



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Muthiga v Jerop (Suing as the Legal Representative and Administrator for the Estate of Leonard Kipchirchir Mwangong (DCD)) & another (Civil Appeal E157 of 2021) [2026] KEHC 5596 (KLR) (28 April 2026) (Judgment)

Neutral citation: [2026] KEHC 5596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E157 OF 2021
RN NYAKUNDI, J
APRIL 28, 2026**

BETWEEN

SOLOMON MURIITHI MUTHIGA APPELLANT

AND

**JOYCE JEROP (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR FO THE ESTATE OF LEONARD KIPCHIRCHIR MWANGONG (DCD)) 1ST RESPONDENT
GRACE MWANGONG 2ND RESPONDENT**

JUDGMENT

1. The brief background facts of this appeal are that the 1st and 2nd Respondents who were the Plaintiffs at the trial Court filed a Plaint dated 8th January 2020 against the Appellant who was the Defendant seeking for judgment against as follows: -
 - a. Damages under the *Fatal Accidents Act*
 - b. Damages under the *Law Reform Act*
 - c. Loss of consortium with respect to the 2nd Plaintiff
 - d. Special damages of Kshs. 580,300/=
 - e. Costs and interests.
 - f. Any other relief that this Honourable Court may deem fit and just to grant.
2. The facts of the case were that the Defendant was at all material times to the suit the registered owner of Motor Vehicle Registration Number KCC 799P Toyota Hiace Van and the deceased was the beneficial owner of the Motor Vehicle Registration No KAW 303Y New Holland. The Plaintiff averred that



on or about the 28th day of March 2019, the deceased Leonard Kipchirchir Mwangong was lawfully driving Motor Vehicle Registration number KAW 303Y New Holland along Eldoret-Nakuru Road when at Choma Zone area or thereabout, the Defendant's motor vehicle KCC 799P was so negligently, carelessly and or recklessly driven, managed and/or controlled that the same rammed into the Motor Vehicle KAW 303Y thereby occasioning the deceased fatal injuries.

3. The Defendant who is the Appellant entered appearance the trial Court and filed his Statement of Defence dated 30th April 2020 and denied the contents of the Plaintiff in relation to the ownership of the motor vehicle registration number KCC 799P Toyota Hiace Van and denied the allegation that the accident occurred on 28/3/2019 along Eldoret-Nakuru road, the manner in which the accident is described to have occurred together with the fatal injuries allegedly suffered by the deceased and put the Plaintiff to strict proof thereof. He sought that the trial Court dismisses the plaintiff's suit and/or be struck out with costs to the Defendant.
4. The matter proceeded for a full trial and judgement was delivered on 5th November 2021 by the trial Magistrate in favour of the Plaintiff and against the Defendant as follows: -
 - a. Liability at the ratio of 100% in favour of the Plaintiff and against the Defendant
 - b. Damages under the *Law Reform Act* at.....Kshs. 200,000/=
 - c. Damages under the *Fatal Accidents Act* at.....Kshs. 2,714,400/=
 - d. Special damages at.....Kshs. 580,300/=
 - e. Loss of consortium.....Nil
 - f. Grand total:.....Kshs. 3,494,700/=
 - g. Interests on (b) and (c) above at Court rates from the date of this judgment and (d) above from the date of filing suit.
 - h. Stay of execution of 30 days from the date of this judgment.
5. The Appellant being dissatisfied with the decision and/or judgment of the trial Court appealed to this Honourable Court on both quantum and liability vide a Memorandum of Appeal dated 12th November 2021 based on the following grounds: -
 - a. That the Learned Magistrate erred in law and fact in holding the Appellant 100% liable for negligence without taking into account the evidence on record.
 - b. That the Learned Magistrate erred in law and fact in failing to appreciate the fact that the Respondents failed to prove their case against the Appellant as required in law and ought to have dismissed their case.
 - c. That the Learned Magistrate erred in law and fact in failing to take into account the evidence on record hence arriving at a wrong decision.
 - d. That the Learned Magistrate erred in law and fact in adopting the wrong principles in assessment of damages payable to the Respondent thereby arriving at an erroneous decision.
 - e. That the Learned Magistrate erred in law and fact in awarding damages which were excessive in the circumstances in view of the evidence adduced.
 - f. That the Learned Magistrate erred in law and fact in failing to properly discount multiplier by not taking into consideration the vagrancies and vicissitudes of life.



