



Esokon (Suing as Legal Representative of the Estate of the Late Jackson Ekai (DCD)) v Yussuf & another (Civil Appeal 012 of 2025) [2025] KEHC 17368 (KLR) (Civ) (24 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL APPEAL 012 OF 2025
SC CHIRCHIR, J
NOVEMBER 24, 2025**

BETWEEN

**JOSEPHAT EDOME ESOKON APPELLANT
SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE
JACKSON EKAI (DCD))**

AND

**FOZIA OMAR YUSSUF 1ST RESPONDENT
OSMAN MAALIM DAUD 2ND RESPONDENT**

(eing an Appeal from the judgment in Isiolo CMCC No. E017 of 2020, delivered by Hon.K. Mutai,(CM)on 12th April 2022)

JUDGMENT

1. The Appellant herein filed a suit seeking for damages for loss suffered by the deceased's estate and his dependants as a result of a fatal road accident involving Jackson Ekai Ekarakot,(Deceased) which occurred on or about 25th May 2020, along the Isiolo-Kwa Water Road at Kambi ya Chuu. The claim was brought under the provisions of the Fatal Accidents Act (FAA) and the Law Reform Act (LRA). At the conclusion, the trial magistrate entered judgment on liability in the ration of 80:20 , procured by consent of the parties and awarded damages for pain and suffering at Kshs. 30,000/= ,kshs 100,000 for loss of expectation of life and special damages of Kshs. 28,450.00/= . The claim for damages under the Fatal Accidents Act was denied.



Memorandum of Appeal

2. The Appellant was aggrieved, and proffered this Appeal against the said judgment on the following grounds:
 - a. That the Honourable Magistrate erred in law by finding that there was no proof of dependency, thereby failing to award damages under Loss of Dependency.
 - b. That the Learned Magistrate misdirected herself in law and fact by failing to consider the submissions of parties and annexed authorities, thereby reaching an erroneous decision.
3. The Appeal proceeded by way of written submissions

Appellant's Submissions

4. It is the Appellant's submissions that courts in the past have awarded damages under the *Fatal Accidents Act* even without of proof of any immediate dependants of the deceased. In this regard he has relied on the decision in the case of *Geoffrey Obiero & Another v Kenya Power & Lighting Corporation Limited & Another* (2019) KEHC 1543 (KLR)
5. The Appellant has urged the court to consider that his brother depended on him, and that it will be draconian if the court ignored this fact.

Respondents Submissions

6. The Respondents contend that the *Fatal Accidents Act* expressly limits dependants to the wife, husband, parent or child of the deceased. That there was evidence that the deceased wife has since remarried and the only minor dependant had since died. It is stated that the Appellant being a brother to the deceased does not qualify as a dependent.
7. It is further submitted that the Appellant failed to provide any evidence such as birth certificates or marriage certificates to substantiate the existence of dependents. Further the chief's letter did not mention any child survivor.

Analysis and Determination

8. The duty of this court as the first appellate court is to evaluate afresh the evidence adduced before the trial court, evaluate it and arrive at its own independent conclusion, but while bearing in mind that it neither saw nor heard the witnesses testify.
9. Upon consideration of the grounds of Appeal, the trial record and the submissions, it is evident that the only issue for determination is whether the Appellant is entitled to the award on damages for loss of dependency.
10. Section 4 of the *Fatal Accidents Act* provides as follows: -Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child of the person, whose death so caused and shall , subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct".



11. In the instant case, it is a fact that the deceased was the Appellant's brother. The court of Appeal while addressing itself to the aforesaid section of the *Fatal Accidents Act* in the case of Mwangi & another (Suing as the Legal Representatives of the Estate of the Late Richard Mwangi Gathoni Deceased) v Ngure & another [2023] KECA 448 (KLR) held: -

“It is therefore clear that it is only in respect of claims brought for the benefit of the wife, husband, parent and child of a deceased under the Fatal Accident Act that ought to be brought in the name of the executor or administrator of the person deceased. Loss of dependency falls under Fatal Accident Act. Accordingly, the 2nd Appellant could not make a claim under the said Act for loss of dependency as he was not a dependant.”

12. Similarly, in Easy Coach Limited v John Thomas Akalongo & another [2014] KECA 177 (KLR), the same court held:

“As is clear from Section 4 of the *Fatal Accidents Act*, legal dependants of deceased persons are their spouses, children and parents. Deceased persons' siblings are not their legal dependents.....”

13. The above two decisions of the court of Appeal are among the many that affirm the law, on who a dependant is for purposes of the *Fatal Accidents Act*. A dependent is either a spouse, child or a parent of the deceased. The Act does not recognize the Appellant herein as a dependant of the deceased.

14. I have seen the high court decision on Geoffrey Obiero & Ano vs KPLC & Ano [2019] KEHC 1543(KLR) . That decision however is not binding on this court.

15. In the end, the judgment of the trial court is hereby upheld and the Appeal dismissed, with costs to the Respondent.

DATED SIGNED AND DELIVERED VIRTUALLY, AT NAIROBI, THIS 24TH DAY OF NOVEMBER 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Roba Katelo – court Assistant

Ms. Njoroge for Mr. Opondo for the Appellant

Ms. Otego for the Respondent

