



**Investments & another v Naliaka & another (Suing as the Administrator of the Estate of the Late Peter Ngugi Wanjohi) (Civil Appeal E212 of 2020) [2025] KEHC 13082 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13082 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E212 OF 2020  
JN NJAGI, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**TANJAL INVESTMENTS ..... 1<sup>ST</sup> APPELLANT**

**DISMASS KIPRUTO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NANCY NALIAKA ..... 1<sup>ST</sup> RESPONDENT**

**EDWARD GIKUNJU WANJOHI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE PETER  
NGUGI WANJOHI**

*(Being an appeal from the decree and judgment of Hon. D.O Mbeja (PM) in Milimani Chief Magistrate's Court CMCC No. 4161 of 2017 delivered on 24th December, 2018)*

**JUDGMENT**

1. The respondents herein brought suit against the Appellants wherein they were seeking general and special damages after their kin (herein referred to as the deceased) was killed in a road traffic accident involving a motor vehicle owned by the 1<sup>st</sup> Appellant and which at the time of the accident was being driven by the 2<sup>nd</sup> Appellant. The trial court found the Appellants liable for the accident and awarded damages, inter alia, as follows:
  - (a) Loss of expectation of life.....Ksh. 150,000/=
  - (b) Loss of dependency .....Ksh.4,879,800
2. The appellants were dissatisfied with the awards on the loss of expectation of life and loss of dependency and filed the present appeal. The grounds of appeal are that: -



- (a) The learned trial magistrate erred in law in relying on extraneous circumstances not supported by the evidence on record.
  - (b) The learned trial magistrate erred in law and in fact by awarding a sum of Kshs. 150,000/= for loss of expectation of life a sum which was excessive and not supported by evidence.
  - (c) The learned trial magistrate erred in law and in fact by adopting a multiplicand of Kshs. 29,169/= which is minimum wage for a driver of heavy commercial vehicles which was excessive and not supported by the evidence on record.
  - (d) The learned trial magistrate erred in law and in fact by adopting a multiplier of 20 years which were excessive in the circumstances.
  - (e) The learned trial magistrate erred in law and in fact in awarding the Respondents` a sum of Kshs. 4,879,800/= which award was excessive in contravention of the laid down principles and was an erroneous estimate of the damages awardable.
  - (f) The learned trial magistrate erred in law and in fact in failing to pay regard to decisions filed alongside the Appellants` submissions that were guiding in the amount of quantum that is appropriate and applicable on similar injuries as the case he was dealing with.
  - (g) The learned trial magistrate erred in fact and law in finding that the respondent was entitled to general damages that were too high in view of the injuries suffered by the Plaintiff.
3. The appellants sought that the judgment and decree of the trial court be set aside or otherwise reviewed and substituted with a suitable award. The Respondents on the other hand opposed the appeal.
  4. The appeal herein is thus on the issue of quantum of damages awarded on loss of expectation of life and loss of dependency. The duty of the first appellate Court was settled by the Court of Appeal in the case of *Selle -vs- Associated Motor Boat Co. Ltd & Others* (1968) EA 123 where it was spelt out that the jurisdiction of the first appellate court is to reassess and re-evaluate the evidence and to come up with its own conclusions. It is therefore the duty of this court to consider the evidence as was produced before the trial court and come up with its conclusion and determination on the issues raised in the appeal.
  5. The appeal was canvassed by way of written submissions of the respective counsels for the Appellants and the Respondents. Having considered the record of appeal, the submissions and the authorities relied on by the respective parties, the issue for determination is whether the quantum awarded by the trial court was excessive.
  6. The principles which guide the court in determining whether or not to disturb an award of damages made by a lower court are well settled. The same was stated by the Court of Appeal in *Bashir Ahmed Butt -vs- Uwais Ahmed Khan* (1982 – 88) KAR 5 as follows:-
 

“An Appellate court will not disturb and award of damages unless it is as 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 aspect and so arrived at figure which was inordinately high or low.”
  7. The same court in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2)* [1985] eKLR pronounced itself on the issue as follows:
 

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of



Appeal of Eastern Africa to be that it must be satisfied that either that the 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.

