



REPUBLIC OF KENYA



**Okello v Omolo & another (Civil Appeal E065 of 2024)  
[2025] KEHC 18255 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18255 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E065 OF 2024  
WM MUSYOKA, J  
DECEMBER 5, 2025**

**BETWEEN**

**FREDRICK OKOTH OKELLO ..... APPELLANT**

**AND**

**STEPHEN OWITI OMOLO ..... 1<sup>ST</sup> RESPONDENT**

**WATU NOMINEES COMPANY LTD ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgement and decree, of Hon. Kassim Akida, Resident Magistrate, RM, of 28th November 2024, in Busia CMCCC No. E195 of 2023)*

**JUDGMENT**

1. The suit, at the trial court, had been brought by the appellant, against the respondents. It arose out of a road traffic accident, which occurred, on 17<sup>th</sup> October 2022, along the Kisumu-Busia Road, involving the deceased and a motorcycle owned and controlled by the respondents. It was brought on behalf of the estate of the deceased, for compensation. The claim was resisted by the respondents, who filed a defence.
2. Liability was settled, at 75:25 against the respondents, on 14<sup>th</sup> October 2024. Only the appellant testified, at the oral hearing. Judgement was delivered, on 28<sup>th</sup> November 2024, at Kshs. 110,000.00 for pain and suffering, Kshs. 1,500,000.00 for loss of dependency and Kshs. 478,699.00 for special damages.
3. The appellant was aggrieved, hence the appeal. The grounds revolve around the award of loss of dependency being too low; the court awarding special damages not specifically pleaded and proved; and the court not awarding costs and interests.
4. Directions were taken, on 28<sup>th</sup> July 2025, for canvassing of the appeal, by way of written submissions. I have seen written submissions, by both sides, which I have read, and noted the arguments made.



5. The appeal herein focuses on 3 issues: loss of dependency, special damages, and costs and interests.
6. Loss of dependency is a claim by dependants, and the award would be made to the persons who were depended on the deceased, and who lost that dependency upon the demise of the deceased. The claim is founded on the [Fatal Accidents Act](#), Cap 32, Laws of Kenya.
7. In this case, dependency was not pleaded. There was no pleading, in the plaint, that the claim was brought on behalf of a dependant. There was no pleading, in the plaint, that someone was dependent on the deceased, and the extent of that dependency was not pleaded. There was also no pleading that the death of the deceased caused a loss of dependency. To the extent that dependency was not pleaded, there was no basis for the award of damages for loss of dependency. Flowing from that there would be no basis to appeal for enhancement of the award of loss of dependency, which ought not have been awarded in the first place.
8. I note, that at paragraph 7 of the plaint, it was pleaded that the suit was brought under the [Fatal Accidents Act](#). I note too that there was a portion, in the plaint, headed “Loss of Dependency,” where it was pleaded that the appellant was the father of the deceased, and that the action was brought on his behalf and for the benefit of her estate. However, that would not suffice to anchor the claim under the [Fatal Accidents Act](#), for the award of loss of dependency, so long as the dependency was not pleaded, and the material particulars relating to dependency were not pleaded. Except for the age of the deceased, it was not pleaded whether she was earning income, and, if so, from which source. The extent of the dependency is not pleaded. Yet, it is these materials that assist the court to determine whether the deceased had a capacity to financially support dependants, and if he is, to what extent. The claim for loss of dependency can only be made by persons who were financially dependent on the deceased before his or her demise. Their loss would be the financial dependency lost. Facts around that would be what ought to be pleaded.
9. The witness statement, filed by the appellant, on 11<sup>th</sup> July 2023, did not allude to dependency. It merely described the deceased as a 23-year-old polytechnic student, that the deceased had great hopes in. When he testified, on 14<sup>th</sup> October 2024, the appellant described the deceased as a full-time student, who was fully dependent on him. There was absolutely no evidence of dependency, upon which the trial court could base itself, to make the sort of award made, and there would be absolutely no foundation to enhance that award at all. If anything, that award stands out for setting aside.
10. Some parties tend to confuse loss of dependency, with lost years. Loss of dependency is a loss to a dependant, a person who was dependent on another. Where there is no dependency, there would be no basis to award of loss dependency. It is largely an award of loss of support or services. Lost years is compensation for lost income. Lost years is not claimed under the [Fatal Accidents Act](#), for it is not a loss to the dependants, but under the [Law Reform Act](#), Cap 26, Laws of Kenya, for it is a loss to the estate.
11. Ideally, in the instant case, the appellant should have sought an award for lost years, for what the estate of the deceased lost, in terms of, not loss of expectation of life, but the income she was projected to earn after she completed her education, based on what she was training for, the average income from the employment she would have gotten, and the number of years she was expected to work. The claim for lost years is the most ideal, with respect to deaths of children, adolescents, and young persons, as these usually have no dependents, for they have no income upon which others could depend. See *Sheikh Mushtaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 others* [1986] KECA 42 (KLR) (Kneller, Hancox & Nyarangi, JJA), *EA Growers Limited vs. Charles Ng’ang’a Ngugi* [2015] KEHC 5067 (KLR) (Ngaah, J), *Amicabre Travel Services Limited & Another vs. DKY* (Suing as the legal representative of the Estate of VJK) [2023] KEHC 3787 (KLR) (Janet Mulwa, J), among others.