- g. That the Learned Magistrate erred in law and fact in adopting sum of Kshs. 100,000/= for pain and suffering in view of the evidence on record.
 - h. That the Learned Magistrate erred in law and fact in adopting a dependency ration of 2/3rd in view of the evidence on record.
6. The Appellant sought the following prayers from the Honourable Court: -
- a. That this appeal be allowed.
 - b. That this Honourable Court be pleased to set aside the lower Court's judgment and/or decision and the same be substituted with a judgment and/or order dismissing the Respondent's suit with costs to the Appellant.
 - c. That the general damages awarded be set aside and the same be re-assessed downwards.
 - d. That costs of this appeal be awarded to the Appellant.
7. The Appeal was canvassed by way of written submissions

Appellant submissions summary

8. The Appellant was represented by the firm of M/s Onyinkwa & Co Advocates where the Learned Counsel Mr. Langat filed written submissions dated 20th January 2023. The learned Counsel for the Appellant submitted on two (2) issues for determination as follows: -
- a. Whether the Respondents proved their case against the Appellant on a balance of probabilities.
 - b. What damages are payable if any?
9. On the first issue, the learned Counsel submitted that the learned Magistrate erred in both law and fact in finding that the Respondents proved their case their case against the Appellant on a balance of probability and was therefore wrong in awarding liability at 100% in favour of the Respondents. Counsel made reference to Ground 1-3 of the Memorandum of Appeal and submitted that PW1 a police officer testified that he was not the investigating officer in this case and that he did not have the police file and further that on the suit date, the motor vehicle registration number KCC 799P rammed into the rear part of the tractor whereby the trailer overturned, rolled and landed into the left ditch. Counsel added that PW1's evidence in his testimony could not tell the point of impact and why the driver of the Appellant was to blame for the accident; PW2 testified that she did not witness the occurrence of the accident and that PW3 also testified and stated that she did not witness the accident and was only informed that her son had been involved in an accident at Choma Zone area along Eldoret-Nakuru road.
10. The learned Counsel made reference to the case of Evans Mogire Omwara Vs Benard Otieno Omolo & Another [2016] eKLR and Alfred Kioko Muteti Vs Timothy Miheso & Another [2015] eKLR. Counsel submitted that the Appellant's witness testified as DW1 and led evidence that on the suit date, he was driving at an average speed of 50km/hr on his lawful lane along Nairobi-Eldoret when the tractor was off the road suddenly joined the road without any warning and had no lights. The learned Counsel also submitted that DW1 tried to avoid the accident by severing on his right but unfortunately the tractor hit the right rear tyre due to close proximity. On liability, the learned Counsel urged this Honourable Court to find that the Respondent's failed to prove their case on a balance of probability against the Appellant and dismiss the Respondent's case with costs to the Appellant.



