

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CIVIL APPEAL NO E011 OF 2024

ROSE ASIKO PANYAKO (Suing as Administrator of the Estate of JOSEPHAT MUSUMBA (Deceased))

.....**APPELLANT**

VERSUS

HARRISON MIYA MUKUNA.....1ST
RESPONDENT

MINI BAKERIES (NRB) LIMITED.....2ND
RESPONDENT

(Being an appeal from the Judgment and Decree of Hon R. M. Ndombi (PM) delivered at Vihiga in the Principal Magistrate's Court Civil Case No 215 of 2022 on 7th March 2024)

JUDGMENT

INTRODUCTION

1. In her decision of 7th March 2024, the Learned Trial Magistrate, Hon R. M. Ndombi, Principal Magistrate dismissed the Appellant's suit with no orders as to costs by holding that the deceased was liable for his own death and could not be compensated for his own negligence.
2. Being aggrieved by the said decision, on 15th March 2024, the Appellant herein filed a Memorandum of Appeal dated 14th March 2024. He relied on four (4) grounds of appeal.
3. His Written Submissions were dated 4th March 2025 and filed on 19th March 2025. The 1st Respondent's Written Submissions were dated 14th May 2025 and filed on 20th May 2025 while those of the 2nd Respondent were dated and filed on 10th March 2025. The Judgment herein is based on the said parties' Written Submissions which they relied upon in their entirety.

LEGAL ANALYSIS

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of **Selle & Another vs Associated Motor Boat Co Ltd & Others [1968] EA 123** where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the parties' Written Submissions, it appeared to this court that the issues that had been placed before this court for determination were as follows:-
 - i. **Whether or not the Appellant had the *locus standi* to file this suit;**
 - ii. **Whether or not the Appellant proved his case on a balance of probabilities;**
 - iii. **Whether or not the Learned Trial Magistrate erred in failing to make a finding on liability and quantum which would have otherwise been awarded to her had her claim succeeded.**

7. The court deemed it prudent to address the issues under the following distinct heads.

I. LOCUS STANDI

8. The Appellant did not submit on this issue. The 1st Respondent reiterated the submissions that he relied upon in the lower court and agreed with the Trial Court's holding that the Appellant had no capacity to institute the suit. He contended that Paragraph 10 of the Amended Plaintiff dated 12th October 2022 listed four (4) minors as beneficiaries of the estate of the deceased but from the evidence on record, the Letters of Administration issued herein were granted to the Appellant only.

9. He argued that the Appellant did not have the *locus standi* to institute the suit in the lower court and hence, the suit should be struck out as it contravened Section 58 of the Laws of Succession Act. He asserted that the Letters of Administration *Ad-Litem* ought to have been given to two (2) or more administrators considering that it was a continuing trust as there were minors who were beneficiaries of the deceased. He was emphatic that Section 58 of the Laws of Succession Act was couched on mandatory terms.

10. In this regard, he placed reliance on the case of **Andrew S.O. Onjoro & Wilbroda Onjoro Night vs David Obarasa Ekaka (Suing as the administrators of the estate of Edisa Nasirumbi (Deceased))** which cited the case of **Veronica Mwikali Mwangangi vs Daniel Kyalo Musyoka[2005]eKLR** where a suit was struck out because the limited

grant giving the administrator authority to sue contravened Section 58 which required appointment of more than one administrator where a continuing trust arose.

11. He was categorical that as the deceased was survived by minors, a continuing trust had arisen with respect to the estate of the deceased, whether full or limited, hence the same was bound to comply with Section 58 of the Law of Succession Act and that, therefore, no grant could be made to the Appellant as he was only one administrator in the deceased's estate. He added that the fact that one was made would mean that the said grant was invalid and available for revocation under Section 76 of the Law of Succession Act. He submitted that a suit that was founded on it was equally invalid or void and should be struck out.

12. This court noted that although the Respondents raised the issue of *locus standi* in their Written Submissions at the lower court, the Trial Court did not determine the said issue.

13. According to Black's Law Dictionary (8th Edition), *locus standi* was defined as:-

“The right to bring an action or to be heard in a given forum; standing.”

