

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. E499 OF 2025

KAVOI

KITUA.....APPE

LLANT

VERSUS

MERCY NG'ONDU NTHIWA & MUENI KITUA

(Suing as Legal Representatives of the Estate of

ALEX MUNYAO KITUA

(DECEASED)).....RESPONDENTS

(Being an appeal from the Judgment of Hon. Hosea Mwangi Ng'ang'a (PM) delivered on 3rd May 2025 in Milimani CMCC No. E5405 of 2022)

JUDGMENT

- 1.** The Appellant appealed against the judgment of the Chief Magistrate's Court delivered on 3rd May 2025 in Milimani CMCC No. E5405 of 2022 in which the Respondents, as legal representatives of the estate of the late Alex Munyao Kitua (hereinafter "the deceased"), were awarded damages arising from a fatal road traffic accident.

2. The Respondents had sued the Appellant seeking damages under the Fatal Accidents Act and the Law Reform Act.

3. Judgment was entered in favour of the Respondents as follows:

Pain and suffering.....	Kshs 250,000
Loss of expectation of life.....	Kshs 100,000
Loss of dependency.....	Kshs
4,800,000	
Special damages.....	Kshs 210,700
Total.....	Kshs
5,360,700	

4. The trial court also found the Appellant wholly liable for the accident.

5. The Appellant was dissatisfied with the findings on both liability and quantum and filed the present appeal.

Duty of the First Appellate Court

6. This being a first appeal, this Court is required to re-evaluate the evidence and to reach its own independent conclusion. In ***Selle & Another vs. Associated Motor Boat Co. Ltd [1968] EA 123***, the Court stated:

“This Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses.”

Appellant’s Submissions

- 7.** The Appellant submitted that the trial court erred in finding the Appellant wholly liable for the accident. It was submitted that negligence was not proved to the required standard.
- 8.** The Appellant further submitted that the award for loss of dependency was excessive and based on unproved income.
- 9.** It was argued that the alleged income of Kshs 25,000 per month was not supported by documentary evidence.
- 10.** The Appellant urged the Court to interfere with the award. Reliance was placed on ***Butt vs. Khan [1981] KLR 349***, where the Court 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.”

- 11.** Reliance was also placed on ***Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR***, where the Court held:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum.”

- 12.** The Appellant submitted that where income is not proved courts should adopt minimum wages or a global sum.

- 13.** Reliance was placed on ***Kimilili Hauliers Ltd vs. Maurice Msindano Musungu [2012] eKLR***, where the Court held:

“In the absence of evidence as proof of income, the Government minimum wage guideline for unskilled labourers set by the ministry of labour be applied.”

Respondents’ Submissions

- 14.** The Respondents submitted that liability was proved on a balance of probabilities.

15. It was submitted that the deceased was a passenger and therefore could not have contributed to the accident. The Respondents submitted that the Appellant called no witnesses. Reliance was placed on **Anne Wambui Ndiritu vs. Joseph Kiprono Ropkoi & Another**, where the Court held:

“As a general proposition under section 107(1) of the Evidence Act, cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.”

16. The Respondents urged the Court to uphold the finding on liability.

17. On quantum, the Respondents submitted that the award was proper.

18. Reliance was placed on **Kemfro Africa Ltd t/a Meru Express Services & Another vs. A.M Lubia & Another [1985] eKLR**, where the Court held:

“The assessment of damages is more like an exercise of discretion and an appellate court is not justified in substituting a figure of its own simply because it would have awarded a different figure.”

19. The Respondents urged the Court to uphold the multiplier approach.

Issues for Determination

20. I find that the issues for determination are whether the Appellant was wholly liable for the accident and whether the award for loss of dependency should be interfered with.

Liability

21. It was not disputed that the deceased was a passenger in the Appellant's motor vehicle. The investigating officer testified that the motor vehicle lost control and veered off the road. The Appellant did not call any evidence.

22. Sections 107, 109 and 112 of the Evidence Act place the burden of proof on the party asserting a fact. I find that the Respondents discharged that burden and I find no reason to interfere with the finding on liability. The finding that the Appellant was 100% liable for the accident is upheld.

Loss of Dependency

23. The trial court adopted a multiplicand of Kshs 25,000, a multiplier of 32 years and a dependency ratio of 2/3

24. The Respondents relied on oral evidence to prove income as no documentary evidence of income was produced. No employment records were produced and no driving licence or professional certification was produced to prove the claim that the deceased was a driver.

25. I agree with the Appellant's argument that the multiplicand adopted by the trial court was not supported by sufficient evidence.
26. Courts have held that the multiplier approach is not mandatory. In ***Albert Odawa vs. Gichimu Githenji [2007] eKLR***, the Court held that the multiplier approach is just a method of assessing damages and is not a principle of law or a dogma and can be abandoned where the facts do not facilitate its application.
27. Similarly in ***Mwanzia vs. Ngalali Mutua & Kenya Bus Services (Msa) Ltd & Another, [2007] eKLR*** the Court stated:

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

- 28.** In *Board of Governors of Kangubiri Girls High School & Another vs. Jane Wanjiku & Another* [2014] eKLR, the Court held that where the income of the deceased is not proved, the court is entitled to make a reasonable global award.
- 29.** I find that the income of the deceased was not proved to the required standard. The multiplier approach adopted by the trial court resulted in an excessive award.
- 30.** I find that this is a proper case for adoption of the global sum approach.
- 31.** Taking into account the age of the deceased (28 years), the existence of dependants, comparable awards and the uncertainties of life, I make an award of Kshs. 2,00,000 for loss of dependency.

Other Heads of Damages

- 32.** The awards under the following heads were reasonable and are upheld: -

Pain and suffering — Kshs 250,000

Loss of expectation of life — Kshs 100,000

Special damages — Kshs 210,700

- 33.** In sum, I make the following final award: -

Pain and suffering.....Kshs 250,000

Loss of expectation of life.....Kshs 100,000

Loss of dependency.....Kshs 2,000,000

Special damages.....Kshs 210,700

Total.....Kshs 2,560,700

Determination

- 34.** I have carefully considered the Record of Appeal, the submissions and the authorities cited.
- 35.** I find and hold that the appeal partially succeeds to the extent indicated above.

Orders

- 36.** The award of Kshs 4,800,000 for loss of dependency is set aside and substituted with an award of Kshs 2,000,000.
- 37.** The total award is Kshs 2,560,700.
- 38.** Interest shall accrue at court rates from the date of judgment of the lower court.
- 39.** Each party shall bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

**HON. W. A. OKWANY
JUDGE
5/03/2026**

FOR APPELLANT Kering for Bosire
FOR THE RESPONDENT Akasi
COURT ASSISTANT Ubah

ORIGINAL