



**Khandasi (Suing as the Administrator of the Estate of Humphrey Adongo Khisa - Deceased) v Butali Sugar Mills Ltd (Civil Appeal E121 of 2024) [2025] KEHC 8574 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E121 OF 2024  
S MBUNGI, J  
JUNE 18, 2025**

**BETWEEN**

**ESTHER KHANDASI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF HUMPHREY ADONGO KHISA - DECEASED) ..... APPELLANT**

**AND**

**BUTALI SUGAR MILLS LTD ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The appellant, Esther Khandasi, filed a suit as the plaintiff in the trial court in a representative capacity seeking compensation for fatal injuries sustained by the deceased on 17<sup>th</sup> February 2018. It was her case that the deceased, while lawfully aboard the Respondent's Tractor Reg. No. KTCB 2X4P along Makhukhuni - Mwakwabuye murram road, was negligently thrown off the trailer as a result of the Respondent's driver's reckless manner of driving. The Respondent denied liability and alternatively attributed the accident to the deceased's own negligence.
2. After a full trial, the learned trial magistrate apportioned liability at 50:50 between the parties, finding that the deceased had stood precariously on the trailer and contributed to the accident. The court awarded the appellant a total sum of Kshs. 988,195/=, comprising damages for pain and suffering, loss of expectation of life, loss of dependency, and special damages. After factoring in the 50% contributory negligence, the net award stood at Kshs. 494,097/=, with costs and interest granted to the appellant(plaintiff) till payment in full.

**The Appeal.**

3. Having been dissatisfied with the trial court judgment, the appellant preferred this instant appeal on the following grounds:



- a. THAT the learned trial Magistrate erred in law and in fact by holding the appellant 50% liable when there was no evidence of contributory negligence.
  - b. THAT the Learned Trial Magistrate erred in law and in fact by awarding the appellant Kshs.494, 097/= as lost years which amount was in-ordinately low.
  - c. THAT the Learned Trial Magistrate Erred in Law and in fact by awarding the appellant Kshs. 80, 000/= for loss of expectation of life which award was inordinately low.
  - d. THAT the Learned Trial Magistrate Erred in Law and in fact by adopting 25 years as the multiplier which was inordinately low.
  - e. THAT the Learned Trial Magistrate misdirected himself by adopting 1/3 as dependency ratio instead of 2/3 thus arriving at a wrong award and thereby occasioning miscarriage of justice.
  - f. THAT the Learned Trial Magistrate erred in not taking into account the evidence presented by the appellant.
4. The appellant prayed for the following orders:
- i. this court do set aside the decree of the subordinate court and do enhance the finding on liability in favor of the appellant.
  - ii. The finding on loss of expectation be enhanced.
  - iii. The multiplier be enhanced.
  - iv. The dependency ratio be enhanced from 1/3 to 2/3.
  - v. Costs of this appeal and interest be awarded to the appellant.
5. The court directed that the appeal be canvassed by way of written submissions. Parties complied. On record are submissions by the appellant dated 28<sup>th</sup> April 2025 and submissions by the respondent dated 6<sup>th</sup> May 2025.

### **Appellant's Case.**

6. Vide her submissions, the appellant identified the following issues for determination in this appeal:
- i. Whether the trial magistrate erred in apportioning liability at 50%:50% between the appellant and the respondent;
  - ii. Whether the trial magistrate erred in adopting a dependency ratio of 1/3;
  - iii. Whether the award for loss of expectation of life was inordinately low.
7. On the issue of liability, the appellant submitted that the trial magistrate erred in apportioning liability equally despite the absence of credible evidence attributing contributory negligence to the deceased. The appellant relied on the testimony of PW1 (the investigating officer) and PW3 (an eyewitness), both of whom confirmed that the accident occurred when the respondent's driver was negotiating a corner at high speed, causing two loaders, including the deceased, to be violently ejected from the trailer.
8. The appellant submitted that DW1, the driver, was inconsistent in his testimony and failed to call any of the other alleged passengers to corroborate his version. It was further argued that the trial court ignored the respondent's own submissions before the trial court conceding 70% liability and failed



to provide reasons for the 50:50 apportionment. The appellant thus urged this court to set aside the finding on liability and hold the respondent 100% liable.

