



Grain Industries Co Ltd v Murima & another (Suing as the legal representatives of the Estate of the Late Francis Muriama Mwangi) (Civil Appeal E004 of 2024) [2026] KEHC 2821 (KLR) (19 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E004 OF 2024
WA OKWANY, J
FEBRUARY 19, 2026**

BETWEEN

GRAIN INDUSTRIES CO LTD APPELLANT

AND

PETER MWANGI MURIMA & FRASHIAH WANGUI MAINA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE FRANCIS MURIAMA MWANGI) RESPONDENT

(Being an appeal from the Judgment/ Decree Hon. J. Ndeng'eri (PM) delivered on 18th July 2022 in Naivasha CMCC No. E438 of 2022)

JUDGMENT

1. The Respondents sued the Appellant for damages under the *Fatal Accidents Act* and *Law Reform Act* following a road traffic accident which occurred on 24th January 2022 along Naivasha–Mai Mahiu road. The Respondents' case was that the deceased was riding as a pillion passenger along the said road when the Respondent's motor vehicle, registration no. KCS 088Y/ZC 0717, allegedly overtook another vehicle at high speed and collided with the motorcycle, thereby causing the deceased's fatal injuries.
2. After hearing the case, the trial court apportioned liability at 50%:50% between the parties. The trial court awarded general and special damages amounting to a total of Kshs. 2,169,115.50 after contribution.
3. Aggrieved by the said judgment, the Appellant lodged this appeal wherein it faulted the trial court for apportioning liability at 50:50 and in the assessment of damages for loss of dependency.
4. The appeal was canvassed by way of written submissions which I have considered.



5. The duty of a first appellate court is settled. 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 neither saw nor heard the witnesses...”

6. Similarly, in *Godfrey Wamalwa Wamba & Another vs. Kyalo Wambua* [2018] eKLR the court held that:

“...the appellate court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court...had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.”

7. Guided by the foregoing decision, I will now turn to consider the issues arising from the appeal.

Liability

8. The Appellant faulted the trial court for apportioning liability at 50:50, arguing that the deceased voluntarily assumed the risk by boarding an unauthorized motorcycle, and that the lorry was safely parked.

9. The Respondent, on the other hand, submitted that no independent evidence such as sketch plans, photographs, reflective triangles, or credible eyewitness testimony was produced to establish exclusive liability on the deceased's part. He noted that PW1 and DW1 were not eyewitnesses.

10. The Respondent cited the decision in *Quickmart Limited & Another vs. Munuve* (Civil Appeal 289 of 2023) [2025] KEHC 14706 (KLR) which cited, with approval, the decision in *Hussein Omar Farah vs. Lento Agencies* [2006] eKLR, where the court stated:

“It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.....In the circumstance, I apportion liability for the accident at 50:50 as the evidence is unclear on who is responsible for the accident.”

11. Guided by the above cited cases, I find that where evidence does not conclusively establish responsibility, shared liability is appropriate. It is noteworthy that the Appellant did not call the alleged driver of the parked lorry, nor produce corroborative evidence showing proper safety precautions. My view is that the failure, by the Appellant, to call its driver as a witness is quite telling as it creates an impression that his evidence may not have favoured the Appellant's case. This is the position that was taken in the oft-cited case of *Bukenya vs. Uganda* [1972] EA 549, where the court held that where a party fails to produce a material witness, the court may draw an adverse inference that the evidence of such a witness would have been unfavourable to its case.

12. In the recent case of *Kariuki vs. Stanley Muchiri* [2021] eKLR, the High Court reiterated that a party who withholds the driver in a road accident case does so at his own peril.

13. My view is that the trial court cannot be faulted in its finding on liability. The finding on liability at 50:50 is therefore upheld.



Loss of Dependency

14. The Trial Magistrate adopted a multiplicand based on the deceased's gross salary and applied a multiplier of 25 years.
15. The Appellant argued that the trial court erred by adopting gross salary rather than net salary and applying an excessive multiplier given the vicissitudes of life.
16. On the multiplier jurisprudence, the Respondent cited the case of *Rose Munyasa & Another vs. Daphton Kirombo & Another* [2014] eKLR, where the court held:

“...There is no guarantee that the deceased could have lived to the retirement age of 60 years... life expectancy has in the recent years gone down due to the increased incidences of poverty, the HIV/AIDS pandemic and other diseases.”
17. On multiplicand, the Respondent relied on the case of *Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989*, wherein it was held that the court must find out, as a fact, what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings.
18. In *Butt vs. Khan* [1981] KLR 349, the Court of Appeal held that:

“...an appellate court will not disturb an award of general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate.”
19. In *Evaline Chepkirui vs. Stella Asuga & Erick Omwenga* [2021] eKLR the Court of Appeal addressed the issue of statutory deductions from the gross salary and held: -

“I note from the record that the trial court allowed other deductions over and above the tax payable (PAYE). My understanding of this aspect of law is that, not all deductions in a pay slip are discounted in the ascertainment of the multiplicand for purposes of loss of dependency. I should think that, only the tax element is to be deducted from the gross pay. PAYE is tax payable to government. However, statutory and other deductions whose beneficial owner is the deceased and his estate, are not to be discounted when assessing dependency. There is no dearth of judicial authorities on this point; I have not any wish to multiply. Accordingly, the trial court applied the wrong principle in assessing the multiplicand applicable in loss of dependency in this case. As such, the discretion thereto is amenable to interference by this court. I set aside the multiplicand adopted by the trial court.”
20. It is trite that where a trial court proceeds on wrong principles, interferes with evidence, or applies excessive multiplier/multiplicand, appellate interference is justified.
21. In this case, I find that an award based on gross income constitutes an error warranting limited interference as the payslip produced indicated that the deceased earned a gross monthly income of Kshs. 51,097.07. Pay As You Earn (PAYE) deductions was Kshs. 7,925.69 leaving a balance of Kshs. 43,171.38.
22. I note that the trial court did not provide any reason for preferring the gross salary as opposed to deducting PAYE as adopted by the Kenyan courts. I find that the deduction of PAYE only is the correct approach that should have been adopted in this case.



23. Turning to the multiplier, I note that the trial court adopted 25 years as the multiplier. I however find that considering that the deceased was 27 years old at the time of his death and taking into account the uncertainties and vicissitudes of life, and comparative authorities, a multiplier of 18 years would be reasonable. I am guided by the decision in *Mwangi vs. Kangethe & another* (Civil Appeal E038 of 2021) [2024] KEHC where a multiplier of 18 years was used in respect to a deceased aged 27 years.
24. Loss of dependency is therefore recalculated using the standard formula - Multiplicand \times 12 \times Multiplier \times Dependency ratio $34,202.28 \times 12 \times 18 \times 1/3 = 3,108,339.36$
Less 50% contribution = Kshs. 1,554,169.68
25. Other heads of damages remain undisturbed.

Conclusion

26. For the foregoing reasons, the appeal partially succeeds.
27. The award on loss of dependency is set aside and substituted as above. Liability remains at 50:50.
28. Each party shall bear own costs of the appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

19/02/2026

For Appellant Ms Karanja

For Respondent Ms Njenga

Court Assistant Karani

30 days stay of execution granted file closed

