



Ghafoor & another v Mangi (Suing on his own behalf and as administrator of the Estate of Dennis Maingi) (Civil Appeal E118 of 2024) [2025] KEHC 17277 (KLR) (24 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E118 OF 2024
TM MATHEKA, J
NOVEMBER 24, 2025**

BETWEEN

NAEEM GULLAM GHAFOOR 1ST APPELLANT

IMRAM GAFYR ABDALLAH 2ND APPELLANT

AND

**SMITH KIIA MANGI (SUING ON HIS OWN BEHALF AND AS
ADMINISTRATOR OF THE ESTATE OF DENNIS MAINGI) RESPONDENT**

JUDGMENT

1. Smith Kiia Maingi (Suing on his own behalf and as Administrator of the estate of) Dennis Maingi the Respondent filed a suit in the lower Court seeking general damages & special damages, costs of the suit and interest under the *akn ke act 1956 48 Law Reform Act* (LRA) and the *akn ke act 1946 7 Fatal Accidents Act* (FAA) following a fatal road accident on 24 07 2020 along the Nairobi-Mombasa Road at kwa DC area. It was his case that DENNIS MAINGI, deceased was lawfully walking along the said road when the Appellant’s motor vehicle KCM 807K was driven managed controlled so negligently that it lost control, hit him causing fatal injuries.
2. Naeem Gullam Ghafoor & imram Gafyr Abdallah the Appellants filed a statement of defence, denied each allegation of fact in the plaint and putting the respondent to strict proof thereof. It was their case that any injuries or damages to the deceased were solely caused contributed to by the deceased’s own negligence.
3. After hearing the matter, the learned trial magistrate delivered judgment where liability was apportioned in the ratio of 80:20 in favor of the Respondent and damages awarded as follows;
Pain & suffering.....kshs 100,000 =
Loss of expectation of life.....kshs 100,000 =



Loss of dependency.....kshs 1,000,000 =
Special damages..... kshs 157,750 =
Less 20%kshs 200,000
Total..... kshs 1,157,750 =

4. Aggrieved by the award on loss of dependency, the Appellants filed this appeal and raised the following grounds;
 - a. The learned trial magistrate erred in law and fact in making an award under the head of loss of dependency under the *akn ke act 1946 7 Fatal Accidents Act* to the Respondent, a step-brother of the deceased person, who is not a dependant as defined by the *akn ke act 1946 7 Fatal Accidents Act*
 - b. The learned trial magistrate erred in law and fact by awarding a step-brother of the deceased person damages under the *akn ke act 1946 7 Fatal Accidents Act* and failed to consider the fact that the deceased person did not leave behind any dependants and or the fact that the Respondent, a step-brother of the deceased person failed to prove any level of dependency.
5. Parties took directions to argue the appeal through written submissions and each filed their respective submissions.

The Appellants' Submissions

6. According to the appellant the issue for determination is whether the Learned Magistrate erred in law and fact in making an award under the head of loss of dependency under the *akn ke act 1946 7 Fatal Accidents Act* to the Respondent, a step-brother of the deceased person.
7. Relying on section 4(1) of the FAA, it was submitted that the only people who can benefit from an award under the Act are the spouse, parent or child of the person whose death was caused by an accident. Reliance was placed on *John Mungai Kariuki & Another -vs- Kaibei Kangai Ndethiu & 2 Others* [2020] eKLR where it was as held;

“Back to the issue at hand, the appellants elected to make their case under the *akn ke act 1946 7 Fatal Accidents Act* which at section 4(1) states;

Every action brought by nature of the provisions of this act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused [and shall be brought by and in the name of the execution or administrator of the person deceased]The brothers and sisters of the deceased are not dependants for purposes of the statute and language of the statute cannot be read, even by creative interpretation, to expand the list of dependants to include siblings of the deceased. Even in the cases relied on by the appellant, the principle that in African culture children are expected to support their parents is supported by the words of the statute as the deceased parents are named as dependants.”

8. It was contended that the Respondent failed to discharge the burden of proving that he qualifies as a dependant within the meaning of Section 4(1) of the FAA. It was submitted that if this court is inclined to consider a broader interpretation of the term ‘dependant’, the Respondent’s failure to establish either a legal relationship or factual dependency on the deceased person disqualifies him from claiming



under the Act. Reliance was placed on Chania Shuttle -vs- Mary Mumbi (2017) eKLR where it was held;

“Indeed, it is trite law that dependency is a matter of fact and must be proved. It must be demonstrated that persons for whose benefit the proceedings are brought under the *akn ke act 1946 7 Fatal Accidents Act* were dependant on a deceased prior to his death.”