14. Section 58 of the Law of Succession Act Cap 160 (Laws of Kenya) provides that:-

1. Where a continuing trust arises-

a. No grant of letters of administration in respect of an intestate estate shall be made to one person alone

except where that person is the Public Trustee or a Trust Corporation;

b. No grant of letters of administration with the will annexed shall be made to one person alone except where—

i. that person is the Public Trustee or a Trust Corporation, or

ii. in the will, the testator has appointed one or more trustees for the continuing trust who are willing and able to act.

2. Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing as chosen by the court of its own motion.”

15. The **Black’s Law Dictionary (11th Edition 2019)** defines Continuing Trust as:-

“A trust that does not end upon the grantor's death.”

16. This court had due regard to the case of **Onjoro & Another vs Ekaka (Suing as the Administrators of the Estate of Edisa Nasirumbi, (Deceased) (Civil Appeal E004 of 2021) [2023] KEHC 20051 (KLR) (17 July 2023) (Judgment)** where it was held that a continuing trust arose where a deceased person was survived by minors

and to a limited extent, surviving spouses and that the distribution of the estate, the shares due to a minor were not devolved to the minor during his minority, but were held by the administrators or personal representatives, during the minority of the minor, in trust.

17. The underlying objective of Section 58 of the Law of Succession Act was to safeguard the interests of minor beneficiaries of the estate. As the said Section was couched on mandatory terms, it was clear that where there was a continuing trust, no grant of letters of administration in respect of the estate could be made to one person alone except where the administrator was the Public Trustee or a Trust Corporation. The Appellant herein was not a Public Trustee or a Trust Corporation and, therefore, she had no capacity to initiate the suit as pleaded since the grant was invalid for violating the provisions of Section 58 of the Law of Succession Act.

18. The Appellant's suit, therefore, ought to have been struck out on the above premises as the Appellant lacked the *locus standi* to file the suit at the Trial Court.

II. LIABILITY

19. The court was aware that it would not have been necessary to analyse the evidence relating to liability and quantum. However, it had to bear in mind that it could be found to have proceeded on the wrong principles and arrived at erroneous conclusion. It was on that basis that it found it prudent to pronounce itself on the issues of liability and quantum.

20. Grounds of Appeal Nos (1), (2) and (4) of the Memorandum of Appeal relating to the issue of liability were, therefore, dealt with under this head as they were all related.
21. The 1st Respondent did not submit on this issue. The Appellant submitted that this court was obliged to review the evidence on record anew and draw its own conclusions as was echoed in the case of **Abok James Odera t/a Machira & Co Advocates[2013]eKLR**. She urged the court to interfere with and set aside the Trial Court's findings on the basis that it misapprehended the evidence tendered by overlooking pertinent factors thus resulting in misapplication of legal principles relating to contributory negligence. In this regard, she relied on the case of **Mweni vs Kagai & Another[2022] KEHC 17264** where the appellate court emphasised that it could only interfere with the trial court's findings if it was evident that it had misdirected itself or acted on wrong principles.
22. She also relied on the case of **Yusuf & Another vs Mutual & Another(Suing as Legal Representatives of the Estate of Mutua[2024] KEHC 10708 (KLR)** where the court therein agreed that the trial court overlooked critical factors that demonstrated the defendant's primary liability.
23. She further submitted that Caleb Opany (hereinafter referred to as "DW 1") was untruthful and was, therefore, an unreliable witness as he gave conflicting narratives in his witness statement and oral testimony which eroded the credibility and probative value of his evidence. She added that the 2nd Respondent never tendered any evidence to controvert her evidence and that since it was his Motor Vehicle Registration Number

KCF 206 S Mitsubishi Lorry Truck (hereinafter referred to as the “ first subject motor vehicle”) that hit the deceased, then the Trial Court ought to have taken that into consideration by apportioning liability.

24. She argued that the Trial Court erred by blaming the deceased wholly on the ground that he was the author of his own misfortune yet the principles of contributory negligence were clear that although they could diminish a plaintiff’s claim, they could not operate to absolve a defendant from the duty of care as was held in the case of **Yusuf & Another vs Mutual & Another** (Supra).

