Muriungi & another v Mwirichia (Suing as the Administrator of the Estate of Duncan Mwirigi - Deceased) (Civil Appeal E002 of 2022) [2025] KEHC 14038 (KLR) (7 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14038 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL APPEAL E002 OF 2022

SM GITHINJI, J

OCTOBER 7, 2025

BETWEEN

JOHN MURIUNGI ..... 1ST APPELLANT

GEORGE MUNGATIA ..... 2ND APPELLANT

AND

ISAIAH MWIRICHIA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF DUNCAN MWIRIGI - DECEASED) ..... RESPONDENT

(Being an Appeal from the Judgment of Hon. E.W Ndegwa (RM) in Githongo SPMCC No. 5 of 2020 delivered on 8th December, 2021)

JUDGMENT

1. This Appeal arises from the judgment of the learned Resident Magistrate Hon. E.W Ndegwa, delivered on 8/12/2021 in Githongo Civil Suit No. 5 of 2020, wherein judgment was entered in the following terms;
    1. Liability 100%
    2. Pain and suffering Ksh. 20,000
    3. Loss of Dependency Ksh. 2,916,000
    4. Loss of Expectation of Life Ksh. 100,000
    5. Special Damages Ksh. 0
2. Aggrieved by the said Judgment, the Appellants set forth the following grounds in the Memorandum of appeal dated 3rd January, 2022;

1. The Learned Magistrate erred in law and fact in awarding the Respondent Kshs. 4,374,000/= as general damages for loss of dependency, Kshs. 150,000/= for loss of expectation of life, pain and suffering 20,000 and special damages Ksh 70,500 bringing the total to Kshs. 4,614,500/= which amount was exorbitantly high in the circumstances.

2. The Leaned Magistrate erred in law and fact in holding that the Respondent had proved his case on a balance of probabilities which finding was against the height of the evidence on record.

3. The Learned Magistrate erred in law and fact in finding that the Respondent was entitled to Kshs. 4,374,000/= on loss of dependency under the Fatal Accident Act as plaintiff did not provide particulars of dependants.

4. The Learned Magistrate erred in law and fact in failing to consider the Appellants' submissions on Quantum.

5. The learned magistrate erred in law and fact when she failed to consider the appellants' evidence on points of law and facts with regard to quantum based on the circumstances.

6. The learned magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.

7. The Learned Magistrate erred in law and fact in failing to pay regard to submissions and decisions filed alongside the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable.

8. The Learned Magistrate erred in law and fact in finding that the Respondent was entitled to general damages.

Evidence at Trial

3. PW1 Isaiah Mwirichia, the Respondent herein and the father of the deceased, adopted his statement dated 14/8/2020 as his evidence in chief and produced the list of documents dated 3/3/2020 as exhibits. He told the court that the 1st Appellant was the owner of the accident motor vehicle while the 2nd Appellant was the driver thereof, who was charged and convicted. When he went to the scene, he found his son's body lying on the right side of the road from Kaguma towards Kariene market. His son, aged 28 years old, with no wife and children, was a 2nd year Civil Engineering diploma student at Mukiria Technical, and he spent Ksh. 70,500 after the accident, which was raised through the assistance of friends.

4. PW2 Phineas Kirimi, an eyewitness, adopted his statement dated 14/8/2020 as his evidence in chief. He stated that at around 7.00 p.m, he was riding his motorcycle from Kaguma to Kariene behind motor vehicle Registration No. KAU 138 L, a lorry. The lorry, which was loaded with stones, was over speeding, and he could not see very well. He did not witness the deceased being hit, but he found his body lying on the right lane facing Kariene and he knew the accident vehicle after it had been arrested.

5. PW3 Cpl Salim Hassan from Kariene police station produced the police abstract as Exhibit 1. He was familiar with the accident that took place on 26/5/2018 at 2020 Hours. A middle aged man was trying to hang on to the lorry, which was carrying stones heading to Kariene from Kaguma direction, when he fell and was toppled over. The driver was arrested, charged with causing death by dangerous driving and

convicted. He was not the investigating officer and he did not visit the scene. The driver was charged because he continued with his journey even after being told to stop.

6. PW4 Joseph Muriuki Kanake, the Court Administrator of Githongo Law Courts produced the file in Githongo Traffic Case No. 25/18 as Pexh 10. He stated that the 2nd Appellant was charged, convicted of causing death by dangerous driving and fined Ksh. 150,000. He was acquitted of failing to report the accident under section 202 of the Criminal Procedure Code.

