



REPUBLIC OF KENYA



**Chege & another v SWM & another (Suing as the Legal Administrators of the Estate of SMW)  
(Civil Appeal E017 of 2025) [2025] KEHC 15672 (KLR) (Civ) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15672 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CIVIL**

**CIVIL APPEAL E017 OF 2025**

**KW KIARIE, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**PAUL KIMANI CHEGE ..... 1<sup>ST</sup> APPELLANT**

**COLONELIUS MWANGI MUKIRI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SWM ..... 1<sup>ST</sup> RESPONDENT**

**JKM ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF SMW**

*(Being an appeal from the judgment and decree in the Engineer Senior Principal  
Magistrate's Court, SPMCC No. E065 of 2024 by Hon. E. Wanjala – Principal Magistrate.)*

**JUDGMENT**

1. Paul Kimani Chege and Colonelius Mwangi Mukiri, the appellants, were the defendants in the Engineer Senior Principal Magistrate's SPMCC No. E065 of 2024. The respondents had sued for a claim of general and special damages following a road traffic accident involving motor vehicle KDC 023X and the deceased, who was a pedestrian along the Nairobi-Ndinda road. As a result of the accident, the minor sustained fatal injuries. The learned trial magistrate held the appellant 100 per cent liable. The respondents were awarded Kshs. 5,460,550.00 in general damages.
2. The appellants were dissatisfied with the judgment and submitted this appeal through Kinyua & Maingi Advocates. They raised the following grounds for appeal:
  - a. The honoured learned magistrate erred in fact and in law in apportioning liability at 100% in favour of the respondent as against the appellants.



- b. The honoured learned magistrate erred in fact and in law in awarding general damages under the head of loss of dependency to the respondent amounting to Kshs 5,000,000/=.
  - c. The apportionment of liability against the appellants and for the respondent is an erroneous estimate due to the circumstances of the case before the subordinate court and the weight of precedents in similar circumstances.
  - d. The quantum of loss of dependency is excessive and an erroneous estimate of the damages awarded to the respondent, due regard to the circumstances of the case before the subordinate court and the weight of precedents in similar circumstances.
  - e. The honourable magistrate erred in law and in fact in relying on extraneous evidence in deciding on liability.
  - f. The honourable magistrate erred in law and in fact in relying on extraneous evidence in deciding on general damages.
3. The respondent opposed the appeal through Musa Machage & Company Advocates. It was contended that:
- a. The trial court did not err in determining liability and the quantum of damages.
  - b. The appeal lacked merit.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
5. Solomon Maina (PW3) is a boda-boda rider in Murungaru. His testimony was that the motor vehicle with registration number KDC 023X was driven at high speed before the driver lost control and hit the deceased, who was a pedestrian walking off the road. No material evidence challenged this evidence.
6. The appellants did not present evidence to demonstrate how the accident occurred. They cannot argue that the learned trial magistrate erred in blaming their driver for the incident. I have no reason to interfere with this finding.
7. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint vs Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.



8. The deceased passed away at the age of 29. He was married. His employer provided a letter which showed that he was earning Kshs. 25,000/= per month.
9. At the trial, the appellants proposed a multiplier of 25 years, which the learned trial magistrate accepted for calculating the loss of expectation of life. I have considered the awards on the relevant heads. The learned magistrate supported her awards with other earlier decisions. I have no reason to interfere with them.
10. The conclusion of this analysis of the evidence on record is that the appeal has no merit. The same is dismissed with costs.

**DELIVERED AND SIGNED AT NYANDARUA, THIS 4<sup>TH</sup> DAY OF NOVEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