8. Having laid down the law guiding the determination of this appeal, I will now proceed to deal with the issues raised by the Appellants.
9. The evidence adduced before the trial court indicated that the deceased was hit by the Appellants' motor vehicle while changing a puncture of his motor vehicle beside the road. He was taken to Kenyatta National Hospital where he died on the same day while undergoing treatment.
10. The Appellants argued that the sum of Ksh.150,000/= made by the trial court on loss of expectation of life was excessive and not supported by evidence. On the other hand, the respondent argued that the award was appropriate and cited the case of *Violet Jeptum Rabedi vs. Albert Kubai Mbogori* (2013) eKLR where the court made an award of Kshs 150,000/= under this head, which award I have duly considered.
11. In have in addition considered the award in the case of *Mosonik & another v Cheruiyot (Suing as the Legal Administrator of the Estate of Stanley Kipchumba Kemboi, Deceased)* (Civil Appeal 113 of 2019) [2022] KEHC 11823 (KLR) (29 July 2022) (Judgment) where the court observed as follows:
  - “ 44 ...I note that *Benedeta Wanjiku Kimani v Changwon Cheboi & Another* [2013] eKLR, Hon Emukule J, reasoned that:

...In common law jurisprudence of which Kenya is part, the courts have evolved two principles, loss of expectation of life and pain and suffering by the deceased, for award of damages under the *Fatal Accidents Act* for pain and suffering ..... determined what is commonly referred to as a conventional sum which has increased over the years from Kshs 10,000/= to Sh 100,000/= currently. The basis of the increase has basically been based upon the increase of life expectancy from 45 years to run 60 years currently, that life itself was, until cut short by the accident worth something to the estate. The generally accepted principle is that very nominal damages will be awarded on this head claim if death followed immediately after the accident. Higher damages will be awarded if the pain and suffering was prolonged before death....”
  45. That was in 2013. Thereafter, in the case of *Citi Hoppa Bus Limited & Another v Maria Clara Rota* [2021] eKLR an award of Kshs 200,000/= was made for loss of expectation of life where the deceased was aged 33 years old.”
12. I have further considered the awards in the cases of *Wanderi & another v Nyambura & another* (2023) eKLR; *Patrick Kariuki Muiruri & 3 others v Attorney General* (2018) eKLR and *Vincent Kipkorir Tanui v Mogogosiek Tea Factory* (2018) where awards of Ksh.200,000/= were upheld in the respective cases for loss of expectation of life.
13. The deceased in the case under consideration died at the age of 36 years. According to his wife, PW3, he was energetic and was working as a driver. It was her evidence that the deceased was the sole bread winner of his family. In view of the cited awards, the award of Ksh. 150,000/= by the trial court for loss of expectation of life was not excessive. I consequently uphold the award in the said sum.
14. On the multiplicand, the Respondents adduced evidence that the deceased was working as a driver. They produced a Recommendation letter from City Shuttle Limited dated 1<sup>st</sup> November 2013 that



indicated that the deceased had been working as a driver with the said company from 15<sup>th</sup> May 2008 till October 2013. A witness for the Respondents, Annet Nakumichia, PW2 testified that the Appellant was their company driver and that on the date of the accident he was driving them from the city centre to Utawala in their company vehicle registration No.KBX 127R. The police abstract produced in the case indicated that the said vehicle was by make a HINO. I am persuaded from the foregoing evidence that the deceased was a bus driver at the time of his death.

15. The Respondents however did not avail any documents to prove how much the deceased was earning as a driver. The trial court in view of lack of documents in proof of the earnings of the deceased made reference to the case Civil Appeal No. 167 of 2002 *Ayiga Maruja & Another -vs- Simeone Obayo* (2005) eKLR where the Court of Appeal observed the following where there are no documents to support the earnings of a deceased:

.... We do not subscribe to the view that the only way to prove the profession of a person must be by way of production of certificates and that the only way of proving earning is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and that earn their livelihood in various ways. If documentary evidence is available that it well and good. But we reject any contention that only documentary evidence can prove these things.