11. On the issue of quantum specifically pain and suffering, the learned Counsel submitted that the Respondents testified and informed the Court that the deceased died on the spot and the death certificate produced as exhibit 8 proved the same; that the deceased did not undergo prolonged suffering before death and therefore the award of Kshs. 10,000/= would have been sufficient in the circumstances. Counsel cited the case of *Jacinta Ruguru Vs Beatrice Muthoni Muthike (suing as the Legal Representative of the Estate of the late Isaac Muthike Ngaga)* [2021] eKLR.
12. On the issue of dependency ratio, the Learned Counsel submitted that the trial magistrate erred in law and fact in adopting a dependency ratio at $2/3^{\text{rd}}$ and no evidence of dependency was adduced by the Respondents and there was no marriage and/or birth certificate to that regard. Counsel opined that the $2/3^{\text{rd}}$ dependency adopted by the trial Court is baseless as it was not supported by any evidence and cited the case of *Chania Shuttle Vs Mary Mumbi (suing on behalf of the Estate of Francis Mungai Karanja (deceased))* [2017] eKLR. It was Counsel's submission that the Respondents had the obligation/onus of proving dependency ratio and to what extent of loss they suffered and they ought to have demonstrated how the deceased used to support them by documentary evidence and/or expenses that the deceased used to cater for. In the circumstances, Counsel proposed a dependency ratio of $1/3$ to be sufficient.
13. On the issue of multiplier, Counsel submitted that the death certificate produced as exhibit 8 showed that the deceased died aged 31 years old and the trial magistrate adopted a multiplier of 25 years thereby discounting only four years and the trial Court ought to have made an award that was commensurate and in tune with the realities of life. Counsel opined that a multiplier of 14-18 years would be sufficient in the circumstances and cites the following cases: *Nelson Ndawa Kioko & Another Vs Mobasa Liners & Another* (2012) eKLR; *Kemfro Africa Limited T/A Meru Express Services & Gathoge Kanini Vs A.M Lubia & Olice Lubia* (1982-88) KAR.
14. It was the learned Counsel's concluding submissions that the awards of pain and suffering, dependency ratio and multiplier be re-assessed downwards as submitted herein and the appeal be allowed; this Honourable Court be pleased to set aside the trial magistrate's holding on liability and substitute in with an order dismissing the respondent's suit; the trial Court's judgment on pain and suffering, multiplier and dependency ratio be set aside and the same be re-assessed downwards and the costs of the appeal be borne by the Respondents.

Respondents submissions summary

15. The Respondents were represented by the firm of M/s A.K Chepkong'a & Co Advocates where the learned Counsel Mr. Chepkonga filed written submissions dated 23rd January 2023. The learned Counsel for the Respondents Mr. Chepkonga submitted on two (2) issues for determination from the Memorandum of Appeal being: -
 - a. Whether the Respondents proved their case against the Appellant on a balance of Probabilities (Ground 1,2 and 3 of the Memorandum of Appeal).
 - b. Whether the award of damages was inordinately high? (Ground 4,5,6,7 and 8 of the Memorandum of Appeal).
16. On the first issue, the learned Counsel submitted that the Respondents proved their case on a balance of probabilities as required by the law and cited the case of *Re H and Others (Minors)* [1966] Ac 563, 586 and *Miller Vs Minister of Pensions* (1947) 2 ALL ER 372. The learned Counsel Mr. Chepkonga submitted that the trial magistrate did not error in law and in fact in finding the Appellant was 100% to



blame for the occurrence of the accident and made reference to the police abstract which was produced as Plaintiff Exhibit Number 1 where the Appellant was blamed for having caused the accident.

