



REPUBLIC OF KENYA



**KENYA LAW**  
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**Matunda (Fruits) Bus Services Limited v Ayieko & another (Suing as the  
Legal Representative of the Estate of Hellen Racheal Odhiambo) (Civil  
Appeal 157 of 2019) [2025] KEHC 7433 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7433 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL 157 OF 2019  
HI ONG'UDI, J  
MAY 29, 2025**

**BETWEEN**

**MATUNDA (FRUITS) BUS SERVICES LIMITED ..... APPELLANT**

**AND**

**JACKLINE ANYANGO AYIEKO & JESSIE OMUNDES (SUING AS THE  
LEGAL REPRESENTATIVE OF THE ESTATE OF HELLEN RACHEAL  
ODHIAMBO) ..... RESPONDENT**

*(Being an appeal from the judgment of Honourable E.G. Nderitu (Chief  
Magistrate), delivered on 3rd September 2019 in Molo CMCC NO. 231 of 2018)*

**JUDGMENT**

1. Jackline Anyango Ayieko and Jessie Omundes the respondents herein filed a suit against Matunda (Fruits) bus services limited seeking damages under *Fatal Accidents Act* and *Law Reform Act*, special damages and costs, plus interest arising from an accident that occurred on 31<sup>st</sup> December 2017 or thereabout. The accident involved a motor vehicle registration number KCC 003A, in which the deceased was a passenger and as a result she died.
2. The appellant filed a defence denying the respondent's claims and blaming her plus the driver of motor vehicle KBK 967C 2 D0066 for the accident. Later the parties entered into a consent on liability in the ratio of 5:95 in favour of the respondents. The matter was then heard after which judgment was entered in favour of the respondents for pain and suffering kshs. 50,000/=, loss of expectation of life kshs. 100,000/=, loss of dependency kshs. 3,958,560/= and special damages kshs. 202,175/= all these were subject to 5% contributory negligence. The respondents were also awarded costs of the suit plus interest until payment in full.



3. Aggrieved by the said judgment, the appellant filed this appeal against the Judgment based on the following grounds; -
  - i. That the learned magistrate erred in law and in fact in awarding a higher amount on general damages without considering the evidence and the submissions on general damages given on behalf of the appellant while considering his judgment.
  - ii. That the learned magistrate erred in law and fact in disregarding the evidence adduced by the appellants thereby arriving at a wrong decision as to the quantum payable to the plaintiff.
4. The Appeal was canvassed through written submissions. It is only the respondent's counsel who filed submissions. The appellant did not file any submissions despite it being accorded several opportunities to do so. The same are not in the court file or the CTS portal.
5. The respondents' submissions were filed by Gekonga & company advocates and are dated 24<sup>th</sup> May, 2023. Counsel identified one issue for determination which is whether the appeal is merited. Counsel submitted that the appellant's appeal was not merited for reasons that the record of appeal lacked vital records like a copy of certified proceedings, the judgment, the respondents' submissions and the decree. That the said record of appeal contravened Order 42 Rule 2 and 13 of the Civil Procedure Rules 2010 and as such the same ought to be struck out and the appeal dismissed. He placed reliance on the decision in *Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 Others* [2015] eKLR held as follows at paragraph 41:

“Without a record of appeal, a court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or *the Constitution*, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.”
6. Counsel further submitted that the 30 years adopted by the trial court as the multiplier was reasonable since the appellant in the submissions had suggested for 36 years. Furthermore, that the multiplicand of kshs. 32, 988/= adopted by the trial court was also reasonable since it was the minimum entry salary for a graduate. He added that it was the respondents' testimony that their family depended on the deceased for the day to day expenses. That the trial court was right to adopt the ratio of 1/3 since the deceased was not married and did not leave behind any children.
7. Counsel submitted that the award of kshs. 3,958,560/= under the limb of loss of dependency was not inordinately excessive in the circumstances. Also, that the awards for pain and suffering for Kshs. 50,000/= and loss of expectation of life Kshs. 100,000/= were not inordinately high in the circumstances and the same ought not to be disturbed. He urged the court to uphold the lower court judgment and dismiss the appeal with costs to respondent.

### **Analysis and determination**

8. This being a first appellate court, I am guided by the dictum in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to re-consider and re-evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the circumstances.



9. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated thus:

“An appeal to this Court from a trial by the High 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 allowances in this respect”

10. Before delving into the merits of the appeal, I will first deal with the issue raised by the respondents in their submissions on the record of appeal not being complete. I have perused the court file and I note that the respondent filed a supplementary record of appeal thus making the said record complete.

11. Moving to the first ground of the memorandum of appeal the appellant stated that the learned trial magistrate erred in law and in fact in making a higher amount on general damages without considering the evidence and the submissions on the same. Looking at the award of pain and suffering and loss of expectation of life, the trial magistrate awarded kshs. 50,000/= and kshs.100,000/= respectively. The court in *Mercy Muriuki & another v Samuel Mwangi Nduati & another* (Suing as the Legal Administrator of the Estate of the late Robert Mwangi) [2019] eKLR, the court observed as follows:-

“The generally accepted principle, therefore, is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for Loss of expectation of life is Ksh. 100,000/- while for pain and suffering, the awards range from Ksh. 10,000/= to Ksh. 100,000/= with greater damages if the pain and suffering were prolonged before death.”