The Respondent’s Submissions

9. The respondent submitted that the was whether the honorable magistrate was correct in awarding loss of dependency to the plaintiff who sued as s step-brother guardian of the deceased plaintiff.

10. It was submitted that the award was proper due to the circumstances of this case and evidence presented in court. That, according to the evidence of PW2, the deceased lost his mother at an early age and the Respondent acted as the deceased’s guardian parent for the duration of the deceased’s life. That, it was the Respondent who paid school fees for the deceased until he completed secondary education and had just started earning as a casual laborer; that the Respondent suffered loss of dependency as a result of the accident that took away the deceased’s life. Reliance was placed on Mutete & Anor -vs- Bosire & Anor (All suing as the Personal Representatives & Legal Administrators of the Estate of Evans Nyang’au Maturu [Deceased]) (Civil Appeal E036 of 2023) [2024] KEHC 5155 (KLR) (25 April 2024) (Judgment) where the court was of the view that;

“ 12. Section 4 of the *akn ke act 1946 7 Fatal Accidents Act* cap 32 provides as follows.....

13. My understanding of the above provision is that it does not place a restriction on the persons who may bring an action under the *akn ke act 1946 7 Fatal Accidents Act*. The law provides that the administrators of the estate of a deceased may do so. The only restriction is on the intended beneficiaries of the said cause of action who are the people specified under subsection (1).

14. The Appellants’ contention was that the Respondents were the aunt and uncle of the deceased and therefore not his parents who are entitled to compensation under the Act. I note that PW1 (the 1st Respondent) testified that the deceased was her son. On cross-examination, however, she conceded that the Plaintiff indicated that she was an aunt to the deceased. In re-examination, she clarified that the deceased was her brother’s son. PW2 confirmed that the deceased was a son to his brother but that he lived with them at their home.

15. This court takes judicial notice that in most African set ups, an uncle or an aunt may ‘adopt’ and live with their nephews or nieces as their own children especially in circumstances where the actual parents of the child in question are deceased.

16. In the present case, it was not clear if the deceased’s parents were alive or dead. It was however not disputed that the deceased lived with the Respondents as his guardians and that PW1 would give him money for his upkeep. The deceased is reported to have been aged 17 years at the time of his death. He did not have any dependants.

17. The Respondents testified that they received the accident report. This leads me to conclude that they were the legal guardians of the deceased, even though



not his biological parents. I find that the Respondents considered the deceased as their son as he was under their care. No evidence was presented to show that the deceased had other parents who could have filed the suit apart from the Respondents. I have perused the Grant Ad Litem dated March 11, 2020 (P.Exh12) which was obtained by the Respondents for purposes of filing the suit and find that the Respondents were duly appointed as the deceased's personal representatives for the purposes of this suit.

18. Having found that there is no evidence on Record to rebut the Respondents' legal capacity to bring the claim, I find that the Respondents were correctly recognized as the deceased's parents and were thus entitled to bring the claim."

11. It was submitted that the Respondent successfully applied for letters of representation and was allowed to represent the estate of the deceased which goes further to prove his capacity as guardian and step-brother. That, no evidence was adduced to controvert PW2's evidence of being a guardian parent to the deceased and that he suffered loss as a result of deceased's death.

12. It was submitted that the deceased was a casual laborer hence difficult to prove his income and difficult to prove dependency on the part of the Respondent. Reliance was placed on Jacob Ayiga -vs- Simeon Obayo (2005) eKLR where the Court of Appeal stated;

"We do not subscribe to the view that the only way to Prove the profession of a Person must be by the production of certificates and that the only way of proving earnings is equally the production of documents. That kind of stand would do a lot of injustice to many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can Prove these things. In this case, the evidence of the respondent and the widow coupled with the production of school reports was sufficient material to amount to strict proof for the damages claimed"

13. It was submitted that, it would be an injustice to assume that the Respondent would keep records of transactions between him and his step-brother; that the Respondent qualifies as a dependant of the estate of the deceased given his position as a guardian parent under the African set-up where orphans were adopted and taken care of by the next of kin; that it would be ludicrous for the Appellants to expect documentation of all the transactions between the Respondent and deceased plaintiff given that the life of the deceased was cut short by the accident and the plaintiff was only seeking compensation for the loss.

14. It is now settled that the duty of a first appellate Court is to analyze and re-evaluate the evidence on record in order to reach its own conclusions bearing in mind that it did not have the benefit of seeing or hearing the witnesses.