17. Counsel made reference to the evidence of PC Edwin Kibitok Chirchir PW1 that both vehicles were being driven in the same direction towards Eldoret and that on reaching Kondoo area, the motor vehicle registration number KCC 799B which was being driven by the Appellant rammed into the rear part of the tractor motor vehicle registration number KAW 303Y on which the deceased was on board and the deceased sustained fatal injuries and died on the spot. Counsel submitted that in his defence, the Appellant was unable to attribute any negligence on the part of the deceased and urged thus Court to find that the learned trial magistrate was legally justified in finding the Appellant wholly to blame for the accident.
18. On the second issue, the learned Counsel submitted that a person should be compensated to the extent that they should have been if they had not suffered the loss and in the instance case, no amount of compensation could be deemed enough to fill the gap left behind by the deceased. Counsel added that the Court has a duty not to disturb the award of damages by the trial Court on unfounded claims and cited the case of *Butt Vs Khan (1982-88) 1 KAR*. The learned Counsel submitted that the award of Kshs. 3,494,700/= awarded to the estate of the deceased was reasonable, within the law and was arrived at after careful consideration of the special circumstances of the case vis a vis the prevailing precedent law and further that it was the discretion of the Trial Magistrate to adopt either approach of computation of damages payable to the estate of the deceased.
19. On pain and suffering, the learned Counsel submitted that an award of Kshs. 100,000/= was interrogated by the learned trial magistrate and was supported by the precedent law as this was noted by the trial magistrate's judgment at page 193 of the record of appeal. He opined that the same remain as it was at the trial Court. On the loss of expectation of life, Counsel submitted that the award of Kshs. 200,000/= which was uncontested between the parties and adopted by the trial Court be allowed. On the loss of expectation of life, Counsel submitted on three (3) limbs as follows: -
 - a. On dependency ratio, the learned Counsel submitted while making reference to Section 4(1) of the *Fatal Accidents Act* Cap 32 that the evidence of PW2 was that the deceased's dependants included herself and their child and that the deceased was a farmer and would bring home about Kshs. 100,000/= every month for supporting the family. Counsel also made reference to PW3 evidence the mother of the deceased who testified that to the effect that the deceased also supported her financially. Counsel submitted that the dependency ratio of 2/3 as used by the trial Court was fair and just and that it applies such as the present one where a deceased left behind a spouse and children and therefore there was nothing principally wrong with the decision of the trial magistrate to adopt a 2/3 dependency ratio in computation of general damages under the loss of dependency. He made reference to the following authorities: *Hillary Tom Mboya Vs Jane Wangechi Njihia & Another [2022] eKLR*; *David Wangila Mutoro Vs Francis Mukonosi Paul (suing as the Legal Administrator of the estate of Solomon Indimuli) & Another [2019] eKLR*.
 - b. On multiplier, the learned Counsel submitted that the deceased at the time of his death was aged 32 years and in perfect health and that he was self-employed and as such would work well beyond the retirement age of sixty years. He further submitted that to limit the multiplier to a period of less than the 25 years adopted by the trial magistrate would be inappropriate and cited the following cases: *Millicent Kimuli & Another Vs Benson Wanjohi Njogu (2015) eKLR*; *PNM & Another (the legal representative of estate of LMM Vs Telkom Kenya Limited and 2 Others [2015] eKLR*; *Naomi Nyambura Karanja (suing as the Administrator of the estate of Simon Karanja Miringu (deceased) Vs Zacharia Muteru Kadunga & Another [2017] eKLR*.



- c. On multiplicand, Counsel submitted while making reference to the case of Alvin Kuria Gikonyo Vs Kathini Kivulu [2018] eKLR that the deceased was self-employed as was submitted in the evidence of PW2 that the deceased was a business and would till land for customers for his tractor and the nature of his employment was informal and thus difficult to prove income through production of receipts or pay slip. He further submitted that the adoption of the minimum wage as the multiplicand in the computation of damages is a well-accepted principle of law and that as at the death of the deceased, the minimum wage as per the Regulation of Wages (General Amendment) Order, 2017 stood at Kshs. 13,572/= and opined that the trial Magistrate did not error in adopting the same.
 - d. On the special damages, the learned Counsel submitted that the Appellant did not raise any contention with the trial Court's award under the head of special damages and urged this Court not to disturb the same as was pleaded and proved.
20. It was the learned Counsel's final submission that the learned trial Magistrate made the award in the trial case after careful and thoughtful consideration of all the evidence adduced before her and made the best award available to compensate the respondents for their loss.

Analysis and Determination

21. This appeal arises from the judgment of the trial Court delivered on 5th November 2021 in which the Learned Magistrate found the Appellant wholly liable for the fatal road traffic accident that occurred on 28th March 2019 and awarded damages to the Respondents as the legal representatives of the estate of the deceased. Being dissatisfied with both liability and quantum, the Appellant lodged the present appeal.
22. This being a first appeal, this 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, unlike the appellate Court, had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand. This Court's the jurisdiction to review the evidence should be exercised with caution. In the cases of Peters Vs Sunday Post Limited [1958] EA 424, the Court therein rendered itself as follows: -
- “It is a strong thing for an appellate Court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate Court might have come to a different conclusion...”
23. It must be borne in mind that the Court does not have the advantage of seeing and hearing the witnesses as did the lower Court, yet it must reconsider the evidence, evaluate it itself and draw its own conclusions. In *Selle & Another Vs Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus: -
- “...this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that 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 and should make due allowance in this respect...”
24. I have read and considered the Memorandum of Appeal and the rival submissions by the respective parties. There are two (2) issues manifest for determination by this Honourable Court: -



- a. Whether the Respondents proved their case against the Appellant on a balance of Probabilities?
- b. Whether the award of damages was inordinately high?

