



**Mukangai (Suing as administrator and personal representative of the Estate of Hilderguard Wiyema Ambia (Deceased) v Langat (Civil Appeal E011 of 2023) [2024] KEHC 4510 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 4510 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E011 OF 2023  
REA OUGO, J  
MARCH 20, 2024**

**BETWEEN**

**RONALD ASMAN MUKANGAI (SUING AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF HILDERGUARD WIYEMA AMBIA (DECEASED) ..... APPELLANT**

**AND**

**WYCLIFFE KIPKORIR LANGAT ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. M. Munyekenye Senior Principal Magistrate in Webuye Senior Principal Magistrate's Court Civil Suit No. 155 of 2019 delivered on 22nd February 2023)*

**JUDGMENT**

1. The appeal before the court is solely challenging the trial magistrate award on damages. A brief background is that the appellant filed a plaint before the subordinate court claiming that on 11<sup>th</sup> March 2019, the deceased was travelling as a pillion passenger along the Eldoret-Bungoma road and that in Mwananchi area, the respondent's driver who was driving a vehicle registration number KBC 837M knocked the motorcycle. As a result of the accident, the deceased sustained severe bodily injuries which caused her demise.
2. The trial magistrate, following an elaborate hearing, entered judgment as follows:
  - a. Pain and Suffering Kshs 100,000
  - b. Loss of Expectation of Life Kshs 100,000
  - c. Loss of Dependency Kshs 1,316,140/



- d. Funeral Expenses Kshs 118,000  
Less 40% Contribution Kshs 653,656  
Amount Payable Kshs 980,484/-
3. The appellant filed his memorandum of appeal dated 23<sup>rd</sup> February 2023 on the following grounds:
1. That the learned trial Magistrate erred in law and in fact by applying dependency ratio of 1/3 instead of 2/3.
  2. That the learned trial Magistrate erred in law and in fact by adopting Kshs. 19,355 as a multiplicand.
  3. That the learned trial Magistrate erred in law and in fact by not appreciating what a statutory deduction is thereby arriving at a wrong decision.
  4. That the learned trial Magistrate misapprehended the facts and the law thereby arriving at a wrong and discriminative decision.
4. The appellant seeks that the dependency ratio be enhanced to 2/3, similarly, he has urged the court to also enhance the multiplicand of Kshs. 19,355/-.
5. The appellant in his submissions dated 9<sup>th</sup> October 2023 contends that the deceased had a child and the appellant was her spouse, therefore, the dependency ratio ought to have been 2/3. He relied on the case of Meru Civil Appeal No. 64 of 2021, Sarah Naitore M'ikunyua (Suing as the legal representative and administrator of the estate of the late Josephine Kendi (deceased) v Geoffrey Mwangi Bor & Another where the court applied a dependency ratio of 2/3 for a single mother who died.
6. It was also submitted that the appellant produced the deceased's payslip in which it was indicated that she earned a gross salary of Kshs 68,563/- and that her net salary was Kshs 65,983/- after deductions. He cited the case of *Hellen Gesare Ayoti v P.N. Mashru* [2016] eKLR.
7. The appeal was opposed by the respondent who filed their submissions dated 15<sup>th</sup> December 2023. The respondent submits that the question of dependency is a matter of fact that must be proved (see *James Mulolo Elisha & Another v Thomas Martin Kibusu* [2014] eKLR. He submits that the appellant testified that he did not depend on the deceased and that they shared the responsibility of bringing up the children. He urged the court to use the dependency ratio of 1/2 as opposed to 2/3. He relied on the decision in *P B S and Another v Archdiocese of Nairobi Kenya Registered Trustee & 2 others* [2016] eKLR where the court applied a dependency ratio of 1/2 as the plaintiff failed to show how the deceased spent 2/3 of her income on her family. The respondent further relied on the case of *Steve Ongingo & another v Susan Adongo Otieno & Another* [2018] eKLR.
8. On the multiplicand, it was submitted that they had urged the trial magistrate to apply a multiplicand of the deceased's salary, less taxes and statutory deductions. They cited the decision by the Court of Appeal in *Vincent Sululu & Another v Rose Wanjiru* [2016] eKLR to guide the lower court. They submit that the trial magistrate was plainly wrong in using the deceased's net salary as the multiplicand.
9. On costs, they submit that costs follow the event, however in a case such as this one, they ought not to bear the costs. They submit that they made the correct submissions before the subordinate court and that it was the trial magistrate who failed to heed their submissions.



