



**Ibrahim & another v Motari & another (Suing as Legal Representatives
of the Estate of Beavon Nyakango Motari) (Civil Appeal 482 of 2018)
[2024] KEHC 4022 (KLR) (Civ) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4022 (KLR)

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

CIVIL

CIVIL APPEAL 482 OF 2018

DAS MAJANJA, J

APRIL 24, 2024

BETWEEN

KAMAU IBRAHIM 1ST APPELLANT

PETER NJOROGE 2ND APPELLANT

AND

EVANS ARIRI MOTARI 1ST RESPONDENT

PAORINA KWAMBOKA MOTARI 2ND RESPONDENT

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF BEAVON
NYAKANGO MOTARI**

(Being an appeal from the Judgment and Decree of Hon. D. Ocharo, SRM dated 11th September 2018 at the Nairobi Magistrates Court at Milimani in CMCC No. 5998 of 2016)

JUDGMENT

1. The Appellants challenge the Subordinate Court's award on quantum of damages. In their memorandum of appeal dated 08.10.2018 they claim that the Kshs. 2,276,595.00 awarded by the court is excessive.
2. A summary of what transpired before the trial court is that the Respondents, acting as legal representatives of the estate of Beavon Nyakango Motari (Deceased), filed suit by the plaint dated 19.07.2016. The Deceased had lost his life as a result of road traffic accident that occurred on 10.02.2015 between the Appellants' motor vehicle and his motor cycle. The Respondents made their claim under the *Fatal Accidents Act* (Chapter 32 of the Laws of Kenya) and the *Law Reform Act* (*Chapter 26* of the Laws of Kenya). The issue of liability was settled by consent and was apportioned



at the ratio of 90:10 in favour of the Respondents. They proceeded to file submissions on quantum of damages.

3. The Appellants proposed an award of Kshs. 10,000.00 for pain and suffering arguing that the Deceased died immediately after the accident. They relied on *John Mureithi Kariuki v George Mwangi* [2012] eKLR where the court made an award of Kshs. 10,000.00 for a death that occurred on the same day of the accident. The Respondents on their part proposed a sum of Kshs. 50,000.00 calling in aid *Francis Wainaina Kirungu (suing as personal representative of the estate of John Karanja Wainaina) v Elijah Oketch Adella* [2015] eKLR where a similar amount was awarded for a death that occurred shortly after the accident. The court awarded Kshs. 100,000.00 under this head.
4. On the limb of loss of expectation of life, the Appellants submitted that an award of Kshs. 70,000.00 would be sufficient while the Respondents prayed for an award of Kshs. 150,000.00. The court awarded Kshs. 100,000.00 under this head as well.
5. Regarding the award of damages under the *Fatal Accidents Act* and noting that the deceased was 26 years at the time of his death, the Appellants proposed a multiplier of 15 years while the Respondents proposed 34 years pegged on the retirement age in Kenya. The court applied 34 years as the multiplier. Both parties agreed on 2/3 as the dependency ratio and a multiplicand of Kshs. 8,000.00 being the minimum wage for a general labourer prescribed by Legal Notice No. 116 *Regulation of Wages Order, 2015*. The trial court thus awarded Kshs. 2,176,000.00 calculated as follows: 8,000 X 12 X 34 X 2/3.
6. The trial court awarded Kshs. 153, 550.00 as special damages as pleaded though the Appellants had prayed that only Kshs. 41,815.00 be awarded since receipts produced in court only proved that amount.
7. It is against the aforesaid background that I am required to determine this appeal. The parties have filed written submissions which I have duly considered.
8. The principles upon which an appellate court can disturb quantum of damages awarded by a trial judge are well settled. The Court of Appeal in *Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another* (No. 2) [1987] KLR held that the appellate court must be satisfied that either the trial judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
9. In deciding the multiplier, not only the age of the deceased and the retirement age are considered, the court should also consider the ages and expectations of life of the dependants (see *Charles Masoso Barasa & Another v Chepkoech Rotich & Another* [2014]eKLR). After all, the claim is for loss of dependency. The Deceased had a mother aged 88 years and children aged between 3 years and 7 years. Taking the age of the youngest child, the period of dependency would be at least 15 years. Even taking into account the normal vicissitudes of life, I find the multiplier of 34 years exaggerated. I would therefore interfere with the multiplier and award a multiplier of 15 years hence the total award would be Kshs. 960,000.00 made up as follows: Kshs 8,000.00 X 12 X 2/3 X 15.
10. The Appellant argues that the trial court ought to have deducted the award under the *Law Reform Act* from that under the *Fatal Accidents Act* and that failure to do so would amount to double compensation. In the *Kemfro Case (Supra)* the court observed as follows:

[T]he net benefit will be inherited by the same dependants under the *Law Reform Act* and that must be taken into account in the damages awarded under the *Fatal Accidents Act* because the loss suffered under the latter Act must be offset by the gain from the estate under the former Act.



11. As explained by the Court of Appeal, the duplication occurs when the beneficiaries of the deceased's estate under the Law Reform Act and dependants under the Fatal Accidents Act are the same hence an award for lost years under the former Act and for loss of dependency under the latter Act will go to the same persons. This principal does not mean that the estate of the deceased should be denied damages for pain and suffering and loss of expectation of life which are only awarded under the Law Reform Act for the benefit of the estate. The issue of double compensation or duplication of awards does not arise in these circumstances. The only award that could be duplicated is an award for lost years under the Law Reform Act given to the same dependants who are set to benefit under the Fatal Accidents Act. I therefore do not find any reason to disentitle the Respondents of the awards under the Law Reform Act.
12. The Respondent prayed for Kshs. 50,000.00 as damages for pain and suffering while the Appellants prayed for Kshs. 10,000.00. The court however awarded Kshs. 100,000.00 which was beyond what either party prayed for and without justification (see David Sironga ole Tukai v Francis arap Muge & 2 Others [2014]eLR). Considering that the deceased succumbed to the injuries immediately upon occurrence of the accident, I consider an award of Kshs. 50,000.00 as prayed by the Respondents to be sufficient.
13. Regarding special damages, I have perused the record of appeal together with the lower court file and found that receipts were filed in support of the same. The limited grant of letters of administration ad litem was also attached indicating that the expense of Kshs. 20,000.00 was expended towards the same. I therefore affirm the award.
14. In the result, I allow the appeal in part on the following terms:
 - a. The Judgment of the Subordinate Court dated 11.08.2018 is set aside and substituted with the following award:

Pain and Suffering Kshs. 50,000.00
Loss of Expectation of Life Kshs. 100,000.00
Loss of Dependency Kshs. 960,000.00
Special Damages Kshs. 153,550.00
Sub-total Kshs. 1,263,550.00
Less 10% contribution Kshs. 126,355.00
TOTAL Kshs. 1,137,195.00
 - b. The amount shall accrue interest from the date of judgment in the Subordinate Court.
 - c. The Respondents are directed make an application before the Subordinate Court under section 4(1) of the Fatal Accidents Act for apportionment and investment of the amount awarded.
 - d. The Respondents shall bear the costs of this appeal assessed at Kshs. 35,000.00.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2024.

D. S. MAJANJA

JUDGE

MNM Advocates LLP for the Appellant.

C. J. Chirchir & Associates Advocates for the Respondents.



