



Sitati & another (Suing as the legal representatives of the Estate of Patrick Mutunga Mwake) v Malonza (Civil Appeal E061 of 2022) [2025] KEHC 17266 (KLR) (24 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E061 OF 2022
TM MATHEKA, J
NOVEMBER 24, 2025**

BETWEEN

AGNES NAKUMICHA SITATI & BRIAN WEKESA SITATI (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PATRICK MUTUNGA MWAKE) APPELLANT

AND

ABEDNEGO MWANGANGI MALONZA RESPONDENT

(Being an Appeal from the Judgment of Hon. E. Kemei (RM) in the Resident Magistrate's Court at Makueni, Civil Case No. E33 of 2021, delivered on 15th November 2022)

JUDGMENT

1. Agnes Nakumicha Sitati & Brian Wekesa Sitati (suing As The Legal Representatives Of The State Of) Patrick Mutunga Mwake (Deceased) the Appellants, filed Makueni Civil Case No. E33 of 2021 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) on behalf of the Estate of Patrick Mutunga Mwake pursuant to a fatal road accident on 19 10 2021 (material day). They averred that on the material day, the deceased was lawfully driving motor vehicle registration number KCX 651S along the Wote-Makindu road when the Respondent drove motor vehicle registration number KBN 031F so carelessly and negligently that it left its lane and got into the lane of KCX 651S hence causing an accident and occasioning the deceased fatal injuries.
2. The Respondent Abednego Mwangangi Malonza filed a statement of defence, denying all the allegations of fact in the plaint and put the plaintiffs appellants to strict proof of the claim. He averred that if at all an accident happened in the manner pleaded on the material date, then it was solely and or substantially contributed to by the negligence of the deceased.



3. After hearing the matter the learned trial magistrate found the Respondent 100% liable and assessed damages as follows;
 - Pain & suffering.....kshs 100,000 =
 - Loss of expectation of life.....kshs 120,000 =
 - Loss of dependency.....kshs 1,814,436 =
 - Special damages.....kshs 112,550 =
 - Total..... kshs 2,146,986 =
4. Aggrieved by the award, the Appellants filed this appeal on the following grounds;
 - a. The learned trial magistrate erred in law and fact by adopting a half (1/2) as the dependency ratio in calculating loss of dependency yet prior to his death, the deceased's wife and children were fully dependent on him.
 - b. The learned magistrate erred in law and fact by failing to adopt a dependency ratio of 2/3 when prior to his death, the deceased's wife and children were fully dependent on him.
 - c. The learned magistrate erred in law and fact by ignoring the evidence on record on the dependency ratio.
 - d. The learned magistrate erred in law and fact in ignoring the Appellant's written submissions and authorities with regard to the issue of dependency ratio.
5. Parties chose to proceed by way of written submissions. The only submissions on record are for the Appellants.

The Appellants' Submissions

6. As to whether the trial court erred by adopting a dependency ratio of $\frac{1}{2}$ instead of $\frac{2}{3}$, it was submitted that according to the testimony of the deceased's wife (PW3), the deceased was survived by a wife and five children who were dependent on him prior to his death and that her testimony was supported by a letter from the Chief of Kithuki Sub-location. That, in re-examination, she said that three children aged 10, 6 and 7 were in primary school, another one was in secondary school and the other was in college. That, despite the eldest being in college, he was still dependent on his father. Reliance was placed on the following cases;
 - a. Bustrack Limited -vs- Wilfrida Achola Omondi & Anor (2010) eKLR where court deemed the dependency ratio of $\frac{2}{3}$ as fair and reasonable for a deceased who left behind his wife and 5 children.
 - b. YAF Japan Motors Limited & 2 Others -vs- Wambughu & Another (Civil Appeal e025 of 2022) [2023] KEHC 22438 (KLR) (20 September 2023) (Judgment) where the Court stated the following;
 - “ 16. With regard to the multiplicand, which is the earnings of the deceased per month and which would be depended upon by him and his dependants that is wife and two (2) of the five (5) children, the trial court used the amount of Kshs. 30,000 = as testified by PW1.....



20. With regard to the dependency ratio of 2/3 for the surviving wife and two school going children, I am satisfied that the said survivors of the deceased were largely dependent on the deceased. I am thus of the view that the Magistrate was correct in applying a dependency ratio of 2/3.”
- c. *Melbrimo Investment Company Limited -vs- Dinah Kemunto & Francissese* (suing as the personal representative of the estate of Stephen Sinange alias Reuben Sinange (deceased) [2022] eKLR, where the court held:
- “34. The Trial Court observed that the deceased left behind his wife and three (3) children and therefore adopted a multiplier of 2/3. This court found and held that a multiplier of 2/3 was appropriate in the circumstances of the case herein as the deceased must have used 2/3 of his income on his family and 1/3 on himself and thus left the determination of the dependency ratio of 2/3 undisturbed....”
- d. *Sarah Naitore M'ikunyua -vs- Geoffrey Mwangi Bor & Another* [2021] eKLR where the Court stated the following;
- “ 19. The trial Court adopted a dependency ratio of 1/2 as the deceased had only two dependants i.e her mother and her son. The Appellant contends that the Court should have adopted a ratio of 2/3. This Court has considered that the deceased was an elder sister to the Appellant. The deceased thus had a greater responsibility with respect to providing for their mother, in addition to her son. The Court notes that in the case of *Petronila Muli v Richard Muindi Savi & Catherine Mwendu Mwindu*, Civil Appeal No. 98 of 2018 [2021] eKLR, Limo J held that if a deceased person was unmarried, the Court should adopt a ratio of 1/3. However, in that case, the deceased's dependants were only his parents. In the present case, the deceased's dependants are her parent and her child. Although she was unmarried at the time of her death, the fact that she had a child means that she had to cater for the child as a single parent. In the circumstances, a larger proportion of her income was expended to her child's upkeep.
20. This Court thus finds that a dependency ratio of 2/3 would best suit the circumstances of this case. The total damages awardable for loss of dependency before apportionment of liability would thus be as follows: - Ksh 11,603 2/3 13 12 = Ksh 1,206,712 =.
27. Accordingly, for the reasons set out above, this Court makes the following orders: - i) The Appellant's appeal is allowed to the extent that the dependency ratio of a half (1/2) adopted by the trial Court is substituted with a ratio of two thirds (2/3).....”
- e. *Crown Bus Services Ltd & 2 Others -vs- Jamilla Nyongesa and Amida Nyongesa* (legal representatives of Alvin Nanjala (deceased) [2020] eKLR where Court stated;
- “ 26.the single female parent's dependency ratio should be equal to that of a married man who maintains his family household at 2/3 of his income. Both occupy the same position of family breadwinner