12. Guided by the authority cited above and in consideration of PW1’s testimony which did not clearly indicate whether the deceased died on the spot or thereafter, I find that the said awards were within the lawful range and thus not inordinately high.

13. Loss of dependency is awarded under the Fatal Accident’s Act. The principles to be considered were stated in *Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another* – Nairobi HCCC No. 1638 of 1988 (unreported) where the court observed as follows: -

“The principles applicable to an assessment of damages under the *Fatal Accidents Act* are all too clear. The court must 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 dependants and the chances of life of the deceased and dependants. 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.”

14. The trial court in awarding the award on loss of dependency noted that the deceased was a graduate with a bachelor’s degree in education (Arts) with a second-class honours upper division as per the evidence of the plaintiff and the letter filed in the case from the Deputy Vice Chancellor (Academics). It therefore adopted the entry level minimum TSC salary for a graduate teacher in possession of a Bachelor’s degree Ksh. 32,988. The trial court considered that the deceased was twenty-four (24) years at the time of her demise and that she was not married. Further, the trial court considered the



uncertainties, vagaries and imponderables of life and that she would have worked for 36 years to reach the retirement age in the civil service, and adopted a multiplier of 30 years. Additionally, in consideration of Section 4, of the *Fatal Accidents Act* it adopted a 1/3 dependency ratio.

15. The learned trial magistrate computed the award on loss of dependency as follows;  
 $32,988 \times 30 \times 12 \times 1/3 = 3,958, 560/=$
16. The decision by the trial court to use the multiplier approach was purely a discretionary one. In the case of *Southern Engineering Co. Ltd v Musungi Mutia* [1985] KLR 730, the court held that:  

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual judge or magistrate, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case...”
17. Regarding the award under loss of dependency, the Court of Appeal in *Chunibhai J. Patel and Another vs. P. F. Hayes and Others* [1957] EA 748, 749, stated the law on assessment of damages under the *Fatal Accidents Act* and held as follows:  

“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 dependants, 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 dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying by a figure representing so many years’ purchase.”
18. Jurisprudence by the courts reveal that either the multiplier approach or an award of a global figure is applicable when it comes to assessing loss of dependency. In the case of *Mwanzia vs Nagalali Mutua Kenya Bus Ltd* cited in *Albert Odawa vs. Gichumu Githenji* [2007] eKLR the court gave guidance on when to use the multiplier approach as follows:-  

“The multiplier approach is just a method of assessing damages. It is not a principle of law of a dogma. It can, and must be abandoned, where the facts do no facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of Justice should never do.” [emphasis added]”
19. Further, in *Frankline Kimathi Maariu & another v Philip Akungu Mitu Mborothi* (suing as administrator and personal representative of Antony Mwiti Gakungu deceased [2020] eKLR the court held as follows:  

“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency. The global sum would be an estimate informed by the special circumstances of each case. It will differ from case to case but should not be arbitrary. It should be seen to be a suitable replacement that correctly is the gap.”



20. In the instant case the trial magistrate made the award based on the multiplier method however no evidence of monthly income or proof of employment was adduced by the respondents. Based on the above decisions, adopting the multiplier and the multiplicand in this case by the trial magistrate had no basis at all. Thus, I find that the global approach would have been ideal in the circumstances.
21. Looking at comparable awards, I have considered the authority in *Kinuthia v Kiugu* (Suing as the Legal Representative of the Estate of Oscar Muthomi Kithinji-Deceased) (Civil Appeal E165 of 2022) [2024] KEHC 9515 (KLR) (30 July 2024) (Judgment) where the court awarded Kshs 2,000,000 for the deceased who was 24 years old at the time of death and was pursuing Actuarial Science which is perceived to be highly marketable. Also, in *Zachary Abusa Magoma* (supra), Ndung'u J awarded Kshs 1,500,000/- for a deceased who was set to write her final examinations in a bachelor of education course. The deceased herein was a graduate with a bright future.
22. I hereby find the award of Kshs 3,958,560/= for loss of dependency to be abit excessive in the circumstances and the same is hereby set aside and substituted with the sum of Kshs 3,000, 000/ which is reasonable in the circumstances
23. The upshot is that the Appeal partially succeeds. The following are the awards:Loss of dependency Ksh 3,000,000/-Loss of expectation of life Ksh 100,000/-Pain and suffering 50,000/-Total = Ksh 3,150,000/-Less 5% contribution = Ksh 3,093,000/= +special – 202,175/- = Ksh 3,295,175/=
24. I therefore set aside the lower court Judgment and substitute it with:
  - i. A Judgment for Ksh 3,295,175/- + lower court costs.
  - ii. The Appellant is awarded half of the Appeal costs.
  - iii. Interest at court rates runs from date of Judgment in the lower court.
25. Orders accordingly.

**DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF MAY, 2025 IN OPEN COURT.**

**H. I. ONG'UDI**

**JUDGE**

