



**Magero (Suing as the Legal Representative of the Estate of Wibrotor Namukhula  
Minyekenye alias Wildroda Numukhula Munyekenye, Deceased) v Shitanda & another  
(Civil Appeal E021 of 2024) [2025] KEHC 8188 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8188 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E021 OF 2024  
WM MUSYOKA, J  
JUNE 11, 2025**

**BETWEEN**

**STEPHEN OKWARA MAGERO ..... APPELLANT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WIBROTOR  
NAMUKHULA MINYEKENYE ALIAS WILDRODA NUMUKHULA  
MUNYEKENYE, DECEASED**

**AND**

**HUMPHREY PHILIP SHITANDA ..... 1<sup>ST</sup> RESPONDENT**

**HUWASHI BUILDERS & GENERAL SERVICES ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgement and decree of Hon. TA Madowo, Senior Resident  
Magistrate, SRM, delivered in Busia CMCCC No. E165 of 2021, on 11th April 2024)*

**JUDGMENT**

1. The suit, at the primary court, was by the appellant, against the respondents. The appellant premised his suit on the *Law Reform Act*, Cap 26, Laws of Kenya, and the *Fatal Accidents Act*, Cap 32, Laws of Kenya. It was a fatal claim, brought with respect to the death of his wife, who met her death as she was riding as a pillion passenger on a motorcycle, along the road from Busia to Mumias, when she was hit by a vehicle registration mark and number KCP 396T, owned and controlled by the appellants. He sought general damages, special damages of Kshs. 124,650.00, plus interests and costs.
2. The respondents filed a defence, in which they denied everything pleaded in the plaint. Alternatively, they attributed liability on the part of the rider of the motorcycle upon which the deceased was a pillion passenger.



3. Liability was settled at 80:20, in favour of the appellant. Quantum was assessed based on viva voce evidence. Only the appellant testified. He stated that the deceased was 60 years old, but there were no supporting documents. She used to assist him care for his children, but he had no supporting documents. He explained that they had six children, one of whom was married, one still a minor. He said that the deceased worked at Nambale market. A judgement was subsequently delivered, on 11<sup>th</sup> April 2024, only under the [Law Reform Act](#), for pain and suffering at Kshs. 20,000.00 and loss of expectation of life at Kshs. 100,000.00. Special damages were granted at Kshs. 118,550.00, making a total of Kshs. 238,550.00, and when subjected to contribution it came to Kshs. 190,840.00. No award was made under the [Fatal Accidents Act](#).
4. The appellant was aggrieved. His appeal, through the memorandum of appeal, dated 30<sup>th</sup> April 2024, lies only on damages not being awarded under the [Fatal Accidents Act](#).
5. Directions were given, on 10<sup>th</sup> March 2025, for canvassing of the appeal by way of written submissions. Both parties have complied.
6. The appellant cites section 4(1) of the [Fatal Accidents Act](#), to argue that an action under that Act lies for the benefit of a spouse, among others, and the deceased was his spouse. He submits that, although the court was not persuaded that he had not proven dependency, the respondents did not provide evidence to the contrary. He avers that he was dependent on the deceased, and they had a minor child. He cites *Stanwel Holdings Limited & Another vs. Rachael Haluku Emmanuel & Another* [2017] eKLR (Nyakundi, J), to urge that life expectancy was between 64 and 69 years. He submits that there was no evidence that the deceased suffered ill health. He argues that she could have continued working up to age 70. He submits that, as he had not proved her income, the court could rely on the statutory minimum wage, based on the Regulation of Wages (General Amendment) Order, 2018, where the minimum was Kshs. 13,572.90. He proposes a multiplier of 13 years, and a dependency rate of 2/3, which should work out to 13,572.90X12 X13X2/3 making a total of Kshs. 1,411,581.60.
7. On their part, the respondents cite *Abdalla Rubeya Hemed vs. Kavuma Mvurya & Another* [2017] eKLR (PJ Otieno, J), to submit that dependency is a matter of evidence, where it has to be shown that the claimant was dependent on the deceased, and that the extent of the dependency must also be established. It is submitted that the nature of the dependency was not pleaded nor proved. It is also argued that there was no proof of marriage. They submit that production of a grant ad litem was not proof of marriage, citing *Cherotich vs. Anzal Communications Ltd* [2024] KEHC 2175 (KLR) (Gichohi, J), and that there was no evidence of the relationship between the deceased and the persons listed as her children, and *Rahab Wanjiru Nderitu vs. Daniel Muteti & 4 Others* [2016] eKLR [2016] KEHC 3643 (KLR) (Janet Mulwa, J) is cited. As an alternative, it is submitted that, should the court be inclined to find that dependency was proved, a multiplier of 1 year should be adopted for the deceased had reached the retirement age of 60 years.
8. I would go by the position stated in *Abdalla Rubeya Hemed vs. Kavuma Mvurya & Another* [2017] eKLR (PJ Otieno, J), with respect to proof of dependency. It is not enough to just claim that the deceased was a spouse, and to list names of her purported children, against their ages, and to claim that the deceased earned some amount of money as monthly income, without presenting any evidence of any kind. Dependency is a matter of fact, which has to be established by some concrete evidence. The mere allegation of a filial relationship is not sufficient. Even where the relationship is proved, it would still not be adequate, for proof of dependency will still be necessary and required.
9. The appellant has argued his case from the perspective of the multiplier/multiplicand approach. There is also the global amount approach, where the income is unknown, and hard and fast figures are hard to come by. Even then, there would still be need to provide proof of the relationship between the deceased



and the claimant. Whereas it would be understandable, that a husband relies or depends on a wife in one way or another, which may not be capable of quantification in monetary terms, before the court gets to assess damages based on the global approach, proof of the relationship between the alleged husband and the deceased, and the alleged children and the deceased, should be established to a certain standard. I do not think that the appropriate threshold was reached.

10. It was argued, by the appellant, that the respondents did not establish the contrary. The legal burden of proof was on the appellant, to establish, on a balance, the relationship between him and his alleged children, to the deceased. The legal burden of proof never shifts. It remained on the appellant throughout, to prove that the deceased was his wife, and the persons listed as her children were so. No such proof was provided to the standard required. The evidential burden was on the appellant, to provide proof to establish the legal burden. The evidential burden could be discharged, by providing documents, which would have pointed to the deceased having been a spouse of the appellant, and the other listed individuals as her children. With such evidence, the evidential threshold would have been reached, and the evidential burden would have shifted to the respondents to disprove that, by contrary or counter-evidence. The evidential threshold was not reached, so that burden did not shift, and the respondents were not obliged to lead any counter evidence.
11. In view of everything said, I find no basis upon which to disturb the findings and holdings of the trial court, and to allow the appeal herein. The same is for dismissal, and I hereby dismiss it. Each party shall bear their own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. W. Anono, instructed by Mukisu & Company, Advocates for the appellant.

Ms. Pandit, instructed by Nishi Pandit & Company, Advocates for the respondents.