Whether the Respondents proved their case against the Appellant on a balance of Probabilities?

25. The central question is whether the trial Court erred in holding the Appellant 100% liable. The Respondents' case was anchored on the evidence of PW1, No. 99706 PC Edwin Kibitok Chirchir who testified that the accident involved motor vehicle registration No. KCC 799P Toyota Van and motor vehicle registration No. KAW 303Y New Holland tractor. His evidence was clear and consistent that both vehicles were travelling in the same direction towards Eldoret when, upon reaching Kondoo area, the Appellant's motor vehicle rammed into the rear of the tractor, causing it to overturn and roll into a ditch. He further testified that the driver of the Appellant's vehicle was to blame and had been charged in Traffic Case No. 386 of 2020 for causing death. On the other hand, DW1 (the Appellant's driver) contended that the tractor suddenly joined the road without indication and had no reflectors, forcing him to swerve unsuccessfully.
26. The trial Court, in evaluating this evidence, made a critical finding that the defence advanced by DW1, that the tractor suddenly joined the road and was not pleaded in the Statement of Defence. This Court agrees entirely with that finding. It is trite law that parties are bound by their pleadings and evidence that departs from pleadings is of no probative value. Further, the Appellant failed to produce any inspection report to demonstrate the alleged absence of pre-accident defects or to support the assertion that the tractor lacked reflectors. This omission weakened the credibility of the defence.
27. In view of this, the rule of evidence is clear that "He who alleges must prove". The maxim has been grounded in law under Section 107 of the *Evidence Act*. The same was enunciated by late Justice Majanja in *Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro* [2015] eKLR when he said that: "...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (1) of the *Evidence Act* (Chapter 80 of the Law of Kenya) which provides: - "107. (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist..."
28. Section 108 of the *Evidence Act* states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision states as follows: - "The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side." In addition, Section 109 of the same Act states: - "The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."
29. The uncontroverted evidence on record shows a rear-end collision. In such circumstances, there is a well-established presumption of negligence against the driver of the trailing vehicle unless rebutted. The Appellant failed to rebut this presumption.
30. Accordingly, this Court finds no error in the trial Court's finding of 100% liability against the Appellant. The same is hereby upheld.



Whether the award of damages was inordinately high?

31. The Court of Appeal in *Catholic Diocese of Kisumu Vs Sophia Achieng Tele Civil Appeal No. 284 of 2001* [2004] 2 KLR 55 set out the circumstances under which an Appellate Court can interfere with an award of damages in the following term: -

“It is trite law that the assessment of general damages is at the discretion of the trial Court and an appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded different figure if it had tried the case at first instance. The appellate Court can justifiably interfere with the quantum of damages awarded by the trial Court only if it is satisfied that the trial Court applied the wrong principles (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

32. Similarly, in *Sheikh Mustaq Hassan Vs Nathan Mwangi Kamau Transporters & 5 Others* [1986] KLR 457 that: -

“The appellate Court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect....A member of an appellate Court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own.”

33. The Court of Appeal in *Chunibhai J. Patel & Another Vs P. F. Hayes & Others* [1957] EA 748, 749 stated the law on assessment of damages under the *Fatal Accidents Act* and held: -

“The Court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependents, the net earning power of the deceased (i.e. his income less tax) and the proportion of his net income which he would have made available for his dependents. From this it should be possible to arrive at the annual value of dependency, which must then be capitalized by multiplying by a figure representing so many years’ purchase.

Pain and Suffering

34. In Civil Appeal No. 42 of 2018 *Joseph Kivati Wambua Vs SMM & Another* (suing as the Legal Representatives of the Estate of EMM-Deceased) paragraph 21 Hon. Odunga J (as he then was) observed: -

“The Appellant has taken issue with the award for pain and suffering on the ground that the evidence on record showed that the deceased passed away the same day and therefore the Respondents ought to have been awarded a lesser sum. In my view what determines the award under that head is how long the deceased took before he either passed away or lost consciousness... a distinction ought to be made between a case where the deceased passes away instantly and where the death takes place sometimes after the accident. In the former, the award ought to be minimal as the legal presumption is that the deceased did not undergo



pain before he died. However, where the deceased dies several hours after the accident during which time he was conscious and was in pain, an award for pain and suffering would not be nominal.”

