

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E083 OF 2025

**JAMES OINDO AGUSA & BENARD NYABINGE OINDO (Suing as the
Legal
Representatives of the Estate of the late ELIJAH NYASAMBA
OINDO).....
.....APPELLANTS**

-VERSUS-

**DANIEL
NJOROGE.....R
ESPONDENT**

**(Being an appeal from the Judgment and Decree of the Honourable N. Shiundu
(CM) delivered on the 30th of July, 2025, in Naivasha CMCC No. E691 of 2021)**

JUDGMENT

Background of Appeal

1. The genesis of this appeal is traceable to an alleged fatal road traffic accident that occurred on the 28th day of August, 2021. The incident took place around the Kinamba Junction area along the busy Nairobi-Nakuru Highway, a critical artery of commerce and transit in the Republic of Kenya.
2. on the date and the material time of the accident, Elijah Nyasamba Oindo (hereinafter referred to as the “Deceased”) was lawfully riding a motorcycle, registration number KMCP 334K along the highway when he was struck by a motor vehicle, registration number KUM 339, an Isuzu Lorry owned and managed by the Respondent, Daniel Kamau Njoroge.
3. The particulars of the accident allege that the Respondent, through his servant, agent, or employee, managed the said motor vehicle with significant negligence. It was pleaded and subsequently established that the driver of the Isuzu Lorry entered the highway abruptly from a feeder road at the Kinamba Junction, failed to ascertain whether the road was clear and thereby knocking the Deceased’s motorcycle. Following the

devastating impact, the Deceased sustained severe multiple injuries and succumbed on the same day.

4. Following the death, the Appellants, James Oindo Agusa and Benard Nyabinge Oindo, respectively the father and brother of the Deceased, after obtaining Limited Letters of Administration, instituted Naivasha CMCC No. E691 of 2021 seeking several heads of compensation from the Respondent. The claim encompassed general damages for pain and suffering, loss of expectation of life, and loss of dependency for the benefit of the Deceased's dependents, as well as special damages related to funeral expenses.
5. On the 22nd of February, 2023, the parties appeared before the trial court and recorded a consent on the issue of liability. The agreement reached was that the Respondent would bear 80% of the blame for the accident, while a 20% contributory negligence factor was attributed to the Deceased. This consent effectively narrowed the trial's focus to the quantum of the due damages only. At the hearing, only the 1st appellant gave evidence by adopting his witness statement as evidence in chief and was thus cross-examined.
6. In its reserved judgment delivered on the 30th of July, 2025, the learned trial Magistrate, assessed the damages as follows:
 - Liability: Apportioned by consent at 80:20 in favour of the Appellants.
 - Pain and Suffering: Kshs. 10,000.
 - Loss of Expectation of Life: Kshs. 100,000.
 - Loss of Dependency: Kshs. 1,158,552 (calculated using a multiplicand of Kshs. 7,240.95 and a multiplier of 20 years).
 - Special Damages: Kshs. 580,400.
7. The Appellants being dissatisfied and aggrieved with the trial court's assessment of the loss of dependency, filed this appeal, contending that

the multiplicand and multiplier adopted were erroneously low and not grounded in the economic realities of the year 2021.

The Appeal

8. The Appellants, through the Memorandum of Appeal dated August 2025, raised two specific grounds of objection to the trial court's judgment. The crux of the appeal is directed at the limb of loss of dependency, which the Appellants argue was undervalued due to a misapprehension of both law and fact.
9. The first ground of appeal asserts that the learned trial Magistrate erred by adopting a minimum wage of Kshs. 7,240.95. The Appellants point out that this figure was derived from the Regulation of Wages (General) (Amendment) Order, 2018, which they argue was no longer a fair representation of the cost of living by the time the Deceased passed away in 2021. They contend that the court should have applied the revised minimum wage rates that were in the process of implementation or had been adjusted for inflation, specifically proposing that a figure closer to Kshs. 15,201 should have been considered.
10. The second ground of appeal is focused on the multiplier on which the Appellants argue that the adoption of a 20-year multiplier for a deceased person who was only 29 years old at the time of death is inordinately low. They emphasize that the Deceased was in excellent health and could reasonably have been expected to remain in gainful employment until the statutory retirement age of 60 years. They submit that a multiplier of 31 years would have been more appropriate to reflect the three decades of support his young children and elderly parents were deprived of.
11. Consequently, the Appellants seek orders from this court to set aside the trial court's award on the limb of loss of dependency and to re-assess and enhance the same to a level that is fair, just, and reasonable under the circumstances of the case.