12. On special damages, the argument is that the trial court should have awarded Kshs. 707,049.00; given that that figure was specifically pleaded, and was specifically proved. In the plaint, at paragraph 7, that award was broken down into Kshs. 200.00 for police abstract; Kshs. 150.00 for death certificate, Kshs. 593,699.00 for medical expenses; Kshs. 63,000.00 for burial expenses, and Kshs. 50,000.00 for letters of administration. The court awarded Kshs. 478,699.00, based on receipts for Kshs. 35,000.00 for the coffin, and Kshs. 443,699.00 for a service which was not disclosed. Kshs. 28,000.00 for bus ticket was rejected, and so was Kshs. 50,000.00 for legal fees.
13. At the trial, the appellant filed and produced a bundle of documents, which included receipts. That bundle composed of the documents in the plaintiff's list of exhibits, dated 6<sup>th</sup> July 2023. In that bundle there is an item, number (n), titled "receipts for special damages." There were receipts from Mediheal Hospital and Fertility Centre: for Kshs. 81,000.00, being deposit, paid on 16<sup>th</sup> November 2022; deposit of Kshs. 19,000.00, paid on 16<sup>th</sup> November 2022; and Kshs. 443,699.00, paid by cheque, on 13<sup>th</sup> June 2023. The total medical expense came to Kshs. 543,699.00. There was a bus ticket, of 5<sup>th</sup> December 2022, for Kshs. 28,000.00, for a journey from Eldoret to Mumias. It was suspicious, but could be genuine. The appellant ought to have dispelled the suspicion by explaining what it was all about. There was a receipt for a coffin, dated 5<sup>th</sup> December 2022, for Kshs. 35,000.00.
14. The transport receipt of Kshs. 28,000.00 and the coffin receipts are both dated 5<sup>th</sup> December 2022. They should be treated as related. The deceased died at the Mediheal Hospital at Eldoret, while the suspect receipt was for a journey from Eldoret to Mumias, 15 days thereafter, when the body was transported for burial, in the coffin the subject of the receipt dated 5<sup>th</sup> December 2022. The trial court should have allowed the receipt for the transport. I also see a receipt for Kshs. 50,000.00, for legal fees for the limited grant, dated 2<sup>nd</sup> May 2023. It must have cost the appellant to obtain it, and the receipt for Kshs. 50,000.00 ought to not have been rejected.
15. Based on the above, the expenses of Kshs. 19,000.00; Kshs. 81,000.00; Kshs. 443,699.00, Kshs. 28,000.00; Kshs. 35,000.00 and Kshs. 50,000.00 were specifically proved, and should have been allowed. They totalled to Kshs. 656,699.00.
16. Regarding costs and interests, I note that the trial court, in its judgement, did not award costs and interests to the appellant. Costs follow the event. The appellant succeeded in his suit against the respondents, and he was entitled to costs. He obtained a monetary decree on general and special damages. He was entitled to interests on those awards.
17. The appeal herein, therefore, succeeds, to the extent of the special damages, and costs and interests. The judgement of the trial court, of 28<sup>th</sup> November 2024, is, accordingly, set aside, with respect to the award of special damages of Kshs. 478,699.00, and that figure is substituted with an award of special damages of Kshs. 656,699.00. In addition, there shall be an order awarding the appellant costs and interests, with the interest on the damages being calculated from 28<sup>th</sup> November 2024, when the judgement was delivered. The appellant shall also have the costs of this appeal. The trial court records shall be returned to the trial court, while the instant file shall be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.



Advocates

Mr. Omondi, instructed by Omondi & Company, Advocates for the appellant.

Mr. Shiloya, instructed by Akwala & Company, Advocates for the respondent.