35. It must be remembered that damages are at large and are not a mathematical exercise. Where the deviations in the overall award are minimal, the Court will not interfere with the award under the various heads, except for special damages that require specificity. In *Nyambati Nyaswabu Erick Vs Toyota Kenya Ltd & 2 Others* (2019) eKLR, Justice D.S Majanja held that: -

“General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would, as far as possible, be compensated by comparable awards, but it must be recalled that no two cases are exactly the same.”

36. Award of pain and suffering depends on whether the deceased died on the spot or after some time. That is, damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. Where a deceased died on the spot, Courts have taken the approach that minimal damages should be granted, unlike in a case where a deceased dies later on.

37. The Appellant argued that since the deceased died on the spot, a minimal award of Kshs. 10,000/= would suffice. However, the evidence on record, particularly that of PW1, is that the deceased succumbed to injuries at Mediheal Hospital. This distinction is critical. In road traffic accidents, it is a matter of common judicial experience that victims rarely die instantaneously. More often than not, they suffer severe trauma, lose consciousness, and succumb to injuries after some period, however short. The law recognizes this interval of suffering.

38. The awards under this head are nominal and do not represent the pain the deceased suffered. In granting nominal damages, looking at damages from other perspectives is necessary. It is common reasoning that astronomical awards may lead to increased insurance premiums thus hurting the insurance industry and the economy. In *West (H) & Son Ltd Vs Shephard* [1964] AC 326, it was stated that: -

“...but money cannot renew a physical frame that has been battered and shattered. All that judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional...”

39. In the present case, given that the deceased did not die instantly but succumbed in hospital, the award of Kshs. 100,000/= was reasonable and consistent with comparable awards. There is therefore no basis for interference.



Loss of Dependency (Dependency Ratio)

40. In the instant case, the appellant faults the trial Court for adopting a dependency ratio of 2/3. Dependency is a matter of fact and must be proved by evidence as was held in *Abdalla Rubeya Hemed Vs Kayuma Mvurya & Another* [2017] eKLR as follows: -

Dependency is always a matter of fact to be proved by evidence. It is not that the deceased earned a sum and therefore must have devoted a portion or part of it to his dependence. Rather the claimant must give some evidence to show that he was dependent upon the deceased and to what extent.

41. Further in *Rahab Wanjiru Nderitu Vs Daniel Muteti & 4 Others* [2016] eKLR the Court held that: -

“The plaintiff must prove dependency. If a wife, she must prove marriage to the deceased either by customary marriage or by production of marriage certificate or by any other acceptable manner, by a letter from the Chief confirming that the plaintiff is a wife of the deceased and that the children are children of the deceased in the absence of birth certificates or any other documents to confirm the same.”

42. The Respondents in this instance case produced a Chief’s letter identifying the dependants of the deceased, including his spouse and child. The Chief’s letter is a crucial document in both succession and fatal accident claims, as it serves as prima facie evidence of dependency and beneficiaries of the estate. Notably, the Appellant did not produce any evidence to challenge the authenticity or contents of the Chief’s letter. There was no allegation, let alone proof, that the document was forged.

43. Where a deceased has left behind a spouse and children, Courts have consistently adopted a dependency ratio of 2/3. In the case of *Sarah Naitore M’ikunyua Vs Geoffrey Mwangi Bor & another* [2021] KEHC 3224 (KLR), the Court held as follows: -

19. The trial Court adopted a dependency ratio of ½ as the deceased had only two dependants i.e. her mother and her son. The Appellant contends that the Court should have adopted a ratio of 2/3. This Court has considered that the deceased was an elder sister to the Appellant. The deceased thus had a greater responsibility with respect to providing for their mother, in addition to her son. The Court notes that in the case of *Petronila Muli v Richard Muindi Savi & Catherine Mwendu Mwindu*, Civil Appeal No. 98 of 2018 [2021] eKLR, Limo J held that if a deceased person was unmarried, the Court should adopt a ratio of 1/3. However, in that case, the deceased’s dependants were only his parents. In the present case, the deceased’s dependants are her parent and her child. Although she was unmarried at the time of her death, the fact that she had a child means that she had to cater for the child as a single parent. In the circumstances, a larger proportion of her income was expended to her child’s upkeep.