7. The Appellants' case was closed without calling any witnesses.

Submissions

8. The Appellants did not file any submissions.

9. The Respondent, through the firm of Basilio Gitonga, Muriithi & Associates Advocates, filed submissions dated 12th June 2025. Counsel argued that the appeal was a candidate for striking out as it is fatally defective on account of mandatory omissions and gaps, as was held in *Gitson Energy Limited v Kochale & 14 Others (as Representatives of the Residents of Loiyangalani District, Marsabit County)* (Civil Appeal (Application) E042 of 2023) [2024] KECA 1260 (KLR) (20 September 2024) (Ruling). Counsel contended that the Appellants did not call any witness to rebut the evidence tendered by the Respondent, and cited *Ann Wambui Nderitu v Joseph Kiprono Ropkoi & Another* (2005) 1 EA 334. Counsel urged the court to dismiss the appeal, and cited *Francis K. Righa v Mary Njeri (Suing on behalf of the legal representatives of the estate of James Kariuki Nganga* (2021) eKLR, *Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi)* [2019] KEHC 9014 (KLR), *Millicent Atieno v Ochuongo v Kalota Richard* (2015) eKLR, *FMM & Another v Joseph Njuguna Kuria & Another* (2016) eKLR, *Kemfro Africa Ltd T/ A Meru Express Service Gathogo Kanini v A M Lubia & Olive Lubia* (1982-88) KLR 727, *Gitobu Imanyara & 2 Others v A.G* (2016) eKLR and *Joshua Mungania & Another v Gregory Omondi Angoya* (2018) eKLR.

Analysis and Determination

10. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.

11. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA the court held as follows: "This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."

12. I have considered the appeal herein, the trial court's judgment, which is the subject of this appeal, as well as the submissions by counsel.

13. From the grounds of appeal, the two issues for determination are whether the awards under the various heads are exorbitant, and whether the Appellants' submissions and authorities were considered.

14. The principles to be considered by an appellate court in deciding whether to disturb the trial court's assessment of damages were set out by the Court of Appeal for East Africa in the locus classicus case of *Butt v Khan* [1978] eKLR thus; "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."

15. On pain and suffering, I am persuaded by *Sukari Industries Limited v Clyde Machimbo Juma* [2016] eKLR, where the court (D.S Majanja J) espoused that: "It is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation."

16. The Respondent testified that, "I went to the scene at around 9.00 PM. I found the deceased body still at the scene. He was already dead at that time. There was blood on the ground. His body had been ran over from the head to the head."

17. Whereas the death of the deceased was instantaneous, it is undoubtedly clear that he endured agonizing pain, and the award of Ksh. 20,000 under this head was justified.

18. The trial court cannot be faulted for awarding the conventional amount of Ksh. 100,000 for loss of expectation of life.

19. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency were extensively dealt with by Ringera, J (as he then was) in *Marko Mwenda v Bernard Mugambi & another* Nairobi HCCC No 2343 of 1993 that: "In adopting a multiplier the court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased...The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

20. On the multiplicand, the Respondent testified that, "My son was a student at Mukiria Technical studying a diploma in civil engineering in 2nd year. I am not aware if he had completed 1st or 2nd year but he was yet to complete his studies. The deceased was 28 years. He had no wife or children. He was an adult who was depending on me for his needs. I am sure he would finish his studies."

21. Whilst the deceased was not gainfully employed at the time of his death, he had a defined civil engineering career path, as evidenced by the documents produced by the Respondent from Mukiria Technical Training Institute.

22. Courts have countlessly emphasized the need to consider the profession a deceased was pursuing in the assessment of damages for lost years. In *Rosemary Mwasya v Steve Tito Mwasya & another* [2018] eKLR, the Court of Appeal noted that; "As for the multiplicand, the only guide the learned Judge had before him was the survey on salaries. The Judge settled for the salary applicable to accountants as that was the profession the deceased would have pursued had death not claimed her life. The figure chosen of Kshs. 118,546/= took into consideration yearly increments had the deceased successfully followed her career. The only error we note the trial Judge committed in arriving at the final figure was the failure

to factor in, the element of taxation and other compulsory statutory deductions which in our view would have amounted to one third of the figure chosen as the multiplicand which would work out as Kshs. 118,546/= x 1/3 = 39,512. When factored into the figure chosen as the multiplicand, it gives a final figure of Kshs 79,034/=."

23. The trial court adopted the minimum wage for a skilled artisan of Ksh. 27,000, as the multiplicand. I find that the adoption of a multiplier of Ksh. 27,000 for an upcoming civil engineer, was reasonable.

24. I equally find that the application of a dependency ratio of $^{1}/3$ for a deceased who was unmarried with no children, was apt.

25. The record shows that the deceased was aged 28 years at the time of his untimely death. It was reasonably expected that, upon successfully completing his studies, he would secure gainful employment as a civil engineer and actively serve until his retirement. Taking into account the vicissitudes and vagaries of life that can potentially limit career longevity, I find that the multiplier of 27 years was fair.

26. The trial court is erroneously faulted for failing to consider the Appellants' submissions and authorities which were never filed, notwithstanding that they had been allowed to do so.

27. In conclusion, I find that the appeal lacks merit and is hereby dismissed with cost to the Respondent.

DATED AND DELIVERED AT MERU THIS 7TH OCTOBER, 2025

S.M. GITHINJI

JUDGE

Apperances:-

Mrs. Oongo holding brief for Miss Karimi for the Appellant.

Mr. Basilio Gitonga for the Respondent (Absent).

Miss Oongo – We pray for 30 days stay of execution.

COURT: 30 days stay of execution is granted.

07/10/2025