25. She also relied on the case of **John Wainaina Kagwe vs Hussein Dairly Ltd[2013]eKLR** where it was held that as the driver did not testify, the allegations in the defence were just mere allegations. She pointed out that the evidence of CP Kiprono Bett (hereinafter referred to as “DW 2”) confirmed that the first subject Motor Vehicle hit the deceased who was hanging on the right side of Motor Vehicle Registration Number KCR 152 T (hereinafter referred to as the second subject Motor Vehicle).

26. She further asserted that from the evidence that was adduced during trial and the fact that the accident occurred during daytime, the 2nd Respondent’s driver could clearly see the oncoming vehicle to enable him take evasive action but he failed to do so. She relied on the doctrine of *res ipsa loquitur* and that the courts addressed in the cases of **Embu Public Road Services Ltd vs Riimi[1968] EA 22** and **Susan Kamini Mwangangi & Another vs Patrick Mbithi Kavita[2019]eKLR**.

27. She was emphatic that DW 1’s evidence was contradictory and that the deceased was hanging on the side and not at the back of the lorry as

it would have been logically impossible for the oncoming motor vehicle to hit him when at the back. In this regard, she relied on the case of **Yusuf & Another vs Mutual & Another** (Supra) which quoted the case of **Ndungu Kimani vs Republic[1979] KLR 282** where it was held that the witness in a case upon whose evidence it was proposed to be relied should not create an impression in the mind of the court that he was not a straight forward person or raise a suspicion about his trustworthiness.

28. She further cited the case of **James Mulinge vs Freight Wings Ltd & 3 Others[2016]eKLR** where it was held that where a court found a party under oath had given false averments, it had the inherent power to punish such witness. She was categorical that the Trial Court misapprehended facts by relying on untruthful evidence tendered by DW 1. She added that the concept of duty of care in the context of an authorised passenger was discussed in the case of **PNM & Another (The Legal Personal Representative of the Estate of LMM vs Telkom Kenya Limited & 2 Others[2015] KEHC 1324 (KLR)** where it was held that negligence was the failure to exercise the standard of the care that a reasonably prudent person would have exercised in a similar situation.

29. She contended that the driver of the second subject Motor Vehicle was able to see the deceased through the side mirror. As a reasonable person would, the said driver ought to have stopped his vehicle and instructed the deceased to alight from the said vehicle if indeed the deceased was unauthorised passenger. She added that since the said driver was aware that the deceased was a passenger in his vehicle and he did not object, then he had automatically assumed a duty of care towards

the deceased and which duty included an obligation for the driver to take reasonable steps to ensure the safety of the deceased as was held in the case of **United Millers Limited & Another vs John Mangoro Njogu[2016]eKLR**. In the premises, she urged the court to find the 1st and 2nd Respondents equally liable for the deceased's death.

30. The 2nd Respondent submitted that from the evidence on record, it was clear that the deceased was the author of his own misfortune and was, therefore, to blame for the accident. It invoked Section 107 and 108 of the Evidence Act and argued that the Appellant failed to prove her case as against the Respondents on a balance of probability, and hence, the Trial Court was right to dismiss her case.

31. It placed reliance on the cases of **Muriungi Knaoru Jeremiah vs Stephen Ungu M'mwarabau[2015]eKLR** where it was held that the burden of proving the claim was with the appellant and the case of **Kiema Mutuku vs Kenya Cargo Hauling Services Ltd (1999)** where it was held that there was yet no liability without fault in the legal system in Kenya and that a plaintiff had to prove some negligence against the defendant where claim was based on negligence.

32. It urged the court to dismiss the Appellant's appeal herein with costs as she had failed to call credible evidence to prove that the accident was caused by negligence on its part.

33. The Appellant testified that the deceased was her husband. She said that she was called on 24th June 2022 and informed that her husband had been involved in an accident. She informed the Trial Court that the deceased was a lawful passenger on the second subject Motor Vehicle

which was being driven along Siaya-Luanda Road when around Fort Jesus Area, it collided with the first subject Motor Vehicle causing an accident in which he sustained fatal injuries.

34. She further stated that the deceased was rushed to Coptic Hospital where he was pronounced dead on arrival. She pointed out that the deceased was the sole breadwinner and had left behind very young children and herself as her wife. She blamed both the first and second subject Motor Vehicle for the accident. She added that she did not witness the accident but that the police knew how the accident occurred.