9. On the issue of the dependency ratio, the appellant submitted that the trial court erred in adopting a 1/3 ratio despite clear evidence that the deceased had a wife and two children, as indicated in the chief's letter produced in evidence. It was argued that formal proof of marriage was not a legal prerequisite to finding dependency, particularly in light of the parties' consent to the admission of the chief's letter. The appellant contended that a dependency ratio of 2/3 was proper and justified in the circumstances.
10. As regards the award for loss of expectation of life, the appellant submitted that the amount awarded by the trial court of Kshs. 80,000/= was inordinately low given the deceased's young age (25 years), and his role as a breadwinner. Citing *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR and *Nelson Rintari v CMC Group Ltd* [2015] eKLR, the appellant argued that courts must recognize informal sector workers who do not keep formal records of earnings. The appellant asserted that the deceased, a cane loader, earned approximately Kshs. 2,000/= daily. In the absence of documentary proof, the appellant urged the court to adopt the statutory minimum wage of Kshs. 13,572.90 per month as provided for under the 2018 Wage Order.
11. On the issue of loss of dependency, the appellant proposed a multiplier of 35 years based on the deceased's age and projected working life to 60 years, and calculated the award as follows: Kshs.  $13,572.90 \times 12 \text{ months} \times 35 \text{ years} \times 2/3 = \text{Kshs. } 3,800,160/=$
12. The appellant prayed that the court allows the appeal in its entirety, set aside the trial court's judgment, enhance the damages accordingly, and award the costs of the appeal with interest from the date of the decree of the trial court.

### **Respondent's Case.**

13. The respondent submitted that the trial court properly analyzed the evidence on record and arrived at a fair and reasoned determination on liability and quantum.
14. On liability, the respondent supported the trial court's apportionment of fault at 50:50, arguing that the deceased bore some responsibility for his own safety. It was contended that the deceased knowingly boarded a sugarcane trailer not meant for human transport, and therefore voluntarily exposed himself to a foreseeable risk of harm. The respondent relied on the case of *Statpack Industries v James Mbithi Munyao* [2005] eKLR, where the court held that a person who voluntarily places himself in a situation of risk may be found contributorily negligent.
15. It was further submitted that the trial magistrate was entitled to consider the inherent dangers of the deceased's actions and that the appellant did not discharge the burden of proving that the respondent's driver was solely to blame for the accident. The respondent submitted that the evidence of DW1, although not corroborated by other passengers, was not materially discredited and that it was the trial court's prerogative to weigh its probative value in context.
16. On the issue of the dependency ratio, the respondent argued that the trial court was correct in adopting a 1/3 ratio. It was contended that no documentary evidence was produced to prove the alleged marriage between the deceased and the alleged dependants. The respondent submitted that the chief's letter, while admitted by consent, did not constitute conclusive proof of dependency, and that the court rightly exercised caution in making its finding. Reliance was placed on the case of *Rose Ouma v Shabaan Mohamed Hassan* [2016] eKLR, where the court held that claims of dependency must be supported by cogent evidence.



17. With respect to the award under loss of expectation of life, the respondent submitted that the amount of Kshs. 80,000/= was reasonable and within the accepted range under Kenyan jurisprudence. The respondent argued that the appellant had not demonstrated that the trial court acted on the wrong principles or that the award was inordinately low as to warrant interference. The respondent cited *Kemfro Africa Ltd t/a Meru Express Services v A.M. Lubia & Another (No. 2)* [1982–88] 1 KAR 727, which reaffirmed that an appellate court should not disturb an award of damages unless it is shown to be so inordinately low or high as to represent an entirely erroneous estimate.
18. On the issue of quantum under loss of dependency, the respondent opposed the appellant’s proposed multiplicand and multiplier, submitting that the trial court made a reasonable estimate based on the available evidence. It was urged that in the absence of payslips or verifiable income records, the trial court was justified in adopting a global award approach. The respondent contended that the proposed multiplicand based on the 2018 minimum wage order lacked evidentiary foundation and that courts must exercise restraint where income is speculative.
19. The respondent prayed that the appeal be dismissed with costs and the judgment of the trial court be upheld in its entirety, arguing that the appellant had failed to demonstrate any error in principle or fact on the part of the trial court.

### **Analysis and Determination.**

20. This being a first appeal, this court is mandated to re-evaluate and analyze the evidence on record and draw its own independent conclusions, bearing in mind that it did not have the benefit of seeing or hearing the witnesses firsthand. As was stated in *Peters v Sunday Post Ltd* [1958] EA 424, an appellate court is entitled to 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 that respect.
21. This court is called upon to determine whether the trial magistrate erred in apportioning liability equally between the appellant and the respondent, and whether the award therein was sufficient.
22. The trial magistrate apportioned liability at 50:50 but gave no reasons for doing so. While this omission is regrettable, this court is not precluded from examining the evidence afresh to determine whether the apportionment was justified.
23. From the evidence on record, it is undisputed that the deceased was riding at the back of a tractor being driven by the defendant’s driver when the accident occurred. Whilst the accident occurred due to the sudden turn caused by the driver, I find that the deceased, due to the nature of his work, must have known the risks involved.
24. Accordingly, the deceased’s decision to board the trailer constituted a voluntary assumption of risk. The court takes judicial notice that sugarcane tractors are not designed or insured for the transportation of persons. The principle in *Statpack Industries v James Mbithi Munyao* [2005] eKLR applies herein, where the court held that a person who voluntarily takes a known risk must bear the consequences to the extent of that risk. The deceased therefore contributed to the circumstances that led to the accident.
25. On the other hand, the respondent’s driver owed a duty of care not only to persons aboard the vehicle but also to other road users. The investigating officer (PW1) and an eyewitness (PW3) both testified that the driver was negotiating a bend at high speed, which caused the deceased and another to be ejected from the trailer. There is no indication that the driver took precautions to ensure safe transport or gave any warning to unauthorized persons who had boarded the trailer. The respondent is vicariously liable for the negligence of its driver in this regard.