Summary of the Appellant's Case

12. The Appellants pleaded that the Deceased was a healthy 29-year-old man who was gainfully employed as a taxi operator earning a monthly income of Kshs. 30,000. The Appellants through the oral testimony of PW1 indicated that the Deceased was his son and was 29 years old at the time of the accident on August 28, 2021. He confirmed the Deceased died on the same day. He told the court that he currently lives with the Deceased's two minor children and is responsible for their feeding and upkeep, despite being unemployed himself. He maintained that the Deceased was in good health prior to the accident and was the primary provider for the family.
13. During cross-examination, PW1 reiterated that his son earned Kshs. 30,000 per month as a taxi operator but admitted he had no payslips, tax records, or employer testimony to verify this. When confronted with the death certificate indicating the Deceased was a waiter, PW1 clarified in re-examination that his son worked as a taxi operator. He further confirmed that the Deceased was buried in Nyamira County on September 5, 2021, and that no public fundraiser was conducted, implying the family bore the costs themselves.
14. To support their claim for dependency, the Appellants highlighted the existence of several dependents, including the Deceased's father, James Oindo Agusa (aged 61); his mother, Monicah Kwamboka Oindo; and his two minor children; Susan Nyasamba (born in 2016, aged 5 at death) and Elijah Bahati (aged 9 months at the time of the claim). He stated that the entire estate had lost its primary source of maintenance and support.
15. Regarding special damages, the Appellants provided a comprehensive list of expenditures totalling Kshs. 580,575. These included the costs of obtaining the Grant of Letters of Administration (Kshs. 50,000), mortuary fees (Kshs. 1,800), post-mortem fees (Kshs. 6,100), and a significant sum for funeral arrangements, including the coffin, hearse, catering, and food

(totalling over Kshs. 500,000). They maintained that these costs were reasonable and necessary for a dignified burial in Nyamira County, consistent with the family's social standing.

Summary of the Respondent's Case

16. Following the conclusion of PW1's testimony, the Respondent's counsel informed the court that the defense would not be calling any witnesses and would instead rely on the evidence elicited during cross-examination and their submissions where they challenged the Appellants' evidence regarding the Deceased's income and the extent of dependency.
17. The Respondent submitted that the Deceased resided in Kayole, Naivasha, which they argued should be categorized under all other areas rather than the higher-paying city or municipal categories. They proposed a multiplicand based on the 2018 Wage Order for rural or other areas, which was Kshs. 6,896.15 at the time. On the multiplier, the Respondent argued that 20 years was more than adequate when one considers the vicissitudes of life, the inherent risks of illness, unemployment, and other uncertainties that could have ended the Deceased's earning capacity before age 60.
18. On special damages, the Respondent contended that the claim for food and catering was excessive and not specifically proven by receipts, urging the court to award only those items that were strictly documented.
19. The court directed that the Appeal be canvassed by way of written submissions and gave the parties the timelines for filing the respective submissions. From the records, only the Appellant filed its submissions dated 11th February, 2026 while the Respondent filed none.

Summary of the Appellant's Submissions

20. The Appellant's submission is premised on the contention that the trial magistrate acted on wrong legal principles, leading to an inordinately low

award of damages. The Appellants first address the choice of the multiplicand. They argue that the trial court's adoption of the 2018 minimum wage (Kshs. 7,240.95) was a gross error of law given that the accident occurred in late 2021. They contend that courts should take judicial notice of the soaring inflation and the government's subsequent revisions of minimum wages. They point to the Regulation of Wages (General) (Amendment) Order, 2021/2022, which set the minimum wage for a general worker in urban areas at Kshs. 15,201. They submit that a reasonable multiplicand, in the absence of payslips, should at least be Kshs. 13,572.90, which they describe as a fair middle ground for an adult worker in 2021.

