comparable award for comparable injury, the court finds that the global award of Ksh.800,000 for loss of dependency was justified in view of the prevailing inflationary rate.

#### **Consideration of the Appellants' submissions**

18. The Appellant's fault the trial court for disregarding their submissions and authorities is misconceived because submissions are a mere guide to the court as they are not pleadings or evidence, and their non-consideration cannot in itself be a basis to overturn a trial court's decision, and it is probable that the Court duly considered the submissions but was unpersuaded by the arguments.

#### **Orders**

19. Accordingly for the reasons set out above, the Court finds the Appellants' appeal is without merit and it is dismissed.
20. The Appellant shall pay the costs of the appeal to the Respondents.  
Order accordingly.

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

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Situma for Mr. Busiega for the Appellant.

Ms. Bundi for Mrs. Waweru for the Respondent.