15. I have considered the grounds of appeal, the rival submissions and entire record, it is my considered view that the issue for determination is whether the award on loss of dependency should be disturbed.

16. Awarding damages is largely an exercise of judicial discretion and the instances that would make an appellate Court interfere with that discretion are well established. In Butt -vs Khan (1977)1KAR it was held that;

"An appellate Court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge



proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low.

17. It was pleaded that the deceased was a casual laborer and his life was cut short at 26 years. That, he was survived by his step-brother guardian, Smith Kiia Maingi, aged 49 years. Smith Kiia Maingi was PW2 and he testified that the deceased was his son as his mother had passed on. That, he brought him up till his demise. That, the deceased completed form 4 in 2017 and was a casual laborer earning around kshs 1,000 =.
18. On cross-examination, he said that Dennis Maingi was his step-brother. He conceded that he had not produced any document to show this relationship. That, he had the identity card but it had not been filed; that he had not availed the deceased's birth certificate; that the deceased was a casual laborer earning kshs 1,000 = per day, on a good day when work was available ;that , he (PW2) used to work together with the deceased; that he was aware of NSSF and KRA but did not have the documents; that the deceased supported him in paying school fees and maintaining PW2's mother.
19. On the other hand, the appellant contends that Respondent, being a step-brother of the deceased, does not qualify for the award as per section 4 (1) of the FAA which provides;

“Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was 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 costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:

20. In this case, the Grant of letters of Administration Ad Litem for the deceased's estate (P.Ex 3) was issued to the Respondent by Makindu Senior Principal Magistrate's Court on 26 08 2021. The case was filed on 03 11 2021 and the hearing proceeded on 15 05 2024. Consequently, PW2's legal capacity to bring the action on behalf of the deceased's estate is not in dispute.
21. PW2 testified that after the demise of the deceased's mother, he cared for him and paid his school fees until he completed form four. Again, the relationship between PW2 and the deceased was disclosed in the plaint filed way back in 2021 hence there was sufficient time to rebut it. Considering the standard of proof in civil cases, the Respondent established that he played the role of a parent in the life of the deceased. In addition to the persuasive authority cited by the Respondent, there is the case of Onyango & Anor (Suing as Legal Representatives of the Estate of Vincent Okoth Otieno - Deceased) -vs- Akoth (Civil Appeal E064 of 2024) [2025] KEHC 16563 (KLR) (14 November 2025) (Judgment), which is equally persuasive, where the court opined as follows;

“The legal principle of Stare decisis demands that similar claims ought to attract similar awards. Learned counsel for the Respondent has submitted that the deceased's parents had already pre-deceased him and as such there should not be any issue of dependency at all. As at the time of filing the suit, it is clear that there were legal representatives who are believed to have been the deceased's guardians as his parents had already passed on. These are the persons who had been taking care of him and meeting his school fees and needs and therefore as guardians, they assumed the role of parents and hence the issue of dependency ought to be considered. Indeed, all parents and guardians look up to their children to provide for them in old age. Hence, the guardians herein must be seen through that prism. I am therefore not



persuaded by the Respondent's counsel's submission that the loss on dependency ought not to be interfered with. I am satisfied that the amount awarded by the learned trial magistrate was inordinately low as to represent an erroneous estimate of damages. It is highly likely that the deceased could have turned out successful after school and be in a position to help himself and his guardians. Guided by the above authorities and due to the inflationary trends, I find that the said award of Ksh 300 000 = by the trial court was inordinately low. It is my considered view that an award of Ksh 2, 000, 000 = would be adequate compensation."

22. I note that the trial magistrate did not address the relationship between the Respondent and deceased in his judgment.
23. The Provisions of the FAA are rigid in their definition as they appear to recognize only biological and adoptive relationships. In our set ups we have kinship adoptions and guardianships that are more often than not registered under any regime. The *akn ke act 2001 & Children Act 2022*, provides for the recognition of these. It is trite that these kinship adoptions and guardianships come with the full parental responsibilities where the relative living with the 'child' becomes the parent for all purposes.
24. In this case the appellant's issue is that the respondent is not strictly recognized by the law as a dependant. However, the evidence on record supports the kinship adoption guardianship where the respondent and his mother were the parents to deceased.
25. It would be unjust to find that the respondent is not entitled as a dependant when there is no dispute to his having been the guardian parent to the deceased though he was his step brother. In the circumstances I would not agree with the appellant .
26. I find that the appeal is without merit and dismiss it with costs to the despondent.

DATED, SIGNED AND DELIVERED VIS CTS ON 24TH NOVEMBER 2025

MUMBUA T MATHEKA

JUDGE

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