21. To bolster this argument, the Appellants cite the decision of the Court of Appeal decision in **Jacob Ayiga Maruja & Another vs Simeon Obayo (2005) eKLR**. They emphasize the court's holding that documentary proof is not a mandatory requirement for proving earnings in the informal sector, as requiring such would disenfranchise millions of Kenyans who work in cash-based livelihoods. They argue that the trial court's failure to give weight to PW1's oral evidence of Kshs. 30,000 was a misdirection.
22. Regarding the multiplier, the Appellants submit that 20 years is manifestly low for a 29-year-old. They rely on **Julian Njeri Muriithi vs Veronicah Njeri Karanja (2019) eKLR**, where a 30-year multiplier was awarded for a 38-year-old. They argue that since the Deceased had a potential working life of 31 years (until age 60), the court should have applied a multiplier of at least 31 years. They also cite **Violet Jeptum Rahedi vs Albert Kubai Mbogori (2013) eKLR**, which suggests that individuals in private business are not constrained by statutory retirement ages and could work into their 70s.
23. The Appellants propose a revised dependency calculation to be: Kshs. $13,572.90 \times 12 \times 31 \times \frac{2}{3} = \text{Kshs. } 3,366,079.20$. They urge this Court to escalate the award to this level, arguing that the current award is an

erroneous estimate of the loss suffered by the Deceased's widow and orphans.

Issues, Analysis and Determination

24. The court having carefully considered the evidence on record, the grounds of appeal as well as the submissions by the Appellant finds the sole issue in dispensing this appeal to limited to whether there is a justification to interfere with the award of quantum of damages.
25. The court, sitting as a first appellate court, is mindful of its duty to re-examine the evidence afresh and to reach its own conclusions while giving due regard to the findings of the trial court. However, because the appeal is only on quantum, an exercise of judicial discretion, the governing principles were articulated in **Mbogo and Another vs Shah [1968] EA 93**, to be that an appellate court will not interfere with the exercise of judicial discretion unless it is satisfied that the trial court misdirected itself or that its decision is clearly wrong. The court therein stated as follows:

“...this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

26. Tritely therefore, an appellate court should only disturb an award if it is convinced that the trial judge took into account irrelevant factors, ignored relevant ones, or if the amount is so inordinately high or low that it represents an outright erroneous estimate of damages. the said position was amplified in **Kemfro Africa Ltd t/a —Meru Express Services II &**

Another v Lubia & Another (No. 2) [1987] KLR 30 where the court stated as follows:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

27. Here, the trial magistrate adopted Kshs. 7,240.95, which corresponds to the basic minimum wage for a *General Labourer* in *all other areas* under the Regulation of Wages (General) (Amendment) Order, 2018. The Deceased herein died in August 2021. While the Regulation of Wages (General) (Amendment) Order, 2022 (Legal Notice No. 125) did not officially commence until May 1, 2022, it is established practice by Kenyan courts to acknowledge that minimum wages are often trailing indicators of economic reality. By late 2021, the 2018 rates could have largely been considered obsolete due to the severe inflationary pressures of the COVID-19 era but the other hard fact is that, the Regulation of wages order is a subsidiary legislation thus must come into force before being applied.
28. The court notes that the accident occurred at Kinamba along the Nairobi-Nakuru highway, and the Deceased lived in Kayole, Naivasha. Naivasha is a major urban center. Under the 2018 Order (Legal Notice No. 2 of 2019), the rate for a general labourer in All former Municipalities and Town Councils of Mavoko, Ruiru and Limuru (which includes the municipal area of Naivasha) was Kshs. 12,522.70. The trial court’s adoption of the

heading, *all other areas rate (rural rate)* for a worker in the Naivasha urban periphery appears to be a misapplication of the facts.