16. The trial court thereupon resorted to the *Regulation of Wages (General) (Amendment) Order, 2017* which provided the monthly earnings of a driver of a heavy commercial vehicle at Ksh. 29,169/=. The court consequently used the said figure as the multiplicand to assess the earnings of the deceased.
17. The Appellants submitted that the multiplicand of Ksh.29,169/= was excessive. The Respondents on the other hand submitted that the trial court did not err in adopting the minimum wage for a driver based *Regulation of Wages (Agricultural) (Amendment) Order, 2017*. They argued that the figure was a reasonable income in the circumstances of the case.
18. In the case of *Francis Rigba Vs Mary Njeri (Suing as the Legal Representative of the estate of James Kariuki Nganga)* (2021) eKLR, the Court of Appeal had this to say on the choice of multiplier and multiplicand to be adopted in assessing damages for loss of dependency;

“...on the choice of a multiplier and multiplicand, we take it from the decision of the court in the case of *Roger Dainty v Mwinyi Omar Haji & Another* 2004 that to ascertain a reasonable multiplier in each case, the court should consider relevant factors like the income of the deceased, the kind of work he was engaged in before his death, the prospects of promotion and his expectations of working life.”

19. In view of the fact that the Respondents did not produce evidence to support the earnings of the deceased, it was proper for the trial court to use the government minimum wages to determine the monthly earnings of the deceased.
20. The trial court used the gazetted wage guidelines for 2017 in assessing the wages of the deceased. In my view, it was not proper to use the wage guidelines for 2017 when the deceased died in 2015. At the same time the court used the wages of a heavy commercial vehicle driver instead of that of a bus driver. The court erred in using the wages of a driver of a heavy commercial vehicle instead of that of a bus driver.
21. The applicable wage guidelines at the time that the deceased died was the *Regulation of Wages (General) (Amendment) Order*, Legal notice No. 197 of 2013 effective in May 2013, wherein the minimum wage for a bus driver in Nairobi was Ksh. 16,602/= plus house allowance of 15% of the basic salary thereby translating to Ksh.2,490/= to make a total of Ksh.19,092/= per month. I find the figure of Ksh.19,092/



- = to have been the earnings of a bus driver in Nairobi at the time of the deceased's death in 2015. The assessment on multiplicand of the trial court of Ksh. 29,169/= is therefore set aside and replaced with one of Ksh.19,092/=.
22. On the multiplier, the trial court in its judgment considered that the deceased died at the age of 36 years and that the retirement age is presently capped at 60 years. The court considered the vicissitudes of life and adopted a multiplier of 20 years. The court in arriving at that figure considered the case of *Daniel Kuria Nganga v Nairobi City Council* (2013) eKLR where a multiplier of 37 was used where the deceased died at the age of 18 years.
23. In the case of *Pleasant View School Limited v Rose Mutheu Kithopi & another* (2017) eKLR, a multiplier of 20 years was adopted for a deceased aged 36 years. In *Paul Ouma v Rosemary Atieno Onyango & Peter Juma Amolo (Estate of Joseph Onyango Amolo)* (2018) eKLR, a multiplier of 18 years was adopted for a deceased aged 38 years. These authorities support the multiplier used by the trial court of 20 years. I find the multiplier of 20 years used by the trial court to have been reasonable and the same is upheld.
24. On the issue of dependency ratio of 2/3 adopted by the trial Court, it is trite that dependency is a question of fact that must be proved by way of evidence. In *Abdalla Rubeya Hemed vs Kayuma Mvurya & Another* [2017] eKLR, the court stated as follows on the issue:-
- “Dependency is always a matter of fact to be proved by evidence. It is not that the deceased earned a sum and therefore must have devoted a portion or part of it to his dependence. Rather the claimant must give some evidence to show that he was dependent upon the deceased and to what extent.”
25. Anne Nakumicha PW3 testified that she was the wife to the deceased with whom she had sired 2 children. She produced a letter from her chief indicating that she was wife to the deceased. The same confirmed that she had 2 children with the deceased. All that evidence was not challenged by the Appellants. The evidence adduced before the trial court proved that the deceased had dependants of a wife and 2 children. Dependency ratio of 2/3 was therefore proved. The loss of dependency is thus determined as follows:
- $$19,092 \times 12 \times 20 \times 2/3 = 3,054,720.$$
26. Consequently, the loss of dependency determined by the trial court of Ksh.4,667,040/= is set aside and substituted with one of Ksh.3,054,720/=.
27. The end result is that the appeal on the award on loss of expectation of life is dismissed while the appeal on the award on loss of dependency partly succeeds and is reduced to Ksh.3,054,720/=. I order each party to bear its own costs to the appeal.

**DELIVERED, DATED AND SIGNED AT GARSEN THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025**

**J. N. NJAGI**

**JUDGE**

In the presence of:

Mr. Njuguna for Appellant

Miss Mumbi for Respondent

Court Assistant -

