



**Multi Gibbs Enterprises Limited v Ellabongo (Suing Administrator of
the Estate of Samuel Okindi Okware (DCD)) (Civil Appeal E037 of 2022)
[2025] KEHC 13880 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E037 OF 2022
REA OUGO, J
SEPTEMBER 30, 2025**

BETWEEN

MULTI GIBBS ENTERPRISES LIMITED APPELLANT

AND

HELLAN MAKUNGA ELLABONGO RESPONDENT

**SUING ADMINISTRATOR OF THE ESTATE OF SAMUEL OKINDI OKWARE
(DCD)**

*(Being an appeal from the judgment of the Honourable Charles Mutai
(SPM) delivered on 10th December 2021 in Bungoma CMCC No 519 of 2018)*

JUDGMENT

1. This is an appeal from the trial magistrate court against the award of damages on the following grounds:
 1. That the trial Magistrate erred in law and in fact by failing to take into account the appellant's evidence on record, submissions, the applicable law and judicial precedents, hence making an erroneous decision.
 2. That the trial magistrate erred in law and fact by awarding damages which were inordinately too high in the circumstances.
 3. That the trial magistrate applied the wrong principles of law in the entire judgment.
 4. That the trial magistrate erred in law and in fact by not considering the appellant's submissions and authorised in his judgment.
2. By way of background, the respondent's case at the lower court was that on 17/2/2017 the deceased was lawfully driving motor vehicle Reg No KCB 363J Toyota Matatu along Bungoma-Malaba when



the appellant's driver drove vehicle registration no. KCJ 063F Faw Tipper that it lost control and rammmed into Toyota Probox KCJ 536L from behind, and as a result, it knocked the matatu, causing the deceased serious bodily injuries. The estate of the deceased suffered loss and claimed damages under the Law Reform Act and Fatal Accidents Act. The deceased was aged 40 years at the time of death and was working as a driver earning Kshs 20,000/- per day and was the breadwinner in his family. The respondent claimed that she was deprived of the love, sex and compassion she used to receive from the deceased. The respondent sought general damages, loss of consortium, special damages of Kshs 78,550/- and costs.

3. The respondent denied that claim and, without prejudice, pleaded that if an accident occurred, then the same was wholly caused by the respondent's own negligence.
4. The trial magistrate, after considering the evidence before him, awarded liability in the ratio of 75:20 in favour of the respondent against the appellant. On damages, the trial court made the following award:

Pain and suffering Kshs 35,000
Loss of dependency Kshs 4,003,440
Special damages Kshs 78,550
Subtotal Kshs 4,117,390
Less 25% Kshs 1,029,347
Total Kshs 3,088,043

5. The appellant submitted that dependency is a matter of fact and must be proved by evidence. The respondent failed to adduce an affidavit of marriage or a marriage certificate to show that she was married. According to the appellant, the deceased was survived by adult children, save for one who was below 18 years. The plaintiff failed to demonstrate that the deceased supported his children and that she was a dependant, as she failed to provide receipts, Mpesa or financial statements. It therefore urged the court to adopt the dependency ratio of 1/3. The deceased, who died at the age of 40, was a driver; the court should take into account the vicissitudes of life and consider that the retirement age is typically 55. The appellant further submitted that the court should avoid double compensation or duplication of the award, as the respondent had sought damages under both the Fatal Accidents Act and the Law Reform Act. The appellant proposes that the award should be worked out as follows:

Liability 75:25
Pain and suffering Kshs 20,000/-
Claim under the Fatal Accident Act
[8000x15x2/3x12] Kshs 960,000/-
Special damages Kshs 78,550/-
Subtotal Kshs 1,058,550/-
Less 25%
Total Kshs 793,913

6. The respondent opposed the appeal. They argue that an award of Kshs 30,000/- on the head loss of expectation of life was proper. On loss of dependency, the respondent supported the trial magistrate's decision in adopting the multiplier of 20. The deceased was 40 years old at the time of death, as per his death certificate, and the retirement age for civil servants in Kenya is set at 60 years.



