



**Muguna & another v Mwanja & another (Suing as the legal representatives of the Estate of Brayan Ochieng' Okoth) (Civil Appeal 258 of 2023) [2026] KEHC 1630 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL 258 OF 2023  
RC RUTTO, J  
FEBRUARY 12, 2026**

**BETWEEN**

**SALLY MUGUNA ..... 1<sup>ST</sup> APPELLANT**

**ESTHER NALLIE ANYANGO ODINGA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**EVELYNE MUENI MWANIA & GRACE NYAMBURA MBURU (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF BRAYAN OCHIENG' OKOTH) ..... RESPONDENT**

*(An appeal from the judgment and decree of the Chief Magistrate's Court at Machakos (E.H. Keago, PM.) delivered on 15th September 2022 in CMCC No. 514 of 2021)*

**JUDGMENT**

1. This appeal challenges the judgment and decree of the Trial Magistrate delivered on 15th September 2022. The appellants were dissatisfied with the trial court's decision awarding the respondents general and special damages amounting to Kshs. 8,034,102.00, together with costs and interest.
2. The facts of the case are that by a plaint dated 24th September 2021, the respondents sued the appellants in their capacities as driver and registered/beneficial owner of motor vehicle registration number KBJ 548J. It was pleaded that on 13th December 2020, at around 7:00 p.m., the deceased was travelling as a lawful paying passenger in the said vehicle. Upon reaching Alim area along the Machakos–Makutano road, the 1st appellant allegedly drove negligently, veered off the road, and collided with an electrical post. The deceased sustained fatal injuries as a result. Consequently, the respondents sought; general damages under the Law Reform Act and the Fatal Accidents Act, special damages of Kshs. 592,085.00, Costs and interest of the suit.



3. In its judgment dated 15th September 2022, the trial court apportioned liability at 75:25 in favor of the respondents against the appellants. The court awarded general and special damages totaling Kshs. 8,034,102.00, together with costs and interest.
4. Aggrieved by the findings, the appellants filed a joint memorandum of appeal dated 19th December 2022 raising five grounds. In summary, they contended that: the award of general damages was excessive, the deceased's income was not strictly proved, the award on loss of dependency was speculative and based on conjecture and that the trial court failed to apply the correct legal principles.
5. On these grounds, the appellants prayed that the appeal be allowed and the award on loss of dependency reconsidered.
6. The appeal was canvassed through written submissions. The appellants, in their submissions dated 19th May 2025, argued that: the deceased's income was not proved on a balance of probabilities. In the absence of proof of income, the trial court ought to have applied the global sum approach rather than relying on uncertain figures. They also submitted that the respondents failed to prove, to the required standard, that they were dependents of the deceased. Consequently, they urged that loss of dependency was not established.
7. For these reasons, the appellants urged the appellate court to allow the appeal with costs.
8. The respondents opposed the appeal through written submissions dated 4th July 2025. They argued that the appellants failed to demonstrate that the trial court acted on wrong principles. In their view, the deceased's income was sufficiently proved based on the evidence adduced. They further contended that loss of dependency was established on a balance of probabilities. Importantly, they recalled that during trial, the appellants consented to the admission of the respondents' documents and could not now renege on that position. Accordingly, they prayed that the appeal be dismissed with costs.
9. I have carefully considered the submissions, examined the record of appeal, and analyzed the applicable law. This appeal arises from a personal injury claim. From the proceedings of 13<sup>th</sup> April 2022, the parties recorded the following consent:
  - “ 1. Judgment be and is hereby entered for the plaintiff as age of (sic) the defendant and liability at the ratio of 75:25 in favour of the plaintiff.
  2. The plaintiff's clear supporting documents as filed with the plaint be admitted as an evidence without calling the makers.
  3. Assessment of damage do proceed on way of submission.
  4. Parties be at liberty to file a consent on any other heads of special damage before the date of submissions on quantum.”
10. It follows that liability is not contested. The appellants' memorandum of appeal primarily challenges the award under the head of loss of dependency. The record shows that the respondents' documents were produced by consent, including receipts supporting special damages amounting to Kshs. 590,385.00. I also find that the awards under the *Law Reform Act*, Kshs. 50,000.00 for pain and suffering and Kshs. 100,000.00 for loss of expectation of life, are consistent with established principles and will not be disturbed.



