

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI
CIVIL APPEAL NO. E061 OF 2025

JACKSON **NJUGUNA**
KAGWARA.....APPELLANT

=VERSUS=

**ANJELICAH WANJA MBUGUA (Suing as the legal
representative of the estate of HESBONE MBUGUA
(DECEASED).....RESPONDENT**

**(Being an appeal from the Judgment of Hon. D. Wangeci
(SPM) in Wundanyi SPMCC NO. E038 of 2021 delivered
on 15th September 2025)**

JUDGMENT

- 1.** The Respondents were the Plaintiffs in Wundanyi SPMCC No. E038 of 2021 where they filed suit in their capacity as personal representatives of the Estate of Hesbon Njiru Mbugua (deceased) under the Fatal Accidents Act and the Law Reform Act.
- 2.** The deceased died in a road traffic accident that occurred on 7th January 2021 along Wundanyi - Mwatate road at Josa area.

3. The deceased was travelling in motor vehicle registration No. KCD 752Y Isuzu FVZ owned by the Appellant when the accident occurred at 2045hours.
4. The motor vehicle's breaking system failed causing it to lose control and roll over causing the deceased fatal injuries.
5. The deceased was thrown out of the truck and he landed in a ditch.
6. The Appellant filed a defence dated 16th June 2022 denying the Respondent's claim.
7. This case was selected as a test suit for purposes of determining liability.
8. The deceased was working as a plant operator earning Kshs. 25,000 per month.
9. The Appellant who testified as DW1 said he was driving motor vehicle registration KCD 752Y Isuzu FVZ when while descending when he encountered a vehicle that had stalled on the road which was not visible.
10. He said there was an oncoming vehicle and in order to avoid a head on collision, he moved to the left side and hit the wall.

11. He lost consciousness after the collision and found himself in hospital.

12. The trial court found the Appellant 100% liable for the accident and she assessed damages as follows:-

(i) General damages for pain and suffering

Kshs. 100,000

(ii) Loss of expectation of life

Kshs. 100,000

(iii) Loss of dependency $6,736.30 \times 25 \times 12 \times 2/3$

= 1,347,260

(iv) Special damages

Kshs.

75,920

Total

Kshs.

1,543,180

13. The Appellant has appealed against the said judgment on the following grounds:-

(i) That the learned Magistrate erred in law and in fact by adopting a dependency ration of 2/3 without any explanation for such application.

(ii) that learned Magistrate erred in law and in fact in disregarding the evidence on record that the deceased was only survived by his mother and as such ought to have applied a dependency ration of 1/3.

(iii) That the learned Magistrate erred in fact and in law by making an award on quantum on loss of dependency based on an erroneous ration of 2/3, which award is excessive in the circumstances.

14. The parties filed written submissions as follows:- The appellant in his written submissions challenges the trial court's award of loss of dependency in a case where the deceased was survived only by his mother.

15. The appellant argues that the lower court erred by applying a dependency ratio of two-thirds, submitting that the respondent failed to provide evidence of the actual portion of the deceased's salary that was given to his mother.

16. The appellant contends that dependency is a matter of fact to be proved, and in the absence of such proof, the

court should not have assumed the deceased contributed two-thirds of his earnings.

17. Citing several authorities, the appellant emphasizes that there is no fixed rule on dependency ratios and that each case must be determined on its own facts.

18. The appellant notes that courts have often applied a one-third ratio in similar circumstances, especially where the deceased was unmarried and left behind only parents, and particularly given the prevailing economic realities where young people may not commit a large portion of their income to supporting parents.

19. The appellant therefore urges the court to apply a ratio of one-third instead, and also prays for costs of the appeal.

20. The Respondents in their submissions oppose the Appellant's appeal against a trial court judgment delivered on 15 September 2025, which awarded damages for loss of dependency following the death of a young, unmarried man.

21. While the Appellant argues that the trial court should have applied a dependency ratio of one-third instead of

two-thirds, the Respondents contend that the two-thirds ratio was correctly applied, as the evidence, particularly the mother's witness statement, showed that the deceased was the sole substantial provider for his mother, his only dependent.

22. The Respondent cites several Kenyan precedents, including **Wachira & another v Shikamili & another** and **Coast Bus (MSA) Ltd v Fatimabhai Osman Suleiman & another**, to show that no rigid rule fixes one-third for unmarried persons, and that courts have repeatedly upheld two-thirds where dependency is proved on the facts.

23. The Respondents therefore ask the court to dismiss the appeal on the dependency ratio issue.

24. Separately, the Respondents argue that the trial court erred in its choice of multiplicand, having applied the unskilled agricultural minimum wage of KShs. 6,736.30 under Legal Notice No. 3 of 2018.