35. PC Evanson Labet (hereinafter referred to as "PW 2") testified that he was the Investigating Officer in the Traffic matter. He stated that on 24th June 2022, an accident occurred at Tosheka Bar along Siaya-Lunda Road involving the first and second subject Motor Vehicles as a result of which the deceased who was a passenger on board the second subject Motor Vehicle sustained fatal injuries. He said that when he arrived at the scene of the accident, he found a pool of blood on the road and the first subject Motor Vehicle on the left side facing Luanda which was its proper lane.

36. On his cross-examination, he stated that as per the driver of the first subject Motor Vehicle, the deceased was hanging on the side at the rear of the second subject Motor Vehicle. He stated that he could not tell if the back of the said second subject Motor Vehicle was open or closed as the said vehicle was not at the scene at the time. He said that the driver of the said second subject Motor Vehicle ought to have warned the deceased

against hanging as he could see him through the side mirror. He produced the copy of the Police Abstract as an exhibit in court.

37. DW 1 was the driver of the second subject motor vehicle. He stated that his lorry had been booked for funeral services to go to Coptic from Luanda to carry chairs and catering items and to remove the body of a deceased from the morgue. He was categorical that his said second subject Motor Vehicle was only insured to carry two (2) people. He denied that the deceased was a passenger in the said second subject Motor Vehicle but that he was only told that he was hanging behind the vehicle and was knocked down by another vehicle when he tried to jump. He added that he could not see him using the side mirror but that if he was hanging on the side, he could have seen him through the mirror. He further stated that his vehicle was inspected and was found to have no damage. He blamed the deceased for his own misfortune.

38. DW 2 testified that he was a police In-charge of traffic duties at Luanda Police Station. He stated that the deceased was hanging on the right side of the second subject Motor Vehicle and was hit by the side mirror of the first subject Motor Vehicle. He added that the deceased sustained head injuries. He blamed the deceased for having caused the accident as he was at a place not designated for passengers.

39. This court had due regard to the case of **Isabella Wanjiru Karanja v Washington Malele [1983] KECA 72 (KLR)** where it was held that there were two (2) elements in the assessment of liability, namely causation and blameworthiness and that there could be no excuse for the driver's complete failure to see the pedestrian, or for the pedestrian's

complete failure to see the car. It was against this background that this court found and held that both drivers of the first and second subject Motor Vehicles were duty bound to keep a proper lookout for other road users irrespective of their follies and carelessness on the roads.

40. The fact that the deceased lost his life was not disputed. However, from the evidence on record, it was not possible to determine who was to blame for his death as there was no eye witness. Although PW 2 testified that DW 1 ought to have seen the deceased through his side mirror and DW 2 confirmed that the deceased was hanging at the right side of the first subject motor vehicle, DW 1 completely denied seeing the deceased through his side mirror. He was emphatic that he could not see the deceased as he was not hanging on the side of the rear of the second subject Motor Vehicle.

41. In the case of **Hussein Omar Farah vs Lento Agencies [2006] eKLR**, the Court of Appeal held that if there was no concrete evidence to determine who was to blame between two drivers, both should be held equally to blame. However, as the deceased was also unauthorised passenger on the first subject Motor Vehicle, in the mind of this court, he placed himself on the line of risk and contributed to his own misfortune. He was the author of his own misfortune for hanging at the side of the rear of the second subject Motor Vehicle. He, therefore, bore the greatest burden for the injuries that he sustained.

42. He could not have been hit by the second subject Motor Vehicle if he was hanging at the rear of the first subject Motor Vehicle. It was the finding and holding of this court that both the drivers of the first and

second subject Motor Vehicles saw the deceased hanging at the side of the rear subject Motor Vehicle and hence were to blame for not having kept a proper lookout for careless road users such as the deceased herein.

43. In light of the circumstances had it found that the Appellant had locus standi to institute the proceedings herein, it would have apportioned liability at seventy (70%) per cent against the deceased herein and thirty (30%) per cent against the 1st and 2nd Respondents each bearing fifteen (15%) per cent liability.