11. The appellants have strongly contested the damages awarded under the *Fatal Accidents Act*, specifically the loss of dependency. In determining whether the award was sound, just, and lawful, this court is guided by the Court of Appeal decision in *Butt v. Khan* (1982–1988) 1 KAR, which held:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded 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 appellants argue that the trial court erred in adopting the multiplier approach because the deceased’s income was not proved to the required standard. The trial court had accepted that the deceased was a graphic designer earning approximately Kshs. 50,000.00 per month. It then applied a multiplicand of 25 years, noting that the deceased was survived by his spouse, two children, and parents, and adopted a dependency ratio of two-thirds. The court justified its finding by stating “The deceased was a graphic designer which happens to be his career as disclosed on the certificate of death which agrees with the evidence of the plaintiff. He therefore had a source of living and the income stated by the plaintiff even without any document will constitute what is reasonable in the field of graphics. The average Graphic Designer Salary in Kenya is Kshs. 481,056.00 per year which is minus the bonuses.”
13. The central question is whether the trial court properly assessed the loss of dependency. The record of appeal indicates that the deceased was alleged to be a graphic designer earning Kshs. 50,000 per month. However, apart from this assertion, no documentary evidence was produced to substantiate his occupation, income, or educational qualifications. Beyond the death certificate, indicating the deceased occupation as graphic designer the respondents provided no proof of the deceased’s employment or earnings.
14. The burden of proof lies squarely on the party who wishes the court to believe in the existence of a fact. Sections 109 and 112 of the *Evidence Act* are clear: the burden of proving any particular fact rests on the party asserting it, unless otherwise provided by law. Moreover, where a fact is especially within the knowledge of a party, that party bears the responsibility of proving it.
15. In this case, the respondents were obligated to adduce sufficient evidence to establish that the deceased indeed earned Kshs. 50,000 per month as a graphic designer. Further, an entry on a death certificate shall be received as evidence as proof of death. The evidentiary value of a death certificate is limited to matters it is intended to prove—namely, cause of death, date of death, and place of death. It does not establish occupation or income. It was therefore incumbent upon the respondents to go beyond the pleadings and the death certificate, and to provide independent proof of the deceased’s occupation. This could have been achieved through a letter from the employer, professional certificates, or documentary evidence of income.
16. In the absence of such evidence, it was improper for the trial court to apply the multiplier approach. As observed in *Albert Odawa v. Gichimu Gichenji* (2007) eKLR, the multiplier approach is merely a method of assessing damages, not a principle of law. It is useful where factors such as age, income, and expected length of dependency are reasonably ascertainable. Where such factors are speculative, insisting on the multiplier approach risks sacrificing justice for methodology something a court of law must avoid.
17. Accordingly, I find that the global sum approach is the more appropriate method for assessing loss of dependency in this case. The absence of credible evidence on the deceased’s occupation and income



renders the multiplier approach unsuitable, and this court is justified in interfering with the trial court's findings.

18. In the absence of such evidence, it was improper for the trial court to apply the multiplier approach. As observed in *Albert Odawa v. Gichimu Gichenji* (2007) eKLR, the multiplier approach is merely a method of assessing damages, not a principle of law. It is useful where factors such as age, income, and expected length of dependency are reasonably ascertainable. Where such factors are speculative, insisting on the multiplier approach risks sacrificing justice for methodology, something a court of law must avoid.
19. Accordingly, I find that the global sum approach is the more appropriate method for assessing loss of dependency in this case. The absence of credible evidence on the deceased's occupation and income renders the multiplier approach unsuitable, and this court is justified in interfering with the trial court's findings.
20. The respondents stated that evidence was provided that the deceased was survived by his children as per the birth certificates that were produced by consent. The appellants could not thus discount that fact. The letter from the chief dated 12<sup>th</sup> April 2021 further confirmed that the deceased was survived by his mother, spouse and two children. I therefore find that those were the deceased's dependents.
21. Taking the above into account, and further considering that the deceased died aged 31 years old, I will make a comparative analysis with recent jurisprudence. In *Kidiga & another v Onguna & another* (Suing as the Administrator of the Estate of Elvis Omondi Otieno- Deceased) (2025) KEHC 10523 (KLR), the High Court upheld a global award of Kshs 3,000,000.00 for loss of dependency in respect of a deceased who was aged 27 years and had left behind one child. In, *Kibuga & another v M'itaruchu & another* (Suing as Legal Representatives of the Estate of Juster Gatwiri Murithi) [2025] KEHC 18345 (KLR), where the deceased was 28 years and left one child orphaned, the High Court awarded Kshs.3,000,000.00.
22. In view of the above, I only set aside the gross award of Kshs.10,000,000.00 on loss of dependency and substitute the same with an award of Kshs.4,500,000.00 given the number of dependents. This amount shall be subjected to the 75:25 ratio bringing it to Kshs. 3,375,000.00. For that reason, I find merit in the appeal and allow it. Since the appeal has partly succeeded, each party shall bear its costs of the appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