29. In the court's view, the trial court ignored the Deceased's probable occupation. Even if the court relied on the death certificate labelling him a *waiter*, the 2018 municipal rate for a *waiter* or *cook* was Kshs. 13,005.70. If the court accepted PW1's testimony that he was a *taxi driver*, the municipal rate was Kshs. 18,319.50. By selecting the absolute lowest possible figure of Kshs. 7,240.95, the trial court adopted a multiplicand that was not supported by the evidence of his location or his semi-skilled role. This court takes the view that the evidence on record and the law availed to the trial court three options for a multiplicand and that the court had no liberty to abandon all the three and adopt one that was wholly inapplicable and irrelevant.
30. In **Jacob Ayiga Maruja vs Simeon Obayo (2005) eKLR**, the Court of Appeal emphasized that the standard of proof in these matters is the balance of probabilities. It is more probable than not that a 29-year-old man supporting a family of four in Naivasha was earning significantly more than the rural general labourer rate. This court finds the trial magistrate misdirected herself by selecting a multiplicand that was inordinately low and failed to reflect the Deceased's proved status in an urban municipality. A more reasonable multiplicand, based on the 2018 municipal rate for a *waiter or driver*. The court elects to accept the evidence in the death certificate that the deceased was a waiter and thus opts the reigning minimum wage of Kshs 13,005.70
31. On the multiplier adopted, the court notes that the deceased was 29 years old at the time of the accident. The trial magistrate applied a multiplier of 20 years, based on the retirement age of 60. The Appellants argue for 31 years. The Court of Appeal in **Board of Governors of Kangubiri Girls High School & Another vs Jane Wanjiku Muriithi & Another [2014] eKLR**, quoting **Cornelia Eliane Wamba vs Shreeji Enterprises Ltd (HCCC No. 754 of 2005)**, held that the choice of

multiplier must be exercised judiciously and account for imponderables of life. The court observed that:

“This court has given due consideration to the afore set out rival arguments on the issue of choice of a multiplier and in its opinion the following are the guiding principles: -

- a. The choice of a multiplier is a matter of the courts discretion which discretion has to be exercised judiciously and with a reason.**
- b. It is common ground that since the deceased was not permanently employed in an establishment with a retirement age bracket for its staff it is not possible to fix a retirement age.**
- c. The nature of the profession engaged in also counts. Herein it is common ground that there is no fixed retirement age in the profession of journalism. One can work as long as he wished.**
- d. Death through natural causes and departure for greener pastures elsewhere is also a factor.”**

32. By the foregoing, the court appreciate the fact that the choice of a multiplier is a discretionary act that must balance the Deceased’s youth against the vicissitudes of life. In **Gerald Manthi Nдеми vs Simon Taveta (2015) eKLR**, the Court of Appeal reduced a 35-year multiplier for a 29-year-old to 25 years, noting that 25 years is more appropriate to account for the risks of early retirement or illness. Similarly, in **Josephat Nduati Kungu vs Nation Media Group (2010) eKLR**, the court observed that for a 29-year-old, courts have given multipliers of between 20-25 years and awarded the same. Similarly, in **James Kinyua Gachoki vs Rais Cement (2016) eKLR**, a 25-year multiplier was adopted for a 29-year-old.

33. Accordingly, the trial court's adoption of 20 years implies the Deceased would have ceased supporting his family at age 49. That the court considers low even when the vicissitudes of life and the fact that the deceased was engaged in the informal sector are taken into account. Conversely, the Appellants' proposed 31 years fails to account for the *vicissitudes* discount required by law. This court finds that a multiplier of 25 years is the most appropriate and reasonable period for a 29-year-old, as it aligns with the prevailing judicial standards and offers a fair estimate of his remaining productive years. The same is hereby elected as the just multiplier for the purchase of the period the deceased would have worked.

34. In upshot, the appeal is hereby allowed with costs to the extent of the award by the trial court on the heading loss of dependency is set aside and, in its place, substituted an award calculated on the basis of a multiplicand of Kshs 13,005.70 and a multiplier of 25 years. The effect and consequence is that the award for loss dependency now calculates as follows:

$$13005.70 \times 25 \times 12 \times 2/3 = 2,601,140/-$$

35. Consequently, the total due award works out thus: -

- b. Pain and Suffering - Kshs 50,000/-
- c. Loss of Expectation of Life - Kshs 100,000/-
- d. Loss of Dependency - Kshs 2,601,140/-
- d. Special damages - Kshs. 580,400/-

Gross Total - Kshs 3,331,540/-

Less 20% Contributory Negligence - Kshs 666,308/-


Net Award Payable to Respondent - Kshs. 2,665,232/

35. The award of general damages if remains unpaid nor availed in an escrow account, pending appeal, shall carry interest at court rates from the date of the trial court's judgment, 30/07/2025, until payment in full.

On the other hand, special damages if unpaid pending appeal, shall attract interests at court rates from the date of the suit till payment in full.

36. The Respondent being the unsuccessful party, shall bear the costs of this appeal.

Dated, signed and delivered virtually this 9th day of April, 2026



Patrick J O Otieno

Judge

Original