III. QUANTUM

44. Ground of Appeal No (3) was dealt with under this head.

45. On the issue of quantum, the Appellant faulted the Trial Court for failing to assess the damages she would have awarded had the claim succeeded. She argued that it was established practice that a trial court ought to assess damages even when dismissing a suit and that that ensures that should an appellate court overturn the dismissal, it could rely on the trial court's assessment without remitting the case for a fresh evaluation of damages as was held in the case of **Kurii vs Wangombe[2023] KEHC 21608 (KLR)**.

46. She asserted that she produced all relevant evidence that was on record and claimed compensation under both the Law Reform Act and Fatal Accident Act. She urged the court to rely on the same. She invoked Section 27 of the Civil Procedure Act and placed reliance on the case of **Cecilia Karuru Ngayu vs Barclays Bank of Kenya & Another[2016]eKLR** where it was held that in determining the issue of

costs, the court was entitled to look at the conduct of the parties, the subject of litigation and the circumstances that led to the institution of the proceedings. He urged the court to award him the costs of the appeal.

47. The 1st Respondent did not submit on this issue. The 2nd Respondent submitted that had the Appellant proved her case on a balance of probabilities then the award that had been submitted by the 1st Respondent at the Trial Court would have been sufficient compensation. It added that it would have adopted a multiplicand of twenty (20) years taking into account life's other vicissitudes not restricted to ill health that could cut short working life of the deceased.

48. Right at the outset, this court wished to point out that while a trial court could exercise its discretion to award quantum based on the material that was adduced during trial, nothing stopped an appellate court from re-evaluating the evidence that had been adduced vis-a-vis considering comparable awards and coming to its own conclusion as was held in the cases of **Selle & Another vs Associated Motor Boat Co Ltd & Others** (Supra) and **Kenya Ports Authority vs Kushton (K) Ltd (2009) 2 EA 212.**

49. It therefore considered the issues that the Appellant had raised under the following separate and distinct heads.

IV. DAMAGES UNDER THE LAW REFORM ACT

A. PAIN AND SUFFERING

50. At the Trial Court, the Appellant had submitted that as the deceased did not die on the spot, he had suffered a great deal of pain and suffering

before his death. She urged the court to award Kshs 1,500,000/= for pain and suffering. She relied on the case of **Sanya Hassan & Another vs Soma Properties Ltd[2002]eKLR** where the court awarded Kshs 1,050,000/= for pain and suffering and **Daniel Kuria Nganga vs Nairobi City Council [2013]eKLR** where the court awarded Kshs 1,500,000/= for pain and suffering.

51. The 1st Respondent submitted that evidence on record showed that the deceased died on the spot and that courts tended to award nominal damages under this head. He proposed that the court awards Kshs 10,000/= for pain and suffering. He relied on the cases of **Kenya Railways Corporation vs Samuel Mugwe Giochwe[2012]eKLR** and **Beatrice Murage vs Consumer Transport Ltd & Another[2014]eKLR**.

52. Notably, the Appellant confirmed that the deceased died on the spot. It was the considered view of this court that a sum of Kshs 50,000/= would have been the most reasonable as he died on the spot. In arriving at the said conclusion, this court had due regard to the cases of **Acceler Global Logistics vs Gladys Nasambu Waswa & Another [2020] eKLR** and **Sukari Industries Limited vs Clyde Machimbo Juma [2016] eKLR** as quoted in the case of **Wachira Joseph & 2 Others vs Hannah Wangui Makumi & Another [2021] eKLR**, the courts therein awarded a sum of Kshs 50,000/= for pain and suffering.

53. This court found and held that the award of Kshs 1,500,000/= that was suggested by the Appellant was manifestly and inordinately high and unreasonable in the circumstances of this case.