20. This Court thus finds that a dependency ratio of 2/3 would best suit the circumstances of this case.

44. The Appellant failed to discharge this burden in rebutting dependency. Accordingly, the dependency ratio of 2/3 was proper and is upheld.

Multiplier and Multiplicand

45. The Court should find the age and expectation of the working life of the deceased and consider the ages and expectations of life of his dependant, the net earnings power of the deceased i.e. his income and tax and the proportion of his net income which he would have made available for his dependants.



From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying a figure representing so many years purchase. The multiplier will bear a relation to the expectation of the earning life of the deceased and the expectation of life and dependency of the widow and children. The capital sum so reached should be discounted to allow for possibility or proportionality of the remarriage of the widow of what her husband left her, as a result of his premature death. A deduction must be made for the value of the estate of the deceased because the defendants will get the benefit of that. The resulting sum (which must depend upon a number of estimates and imponderables) will be the lump sum that the Court should apportion among the various dependants.

46. Moreover, the Court must also in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The Court should then multiply the multiplicand by a reasonable figure representing so many years' purchases. In choosing the said figure, usually called the multiplier, the Court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependents and the chances of life of the deceased and the dependents. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature
47. The deceased was aged approximately 31–32 years at the time of death and was self-employed as a farmer. The Appellant argued for a lower multiplier of 14–18 years, while the trial Court adopted 25 years. In *Chunibhai J Patel and Another Vs PF Hayes and Others* (1957) EA 748, 749 the Court of Appeal stated in the manner of assessment of damages under the Fatal Accident's Act that -

“It is true that there are indeed many imponderables of life and life itself is a mystery of existence. However, it is not in the province of this Court to determine or explore those imponderables. The duty of this Court is to apply the generally known period during or about which an employee in the deceased's occupation of an accountant would be in active work and retire.’ In the government employment, the deceased would have retired at age 60 years. In accordance with employment laws and there was no other evidence to challenge this legal retirement age and the plaintiff did not state otherwise. I would therefore take 60 years to be the common retirement age. There was no evidence of the vicissitudes of life of other imponderables or illness which would have shortened the deceased's working life to only 15 years and retire from work. The deceased was described as having lived a healthy and happy life ...

In *Benedita Wanjiku Kimani (supra) Emukule J* awarded a multiplier of 16 years to+ a deceased aged 44 years at the time of his death. In *Simon Kiplimo Murey & 3 Others vs. Kenya Bus Service Management Services Ltd & 4 Others* (2014) eKLR where the deceased died aged 28 years working for Kenya Power and Lighting Co. Ltd and earning Kshs 40,000/- per month the Court awarded a multiplier of 25 years.’

48. This Court takes judicial notice of the fact that life expectancy in Kenya exceeds 60 years. According to the World Bank data index, the average life expectancy for males in Kenya is well above 60 years. In addition, self-employed individuals, particularly farmers, do not retire at a fixed age and often remain economically active well beyond formal retirement age. The trial Court's adoption of a multiplier of 25 years was therefore reasonable, taking into account the vagaries and vicissitudes of life.
49. In addition, on multiplicand, the use of the minimum wage was appropriate given the informal nature of the deceased's occupation.



Special Damages

50. Special damages of Kshs. 580,300/= were specifically pleaded and strictly proved. There was no challenge to this award. It is therefore upheld.
51. In conclusion, upon a comprehensive re-evaluation of the entire record, this Court finds that: the trial Court properly evaluated the evidence and correctly found the Appellant 100% liable, the awards under all heads of damages were based on sound legal principles and supported by evidence and the Appellant has failed to demonstrate any error in law or fact warranting interference by this Court.
52. Accordingly, the Appeal is hereby dismissed in its entirety and the judgment of the trial Court is upheld. The Respondents shall have the costs of this Appeal together with interest at Court rates. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 28TH DAY OF APRIL 2026

.....

R. NYAKUNDI
JUDGE