7. The deceased was a driver, and no fault can be placed on the trial court for adopting a multiplicand of Ksh 25,000/-. The deceased derived an income from driving, and it's a norm for self-employed people not to be on a payroll or keep records (see *Jacob Ayiga Makokha & another v Simeon Obayo* [2005] eKLR). They urged the court to uphold the dependency ratio adopted by the trial court and the appeal to be dismissed.

Analysis and Determination

8. The assessment of damages is at the trial court's discretion, and this Court will only interfere where that discretion was exercised on wrong principles or where the award is so excessive or inadequate as to constitute an erroneous estimate. In *Kemfro Africa Ltd Vs Gathogo Kanini Vs A.M.M Lubia & Another* where the Court held as follows:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

9. The appeal primarily challenges the award under the head of loss of dependency only. According to the death certificate, the deceased was 40 years old. The trial magistrate applied a multiplier of 20 years based on the fact that the retirement age is 60 years. In my view, the trial magistrate failed to take into account the vicissitudes of life and its uncertainty as necessary factors in arriving at a reasonable multiplier. In *Kuria & another (Suing as the personal representatives of the Late Peter Mwangi Kuria) v Mwangi* [2024] KEHC 10545 (KLR), the court observed as follows:

8. Let me now advert to past decisions to get guidance. I will start with the decisions relied on by the appellants. In *Millicent Teresa Anyango v Patrick Gombe* [2003] eKLR (Mbitio, J), the court applied a multiplier of 14 for a 41-year-old deceased person. 15 was adopted as the multiplier, where the deceased died at 45 years, in *Tessie Margaret Kariuki & another v Shakalaga Khwa Jirongo & another* [2014] eKLR (Waweru, J). I have looked up other cases. In *Mutuku Mbithi v Coast Bus Safaris Limited & another* [2012] eKLR (Waweru, J), the court adopted 5 years for a 57-year-old. 11 years was adopted, in *Joyce Mumbi Mugi v Cooperative Bank of Kenya Limited & 2 others* [2004] eKLR (Maina, J), for a 51-year-old.

9. The survey above reveals a pattern which suggests that the multiplier adopted by the trial court was within the range. A multiplier of 5 would appear appropriate for a person dying in his 50s and above. A multiplier in the region of 15 would be sufficient for a person aged 40 and below; while an average of 10 would be adequate for individuals in their 40s.

10. The trial magistrate applied a multiplicand of Kshs 25,000/- because no records of his employment. The appellant argues that the trial court ought to have applied the minimum wage of Kshs 9,870/-. According to the death certificate, the deceased was a driver. This was also the testimony of Hellan Makunga Ellabonga (Pw1). According to the Regulation of Wages (General) (Amendment) Order, 2017, the salary of a driver outside Nairobi is KShs 17,982.10/-.

11. Pw1 produced four Certificates of Birth with respect to their 4 children, Michael Omusungu, Enos Okware, Shalvin Shadrack Okware and Margaret Adhiambo, born in 2004, 2001, 2010 and 1999, respectively. Therefore, at the time of the deceased's death, he had one adult child aged 18, and the other three were below the age of 18 and dependent on him. Pw1 testified that she was the deceased's spouse, and the appellant presented no evidence to challenge or discredit her testimony. Therefore, the



ratio of 2/3 applied by the trial magistrate was appropriate. The award of loss of dependency shall now be calculated as follows: $17,982.10/- \times 15 \times 12 \times 2/3 = 2,157,852/-$.

12. In the end, the appeal is successful and the award of loss of dependency of Kshs 4,003,840/- by the trial court is set aside and substituted with the award of Kshs 2,157,852/-. The appellant shall have the cost of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2025

R.E. OUGO

JUDGE

In the presence of:

Miss Makori h/b Mr. Nyachiro -For the Appellant

Miss Masakhali -For the Respondent

Wilkitser -C/A