B. LOSS OF EXPECTATION OF LIFE

54. The Appellant submitted that the deceased died at the age of thirty-three (33) years and did not suffer from any ailments and never used any form of drugs. She asserted that the deceased engaged in robust farm work and other casual labour which demanded one to be in pique physical condition. She urged the court to award Kshs 400,000/= under this head.
55. In that regard, she relied on the cases of **Letayoro & Another vs JK (Suing as the Legal Representative of the Estate of the CK (Deceased))[2022] KEHC 10309 (KLR)** and **Daniel Kuria Nganga vs Nairobi City Council** (Supra) where the courts therein awarded Kshs 300,000/= for loss of expectation of life.
56. On his part, the 1st Respondent submitted that there was no evidence that was adduced to show that the deceased was in perfect health at the time of his death. He argued that allowing for the uncertainties and vicissitudes of life, then an award of Kshs 50,000/= would be reasonable. He relied on the case of **Joseph Kahiga Gathii & Paul Mathaiya Kahiga (Suing as the Administrators of the Estate of the late Lydia Wanjiku Kahiga and Elizabeth Kahiga (both deceased) vs World Vision Kenya & 2 Others)[2014]eKLR** where the court awarded Kshs 60,000/= for the loss of expectation of life.
57. It was this court's considered view that the Appellant's proposal for loss of expectation of life was manifestly and inordinately excessive taking onto account the comparable awards. On the other hand, the award of

Kshs 50,000/= for loss of expectation as submitted by the 1st Respondent was manifestly and inordinately low.

58. Considering inflationary trends, it was this court's view that an award of Kshs 100,000/= would have been sufficient for loss of expectation of life. In arriving at this figure, this court associated itself with the holding in the case of **Joseph Mugweru Njenga & Another vs Joseph Kamau Ng'ang'a [2018] eKLR** where the court therein awarded a sum of Kshs 100,000/= under this head.

V. DAMAGES UNDER THE FATAL ACCIDENTS ACT

A. MULTIPLICAND

59. The Appellant submitted that the deceased was a farmer and a casual labourer who earned Kshs 1,000/= per day. On his part, the 1st Respondent submitted that the applicable figure under this head would be prescribed under the Regulation of Wages (General) (Amendment) Order, 2015 as the allegations that he was a farmer were unproved. He submitted that the deceased fell under the general worker category and as he was a resident of Vihiga County, he fell under column 4 of General Labourers where the applicable figure therein was a salary of Kshs 5,844/= per month.

60. Notably, as there was no proof of income, the trial court ought to revert to Regulation of Wages (General Amendment) Order as was held in the cases of **Muthike Miciimi Nyaga (Suing as the Legal Administrator of the Estate of James Githinji Muthike (Deceased) vs Dubai Superhardware[2021]eKLR** and **Nyamira Tea Farmers**

Sacco vs Wilfred Nyambati Keraita (Suing as the Personal Representative of Mary Nyaboke Keraita (Deceased) [2011]eKLR.

61. This court also had due regard to the case of **Jacob Ayiga Maruja & Another vs Simeon Obayo [2005] eKLR** where the Court of Appeal stated that it did not subscribe to the view that the only way to prove the profession of a person was by producing certificates or that the only way of proving earnings was by production of documents as this would occasion grave injustice to very many Kenyans who were illiterate and kept no records yet they earned their livelihood in various ways.
62. In the absence of proof of income of the deceased as a farmer and a casual labourer, this court reverted to the appropriate Regulation of Wages (General)(Amendment) Order, 2022 as the deceased died on 24th June 2022 which provided the minimum wage of a casual labourer as Kshs 9,370/=, which this court would have adopted as the multiplicand to calculate the damages under this head.

B. MULTIPLIER

63. The Appellant submitted that as farmers and casual labourers had no fixed retirement, not to mention the vagaries of such a life, a retirement of sixty-five (65) years was appropriate.
64. In the circumstances, she proposed a multiplier of thirty-two (32) years. In that regard, she relied on the cases of **Kenya Power & Lighting Co Ltd vs Maria Kianga & Another (Suing as legal administrators of the estate of Peter Okoti (Deceased))[2021]eKLR** where the court adopted a multiplier of twenty (20) years where the

deceased was forty-five years old and **Samwel Osewe Ochillo vs Simion Omwoyo Obare[2013]eKLR** where the court adopted a multiplier of fifteen (15) years where the deceased was fifty (50) years old.

65. The 1st Respondent proposed a multiplier of fifteen (15) years and relied on the case of **Amos Mungulusi Syomau & Another vs Mawingo Bus Services & Another Hccc No 64 of 1997**(eKLR citation not given) wherein the deceased was aged thirty-five (35) years and the court adopted a multiplier of fifteen (15) years.