25. The Respondent submits that the deceased was a machinery worker or machine operator, which falls under the semi-skilled categories of the Regulation of Wages

(General) (Amendment) Order, 2018 (Legal Notice No. 2 of 2018).

26. Citing multiple authorities—including **Njoroge & another v Mohamed, David Kimani Githinji v Mutai Hardware Stores, Kuliba v Sandu, and Rwonyo v Koske**, the Respondents argue that where actual earnings lack documentary proof but the occupation is testified, courts should adopt the applicable statutory minimum wage for that occupation and skill level.
27. The Respondents propose a multiplicand of KShs. 14,315.30 (Category 4 for machine workers), and calculates the loss of dependency as $\text{KShs. } 14,315.30 \times 25 \text{ years} \times 12 \text{ months} \times \frac{2}{3} = \text{KShs. } 2,863,060$.
28. The Respondents pray that the court dismisses the appeal on the ratio, vary the award to substitute the correct statutory multiplicand, and grant costs and interest.
29. The sole issue for determination in this appeal is whether the trial magistrate erred by applying a dependency ratio of two-thirds in calculating loss of dependency for the estate of a young, unmarried man who was survived only by his mother.

30. The appellant contends that the ratio should have been one-third, citing a lack of documentary proof regarding the exact portion of the deceased's income that supported his mother.

31. However, a careful review of the principles governing appellate intervention on quantum reveals that this ground of appeal cannot succeed.

32. The law is well settled that an appellate court will not disturb an award of damages by a trial court unless it is shown that the trial court acted on wrong principles, took into account irrelevant matters, failed to take into account relevant matters, or that the award is so inordinately high or low as to be an erroneous estimate of the damages.

33. The choice of a dependency ratio is a matter of fact and judicial discretion, guided by the specific evidence presented in each case.

34. There is no rigid rule that compels a court to apply a one-third ratio for an unmarried deceased person.

35. Dependency is a fluid concept, and it is not uncommon in our society for an unmarried individual to be the primary breadwinner for their family.

36.I find that the trial magistrate acted within the law by applying a two-thirds ratio for an unmarried deceased who supported his mother, and I find no error in that exercise of judicial discretion .

37.The two-thirds ratio is a conventional and acceptable means of quantifying that loss.

38.The appellant's argument that the respondent failed to provide documentary evidence of the exact amount given to the mother misses the mark.

39.While dependency is a matter of fact to be proved, it is most often proved through oral testimony, especially in cases involving informal household economies. '

40.The trial court had before it the evidence that the deceased was a plant operator earning a modest salary and that his mother was his sole dependent.

41. It was reasonable for the trial court to infer that a significant portion of his income, indeed the bulk of it, would have been used to support her.

42.To insist on documentary proof in these circumstances would be to place an impossible burden on claimants and to ignore the practical realities of family support in Kenya.

43. The trial court cannot be faulted for applying the common law principle that where a deceased person has a legal dependant, the court will make a reasonable assessment of the dependency, which in the case of a sole surviving parent has frequently been assessed at two-thirds.

44. Finally, the respondent, in their submissions, raised a complaint about the multiplicand used by the trial court, arguing that a higher statutory minimum wage for a machine operator should have been applied.

45. However, the respondent did not file a cross-appeal or a cross-review on this issue.

46. It is a long-standing principle of appellate procedure that a respondent who is aggrieved by a part of a decree must challenge that part by way of a cross-appeal or by filing a notice of grounds for affirming the decision on other grounds.

47. Since the respondent has not taken any such step, this court is precluded from varying the award to increase the quantum of damages.

48. The appeal is solely about reducing the award based on the dependency ratio, and the court cannot, in the

absence of a proper cross-appeal, entertain the respondent's invitation to enhance the award.

49. The trial court's finding on the multiplicand, rightly or wrongly, remains undisturbed because it was not the subject of a challenge from the party who would be aggrieved by it.

50. Having reviewed the record and the applicable law, I find no error in the trial court's exercise of discretion.

51. The application of a two-thirds dependency ratio was proper on the facts as found by the trial court, and it is consistent with established Kenyan jurisprudence.

52. The appeal lacks merit and is hereby dismissed in its entirety, with costs to the respondent.

53. Orders to issue accordingly.

Dated, Signed and Delivered this 30th Day of April, 2026 in open court at Voi High Court.

.....

ASENATH ONGERI

JUDGE

In the presence of:

Court Assistant: Millicent/Eghwa

.....for the Appellant

.....for the Respondent

ORIGINAL