



REPUBLIC OF KENYA



KENYA LAW
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**Kyalo (Suing on Behalf of the Estate of Samuel Nzivo) & another v CELLZ R US Limited
(Civil Appeal E119 of 2022) [2026] KEHC 5864 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E119 OF 2022**

EN MAINA, J

APRIL 30, 2026

BETWEEN

**SILVESTER MUTISYA KYALO (SUING ON BEHALF OF THE ESTATE OF
SAMUEL NZIVO) 1ST APPELLANT**

**SUSANA NZIA MULI (SUED ON BEHALF OF THE ESTATE OF SAMUEL
NZIVO) 2ND APPELLANT**

AND

CELLZ R US LIMITED RESPONDENT

RULING

1. What is before this court is the Notice of Motion dated 29th January 2025. The application is supported by the affidavit of Silvester Mutisya Kyalo the Appellant, and it seeks an order for distribution of the decretal sum herein to the beneficiaries.
2. The application is opposed through the replying affidavit of Susan Nzisa Muli sworn on 9th April 2025.
3. This court directed the parties to canvass the application by way of written submissions. The submissions were duly received. Those of the Applicant were filed by the firm of Fred K. Musyimi and Associates while those of the Respondent were filed by the firm of A. K. Mutua Advocate.
4. According to the Applicant a dispute has arisen between the parties as to the shares of the beneficiaries of the damages awarded by the court below and it has therefore become necessary to review the judgment so as to indicate the share of each person. It is argued that this constitutes a sufficient reason to review the judgment in order to satisfy the provisions of Section 4 of the *Fatal Accidents Act* which requires the court to divide the damages amongst the persons so entitled. The Applicant proposes equal distribution of the damages among the wife, mother and children of the deceased as specified in the chief's letter. The Applicant is opposed to the proposal that the damages be shared equally but only between himself and the Respondent who was his co-Plaintiff.



5. On her part the Respondent argues that she should get the lion's share of the damages since she depended on the deceased as opposed to the Applicant and his siblings who are all adults. She also alleges that the deceased and the mother of the Applicant were estranged for a long time.

Analysis and determination

6. The issue for determination is whether or not the judgment delivered on 31st October 2024 should be reviewed so as to reflect the shares of the beneficiaries of the damages awarded therein.
7. I have considered the application, the grounds on its face, the affidavits both in support and in opposition, the rival submissions and the law. The power of this court to order a review of a decree or order of the court stems from Order 45 Rule 1 of the Civil Procedure Rules. Such a review can be granted where there is discovery of new and important matter or evidence, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. I am persuaded that in this case the identification of the shares of the persons for whose behalf the claim for damages under the *Fatal Accidents Act* was brought, constitutes a sufficient reason to review the judgment and/or decree herein. This is because in the judgment the shares were not identified yet Section 4 of the *Fatal Accidents Act* expressly requires the court to do so. That section states:

“Section 4(1) Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of Section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be dividend amongst those persons in such shares as the court, by its judgement, shall find and direct;.....”

8. The proceedings/claim for damages under the *Fatal Accidents Act* are brought on behalf of a wife, husband, parent and children of the person whose death was caused by the accident- seen Section 4 of the Act. In this case the persons for who the claim was brought are specified in the Applicants witness statement dated 11th May 2021 and also in the letter of the Assistant chief dated 6th August 2021. They are:
 1. Josephine Ndumi Nzioka – wife (widow)
 2. Alfred Muli Kyalo – son
 3. Martin Muteti Kyalo – son
 4. Joan Katunge Kyalo – daughter
 5. Silvester Mutisya Kyalo – son
 6. Stephen Mutua Kyalo – son
 7. Susan Nzisa Muli – mother

There is therefore no dispute as to who should benefit from the award as even the Respondent agrees with the above list.
9. It is instructive that when dividing the damages the court does not consider the *law of Succession Act*. As a matter of practise the consideration is the age of the persons – so that for instance where there



are minor children their share is bigger given their requirements for school fees. The adult children are given less as their dependency cannot be compared to that of the minor children. In this case the age of the persons on whose behalf the damages were claimed, have not been specified. There is no law that states that any of the beneficiaries should get more than the other. Neither has the allegation that the deceased and his wife were estranged been proved. In the premises the mode of distribution that commends itself to me is that each of the persons listed above gets an equal share of the damages.

10. It is instructive that it is an equal share of the damages under the Fatal Accidents Act only. That is what this court has distributed. The award under that head was for Kshs.300,000/- which upon being subjected to 10% liability leaves a sum of Kshs.270,000/-. Each beneficiary shall therefore be entitled to Kshs.38,571/-.
11. The damages under the other heads are awarded under the law Reform Act to the estate of the deceased person and shall therefore await distribution in accordance with the Law of Succession Act by the Administrator(s) of the estate once a full grant is issued.
12. The application therefore succeeds to the extent stated in paragraph 10 above.
13. Each party shall bear their own costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF APRIL 2026.

E. N. MAINA

JUDGE

In the presence of:

Mr. A. K. Mutua for the 2nd Appellant/ Applicant

Mr. Mutinda for the 1st appellant/Respondent

Mary - Court Assistant/Interpreter