## Analysis And Determination

10. I have carefully considered the appeal, the rival submissions by parties and the evidence on record. The only issue is whether the damages awarded by the trial court were excessive, that is, whether the trial court applied the correct dependency ratio and multiplicand. I stand guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”

11. I will first consider whether the trial magistrate applied the correct dependency ratio. The trial court in awarding the ratio of 1/3 based her decision on the fact that one of the deceased’s children died in the same accident that killed the deceased and that she was survived by only one child. The appellant argues that the trial magistrate ought to have awarded 2/3 as the dependency ratio taking into account that the deceased was survived by a spouse and child.

12. In *Albert Kubai Mbogori v Violet Jeptum Rabedi* [2017] eKLR the court observed that:

“The degree of dependency on the deceased’s income is a matter of fact. In *Boru v Onduu* [1982-1988] KAR 299, the Court expressed that,

“The extent to which the family is being supported must depend on the circumstances of each case. To ascertain it the judge will analyze the available evidence as to how much the deceased earned and how much he spent on his family. There can be no rule or principle in such a situation.”

13. The appellant, Ronald Asman Muikangai testified as Pw1 before the subordinate court. He adopted his statement dated 20<sup>th</sup> April 2019. He testified that he had two children with the deceased and that the deceased supported the family financially. He testified that she contributed to paying school fees, clothing and medication. On cross-examination, he testified that one of their children died as he was with the deceased. He testified that they both took care of the children and that the deceased helped him raise the family.

14. The evidence of the deceased’s contribution is based on the facts before the accident. The trial magistrate did fall into error when she reduced her contributions to 1/3 on the basis that one of her children died along with her. The appellant in his witness statement testified that he relied on the deceased to pay school fees for the children and to contribute towards the clothing and medication of the whole family. The deceased therefore supported both her husband, Pw1 and their children. There was, however, evidence from Pw1 that they shared financial responsibility with the deceased. Therefore, a dependency ratio of ½ would apply in this case.

15. I now turn to consider the multiplicand. The trial magistrate applied a multiplicand of Kshs 19,355/- noting that that was the net earnings of the deceased after all the deductions. The Court of Appeal in *Mary Osano (Personal Representative of the estate Charles Otwor Ogechi - Deceased) v Simon Kimutai* [2020] eKLR, Kisumu Civil Appeal Number 48 OF 2016 stated as follows:

“Counsel for the appellant submitted that the deceased’s net pay as evidenced by a copy of his payslip was Kshs 53,550 per month, with a house allowance of Kshs 45,000 per month



which totals to Kshs 98,550. The statutory deductions as contained in the payslip are; P.A.Y.E at Kshs 23,947; NHIF at Kshs 320 and NSSF at Kshs 3748 which totals to Kshs 28,015. The rest do not amount to statutory deductions as the learned Judge erroneously held. In our assessment, the rest of the deductions were either in the form of savings or payment of loans, none of which are to be factored in when determining a multiplicand.”

16. In this case, the net pay of the deceased would comprise her gross salary less statutory deductions. The trial magistrate ought not to have deducted her loan payments and her savings. The deceased was a teacher and her gross earnings according to her payslip were Kshs 68,563/-. Her net income would be her gross income less PAYE and NHIF, which is Kshs 53,370.30/- (68,563 - 13892.70 - 1,300). Consequently, the loss of dependency shall be Kshs 5,443,770.60 (53,370.3 x 12 x 17 x 1/2).

17. In the end, I find that the appeal is meritorious. The appellant will have a judgment made as follows:

- a. Pain and suffering Kshs 100,000.00
- b. Loss of expectation of life Kshs 100,000.00
- c. Funeral Expenses Kshs 118,000.00
- d. Loss of Dependency Kshs 5,443,770.60

Total Kshs 5,761,770.60/-

Less 40% liability Kshs 2,304,708.24/-

Net Total Kshs 3,457,062.36/-

16. The respondent has argued that he made correct submissions which were disregarded by the trial court, however, looking at his submissions before the subordinate court, he proposed an award of Kshs 3,198,018/- as an award for dependency. The appellant having succeeded in his appeal is entitled to costs. The appellant is awarded the cost of the appeal. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 20<sup>TH</sup> DAY OF MARCH 2024**

**R.E. OUGO**

**JUDGE**

In the presence of:

Appellant- Absent

Miss Awino -For the Respondent

Wilkister -C/A