and provider, and I do not see why an unmarried woman's support of her family should be at a lower fraction of her income than that of her male counterpart. The court, therefore, approves the use of the dependency ratio of 2/3 in the computation of the applicable damages for dependency under the *akn ke act 1946 7 Fatal accidents Act.*"

7. As to whether the trial magistrate disregarded the evidence on record regarding the dependency ratio and Appellant's written submissions and authorities cited on the same issue, it was submitted that the Appellants' submissions in the trial court were that a dependency ratio of 2/3 was reasonable in the circumstances. That, the Appellant quoted a case supporting the principle that a dependency ratio of 2/3 was reasonable where a deceased was being depended on by a wife and 3 children.
8. That the trial court went on to adopt a dependency ratio of 1/2 without explaining why it disagreed with the Appellants' submissions, the evidence on record and the authorities cited. Consequently, it was submitted that the trial court failed to consider a pertinent legal principle to the effect that a dependency ratio of 2/3 is appropriate for a deceased who had a wife and school going children.

Analysis and Determination

9. 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. (*Selle -vs- Associated Motor Boat Company (1969) E.A 123*).
10. I have carefully considered the grounds of appeal, the Appellants' submissions and entire record, and the only issue for determination is whether the trial court erred by adopting a dependency ratio of 1/2 instead of 2/3.
11. 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.
12. The sole issue in this appeal is about the dependency ratio of 1/2 applied by the trial court.
13. It was pleaded that the deceased was survived by a wife, two adult children and three minor children. The wife (PW3) testified that the deceased was 47 years at the time of death and that she was unemployed hence dependent on him together with the children. On cross-examination, she confirmed that she had not produced anything to show that the children were schooling. In re-examination, she said that the three minors were in primary school, one was in secondary school and one was in college.
14. PW3 produced the childrens' birth certificates (P.Ex 12) showing their dates of births as follows; SC; 17 10 2001, EM;02 04 2010, AN; 21 06 2013 and PM; 02 12 2016. Their ages at the time of their father's death (19 10 2021) were therefore; 20, 11, 8 and 5 respectively. The birth certificate for BWS was missing but his age was indicated as 25 years in the Chief's letter (P.Ex 10).
15. The Respondent's submissions on this issue in the trial court were that the plaintiffs had failed to prove how the deceased provided for his dependents. He submitted that a dependency ratio of 1/3 would



be reasonable and relied on Samuel Kimutai Korir (suing as personal and legal representative of the estate of Chelangat Sileria -vs- Nyanchwa Adventist Secondary School & Anor (2016) eKLR where the court used a multiplier of 25 years and dependency ratio of 1/3 for a 21-year-old deceased who was undertaking a Teachers Training Course.

16. Dependency is a question of fact and having looked at the decisional law on this point, including the cases cited by the Appellants, it is clear that courts give a higher ratio where the deceased was married with dependents.
17. Considering the standard of proof in civil cases, the deceased's wife established that the deceased was survived by 5 children three of whom were minors. The minors were in the age-bracket of primary school while the two adult children were in the age bracket of tertiary education. Despite the lack of documentary evidence to show the schools colleges attended, their mother testified to that effect and in the absence of rebuttal evidence, it is more probable that the five children were actually schooling. Other than schooling children have other needs and the deceased was the breadwinner. The evidence on dependency was not challenged. And the dependency ratio of 1/2 was against the available evidence and ended up being too low.
18. The Respondent relied on a case where the deceased was a 21-year-old unmarried lady who had no children and was undertaking a Teachers Training Course. The case was therefore clearly distinguishable and not a good guide in this case. The trial magistrate appreciated that the deceased had five children depending on him but did not explain the adoption of a low ratio in the circumstances of the case. To that extent the court was in error
19. The appeal is there for meritorious. It is allowed to the extent that the dependency ratio of 1/2 is substituted to 2/3. The award works out thus: 23,262 x 12 x 13 x 2/3 = 2,419,248 =.
20. The total award is therefore;
Pain & suffering.....kshs 100,000 =
Loss of expectation of life.....kshs 120,000 =
Loss of dependency.....kshs 2,419,248 =
Special damages.....kshs 112,550 =
Total..... kshs 2,751,798 =

Judgment be and is entered accordingly plus costs and interest from the date of the Judgment in the subordinate court.

The appellant will have the costs of this appeal .

DATED, SIGNED AND DELIVERED VIA CTS THIS 24TH DAY OF NOVEMBER 2025

CA Chrispol

Appellants' Advocates

Mutuku Wambua & Associates Advocates

Mutukuwambua33@yahoo.com

Respondent's Advocates

Kimondo Gachoka & Co. Advocates

info@kglaw.co.ke

