



**Mwangi & another v Mbuthia ((Suing as Personal Rep. of The Estate of
Robinson Gitachu Mbuthia - Deceased)) (Civil Appeal E1093 of 2023)
[2025] KEHC 1200 (KLR) (Civ) (3 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 1200 (KLR)

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

CIVIL

CIVIL APPEAL E1093 OF 2023

LP KASSAN, J

MARCH 3, 2025

BETWEEN

ISAAC MWANGI 1ST APPELLANT

IOTA ENGINEERING AND CONSTRUCTION LIMITED 2ND APPELLANT

AND

ELIZABETH WANJIKU MBUTHIA RESPONDENT

**(SUING AS PERSONAL REP. OF THE ESTATE OF ROBINSON GITACHU
MBUTHIA - DECEASED)**

*(Being an appeal from the judgment of Hon. L. Mbacho (SRM) delivered
on 4th October, 2023 in Nairobi Milimani CMCC No. E5640 of 2022)*

JUDGMENT

1. The deceased, represented by the Respondent, was a pedestrian along Outering Road near Kiamako on 13th January 2021 when motor vehicle registration number KCZ 492L, driven by the 1st Appellant, struck him, resulting in fatal injuries. The Respondent filed a claim for damages under the [Law Reform Act](#) (Cap 26) and the [Fatal Accidents Act](#) (Cap 32), seeking Kshs 39,410/= in special damages.
2. Liability was settled by consent at a ratio of 70:30 against the Appellants. The trial court then assessed damages, awarding the Respondent:
Pain and suffering – Kshs 100,000/=
Loss of expectation of life – Kshs 100,000/=
Loss of dependency – Kshs 500,000/=



Special damages – Kshs 39,410/=

Total – Kshs 739,410/=

Less 30% liability – Kshs 221,823/=

Final award – Kshs 517,587/=

3. The Appellants challenge this award, specifically contesting the Kshs 500,000/= granted for loss of dependency, arguing that the trial magistrate applied incorrect principles and disregarded the *Fatal Accidents Act* and established legal precedents.

Appellants' Submissions

4. The Appellants contend that the Respondent failed to meet the criteria for damages under loss of dependency. They argue that the deceased, a 34-year-old salesman awaiting enrollment in higher legal education, did not provide financial support to his siblings. Citing *Mohamed Hirbo Shande & Another v George Mwendu Mwiti* (2021) eKLR and *John Mungai Kariuki & Another v Kaibei Kangai Ndethiu & 2 Others*, Kiambu HCCA 29 of 2018, they assert that Section 4(1) of the *Fatal Accidents Act* does not recognize siblings as dependents.
5. They further argue that the trial court wrongly applied the principle of a global award, relying on *Moses Mairua Muchiri v Cyrus Maina* (Suing as personal representative of Mercy Nzula Maina (Deceased)) (2016) eKLR, rather than adopting a structured approach in determining loss of dependency.

Respondent's Submissions

6. The Respondent supports the trial court's decision, noting that the magistrate rejected the claim under the *Fatal Accidents Act* but made an award for lost years under the *Law Reform Act*. Since the deceased's income was unproven, the court opted for a global sum.

Issue for Determination

- i. Whether the trial magistrate erred in awarding damages for loss of dependency under the *Fatal Accidents Act* or for lost years under the *Law Reform Act*.

Analysis and Determination

7. As a first appellate court, I am required to review the trial court's evidence while recognizing that I did not observe the witnesses. The Court of Appeal in *Kiruga v Kiruga & Another* [1988] KLR 348 held that an appellate court should only interfere with factual findings if there is no supporting evidence or if the trial judge was plainly wrong.
8. A claim for loss of dependency under the *Fatal Accidents Act* differs from a claim for lost years under the *Law Reform Act*. The former benefits specific dependents who relied on the deceased before death, while the latter compensates the deceased's estate for lost earnings. Courts must consider awards under both Acts to prevent double compensation, as established in *Kemfro v A.M. Lubia & Another* [1982-88] KAR 727 and *Hellen Waruguru Waweru v Kiarie Shoe Stores Ltd* [2015] eKLR.



9. The Respondent’s claim was brought under both Acts. However, Section 4(1) of the Fatal Accidents Act does not recognize siblings as dependents. The trial magistrate correctly found that the Respondent and her siblings were not entitled to loss of dependency under that Act. In her judgment, she stated:

“The plaintiff and her siblings do not qualify for an award under the Fatal Accidents Act as they are not among the persons listed under Section 4(1) of the Act.”

10. The trial magistrate instead awarded compensation under the Law Reform Act for lost years, recognizing that the deceased’s estate was entitled to such compensation. She held:

“Having found that the plaintiff and her siblings are not entitled to claim under the Fatal Accidents Act, it is my considered opinion that the estate of the deceased is entitled to compensation for lost years under the Law Reform Act.”

Quantum of Damages

11. An appellate court will not interfere with a trial court’s damages award unless it is based on incorrect principles or is excessively high or low, as held in *Butt v Khan* [1981] KLR 349.

12. The Court of Appeal in *Mwangi & Another v Ngure & Another* [2023] KECA 448 (KLR) distinguished damages under the Fatal Accidents Act and the Law Reform Act:

“A claim under the Law Reform Act benefits the deceased’s estate and is a continuation of the cause of action they had before death, whereas a claim under the Fatal Accidents Act is a fresh cause of action for dependents.”

13. Since the magistrate awarded damages for lost years and not loss of dependency, the Appellants’ argument is misplaced. While the judgment incorrectly referred to the award as “loss of dependency,” this can be rectified under Section 99 of the Civil Procedure Act.

Conclusion

14. The trial Magistrate did not err in declining to award damages under the Fatal Accidents Act while granting compensation under the Law Reform Act. The reference to loss of dependency in the judgment was a clerical error, which should be corrected to reflect “lost years.”

15. The file is to be placed before the trial magistrate for rectification of this error.

16. The appeal is dismissed with costs to the Respondent.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF MARCH 2025.

L. KASSAN

JUDGE

In the presence of: -

Otieno for Appellant

Mburu for Respondent

Carol – Court Assistant