26. In the circumstances, the trial magistrate's finding of contributory negligence at 50:50, though not reasoned in the judgment, was not without basis. The court is satisfied that the apportionment was lawful and supported by the evidence on record. Accordingly, the finding on liability at 50:50 is upheld.
27. On the issue of the dependency ratio, the trial court adopted a ratio of 1/3. However, from the evidence adduced, particularly the chief's letter which was produced by consent showed that the deceased was survived by a wife and two children. While formal documentation such as a marriage certificate or birth certificates was not produced, courts have held that dependency is a matter of fact and not law. In *Albert Odawa v Gichimu Githenji* [2007] eKLR, the court emphasized that the absence of formal proof of marriage or parentage does not negate factual dependency when it stated thus:
- “The court must therefore do the best it can to arrive at a fair figure bearing in mind the deceased's station in life, the earnings he was likely to be making, and the number of dependants left behind. The absence of marriage certificates or birth certificates of children is not fatal to a claim for dependency, if there is other credible evidence to prove that the deceased indeed had dependants.”
28. Given the uncontroverted evidence, the court finds that a dependency ratio of 2/3 was appropriate in the circumstances and ought to have been applied. The trial court erred in adopting a lower ratio despite the existence of dependants.
29. On the award for loss of expectation of life, the trial court awarded Kshs. 200,000/=. The appellant contends that the amount was inordinately low. However, Kenyan courts have consistently held that the conventional award under this head is Kshs. 100,000/=.
30. The court in the case of *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another* (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) (2019) eKLR observed that:-
- “The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs.100,000/- while pain and suffering the awards range from Kshs.10,000/- with higher damages being awarded if the pain and suffering was prolonged before death.”
31. This position has been reiterated in *Maurice Onyango Oloo v South Nyanza Sugar Co. Ltd* [2021] eKLR and *Gideon Ndungu Nguruki v John Ndungu Muiruri* [2017] eKLR, where the courts upheld an award of Kshs. 100,000/= under this head for young deceased persons. The court finds that the appropriate award under this head should be Kshs. 100,000/=.
32. On the multiplicand and multiplier, the appellant proposed a wage of Kshs. 13,572.90 based on the 2018 Wage Order. However, there was no evidence that the deceased was formally employed. In such circumstances, a court may adopt a reasonable estimate based on general economic conditions. The minimum wage applicable to general labourers in rural areas at the material time was approximately Kshs. 7,000/= per month. This figure is more modest and realistic in the absence of concrete proof of income, in line with the reasoning in *Jacob Ayiga Maruja & Another v Simeon Obayo* [2005] eKLR, where the Court of Appeal held that lack of documentary proof of earnings is not fatal where the deceased was clearly engaged in gainful activity.
33. The trial court adopted a multiplier of 25 years. The deceased was 25 years old at the time of death. According to the World Health Organization, the average life expectancy for males in Kenya as at 2018 was 62.68 years. Nonetheless, it cannot be denied that in life there are vicissitudes that can shorten one's



life. In the absence of evidence of ill health or other limiting factors, a multiplier of 35 years is more reasonable, given that most individuals work up to the retirement age of 60. In Board of Governors of Kangubiri Girls High School & Another v Jane Wanjiku Muriithi & Another [2014] eKLR, the Court of Appeal adopted a multiplier of 35 years for a deceased person aged 25.

34. Accordingly, the appeal has merit. I shall therefore proceed to award compensation as follows:

Liability .....50:50  
Pain and suffering .....Kshs. 20,000/-  
Loss of expectation of life.....Kshs. 100,000/-  
Loss of dependency (700012352/3).....Kshs 1,960,000/-  
Special damages.....Kshs. 78,580/-  
Total – Kshs. 2,158,580/-  
Less 50% contribution.....Kshs. 1,079,290/-

35. From the above, the respondent shall therefore pay Kshs. 1,079,290/- to the appellant.

36. Costs awarded to the appellant at court rates from the date of this judgment till payment in full.

37. Right of appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18<sup>TH</sup> DAY OF JUNE, 2025**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Court Assistant – Elizabeth Angong’a

Mr Alukwe for the appellant present online.

Mr. Too holding brief for Atami for respondent present online.