66. This court had due regard to the case of **Kenya Wildlife Services vs Geoffrey Gichuru Mwaura [2018] eKLR** where it was held that there was no clear-cut approach when ascertaining a multiplier but that courts took into consideration the vagaries of life.

67. Courts are guided by comparable cases to arrive at conclusions that are not so wide apart as to cause inconsistency and confusion to those relying on the decisions. In this regard, taking the deceased's age of thirty- three (33) years into account, this court came to the firm conclusion that a multiplier of twenty (20) years was reasonable in the circumstances of this case. In determining the multiplier applicable in this case, this court considered the following cases:-

1. In the case of **Akuma (Suing as the Legal Representative of the Estate of the Late Kelvin Ongeru Obutu - Deceased) vs Ogega & Another [2025] KEHC 16489 (KLR)**, the court adopted a multiplier of twenty (20) years where the deceased was thirty-five (35) years old at the time of his death.

2. In the case of **Pleasant View Limited vs Rose Mutheu Kithoi & Another [2017]eKLR**, the court adopted a multiplier of twenty (20) years for a thirty-six (36) years old deceased person to calculate loss of dependency.

C. DEPENDENCY RATIO

68. The Appellant submitted that the ration of 2/3 was appropriate in the circumstances noting that the deceased had many dependents. The 1st Respondent had also proposed the same.

69. Notably, the Chief's Letter dated 26th July 2022 indicated that the deceased had been survived by his wife, the Appellant and four (4) minors.

70. The extent of dependency was a question of fact as held in the case of **Leonard Ekisa & Another vs Major Birgen [2005] eKLR**. The court stated that there was no rule of law that 2/3 of the income of a person was to be taken as available for family expenses but that the extent of dependency was a question of fact that was to be established in each case.

71. In the circumstances this court found and held that a dependency ratio of 2/3 as had been proposed by the Appellant herein would have been appropriate in the circumstances of this case.

72. In conclusion, the loss of dependency would have been calculated as follows:-

$$9,370 \times 12 \times 20 \times 2/3 = \text{Kshs } 1,499,200/=$$

VI. SPECIAL DAMAGES

73. The Appellant submitted that special damages must be pleaded and proved as was held in the case of **Christine Mwigina Akonya vs Samuel Kairu Chege[2017]eKLR**. She contended that she had proved the sum of Kshs 59,100/= as special damages and urged the court to award the same.

74. The 1st Respondent submitted that the only receipts filed were for Kshs 40,000/= and only that should be awarded.

75. A perusal of the record of appeal showed that the receipts amounting to Kshs 59,100/= had been produced as evidence during trial. As such, the special damages of Kshs 59,100/= were specifically pleaded and proved, the Appellant would have been awarded the said sum as pleaded.

VII. CONCLUSION

76. In the event the Appellant's appeal would have been successful, this court would have entered Judgment in her favour against the 1st and 2nd Respondents jointly and severally for the sum of Kshs 512,490/= made up as follows:-

Loss of Dependency **Kshs 1,499,200/=**

$2/3 \times 9,370 \times 12 \times 20$

Loss of expectation of life **Kshs 100,000/=**

Pain and Suffering **Kshs 50,000/=**

Special damages **Kshs 59,100/=**

Kshs 1,708,300/=

Less 70% contribution

Kshs 1,195,8100/=

Kshs 512,490/=

Costs and interest thereon would have been awarded. Interest on special damages would have accrued at court rates from the date of filing suit while damages under the Law Reform Act and damages under the Fatal Accidents Act Cap 32 (Laws of Kenya) would have accrued interest at court rates from the date of judgment of the lower court until payment in full.

DISPOSITION

77. Having found that the Appellant did not have the locus standi to institute the proceedings herein, the upshot of this court's decision was that the Appellant's appeal herein dated 14th March 2024 and filed on 15th March 2024 was not merited and the same be and is hereby dismissed. In view of the loss that the Appellant had already suffered, it is hereby directed that each party will bear their own costs of the appeal.

78. It is so ordered.

DATED and DELIVERED at VIHIGA this 15th day of December 2025

J. KAMAU
JUDGE