



REPUBLIC OF KENYA



**Pilakan v Chemayek (Suing as Legal Administrator of the Estate of the Late Gladys Nekesa Nyongesa) (Civil Appeal 58 of 2021) [2025] KEHC 9277 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9277 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL 58 OF 2021**

**RK LIMO, J  
JUNE 30, 2025**

**BETWEEN**

**ISAIH PKEMEI PILAKAN ..... APPELLANT**

**AND**

**JANE NAMALWA CHEMAYEK (SUING AS LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE GLADYS NEKESA NYONGESA) ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal that arose from the judgment of Hon. S.N. Makila, Principal Magistrate delivered on 1/11/2021 vide Kitale CMCC No.273 of 2019. In that suit the respondent suing as the legal representative of the estate of the late Gladys Nekesa Nyongesa sued the appellant for tort of negligence as a result of a road traffic accident which occurred on 25/9/2018 along Kitale-Kapenguria road. The fatal accident involved the appellant's motor vehicle Reg No.KBG 263K and a motorcycle Reg No.KMDZ 020A which was carrying the deceased as a pillion passenger. The appellant denied liability and instead blamed the motorcyclist for entering the main road when it was unsafe to do so.
2. The trial court evaluated the evidence tendered and found that the rider of the motorcycle KMDZ 020A was largely to blame and apportioned 70% of the blame on him while the appellant was found 30% to blame.
3. On quantum, the trial court awarded the respondent as follows;
  - a. Pain and suffering – Kshs.10,000/-.
  - b. Loss of expectation of life - Kshs.100,000/-
  - c. Loss of dependency – the trial court adopted the minimum wage guideline of Kshs.12,522.70 for unskilled workers and applied it as multiplicand and adopted dependency ratio of 2/3 and



used a multiplier of 30 years given her age [21 years old at the time]. So the calculations were as follows;

$12,522.70 \times 12 \times 2/3 \times 30 = \text{Kshs.} 3,005,448$

The total award as follows;

Pain and suffering -Kshs.10,000/-Loss of expectation of life - Kshs.100,000/-Loss of dependency -Kshs.305,448/-

Sub Total -Kshs.2,115,448/-

Less 70% -Kshs.934,634/-

The respondent was also awarded 30% costs.

4. The appellant felt aggrieved and filed this appeal and raised the following grounds namely;
  - i. That the trial magistrate erred by adopting wrong principles in assessment of the damages.
  - ii. That the trial court failed to take into account principles applicable under *Fatal Accidents Act*.
  - iii. That the trial magistrate erred by adopting dependency ratio of 2/3 without considering the evidence placed on record.
5. In his written submissions through learned counsel Dennis Onyinkwa Advocate, the appellant faulted the trial court for adopting a multiplier of 30 years. According to the appellant the trial court failed to factor in vagrancies and vicissitudes of life. He relies on the case of *Crown Bus Services Ltd & 2 Others v Jamilla Nyongesa & Amida Nyongesa [2020]eKLR* where the court adopted a multiplier of 25 years. He further relies on *Samuel Kimutai Korir [suing as personal representative of the estate of Chelangat Sileria v Nyadhwa Adventist Secondary School & Anor [2018]eKLR* where the court adopted a multiplier of 25 years for a deceased who was aged 21 years at the time.
6. On dependency ratio, the appellant faults the trial court for adopting 2/3 when no evidence was placed in court to support the allegations that the deceased left a child aged 4 years old. The appellant submits that a dependency ratio of 1/3 in the circumstances was justified. He relies on the case of *Petronila Muli v Catherine Muindi Savi & Catherine Mwendu Mwindu [2021]eKLR*.
7. The respondent has opposed this appeal through written submissions by her counsel M/s Okile & Co Advocates, she supports the decision of the lower court in adopting a multiple of 30 years stating that the retirement age in Kenya is 60 years which meant that the deceased would have worked for another 39 years as she was 21 years old.
8. On dependency the respondent submits that though the deceased was unmarried, she had dependants who were listed in the plaint. The respondent supports the trial court for adopting dependency ratio of 2/3 stating that there is no law stating that the dependency ratio of 2/3 applies only to married persons.
9. This court has considered this appeal which is only on quantum. The work of this court is to re-evaluate the evidence tendered and make own conclusions.
10. The appellant has only raised two issues on the quantification of quantum which are;
  - i. The multiplier of 30 years adopted by the trial court and
  - ii. Dependency ratio
11. I will begin with the award in loss of dependency under *Fatal Accidents Act*. The quantification of damages under this head depends on the age of the deceased and the income. In this instance, the



respondent stated that the deceased was a business lady selling charcoal earning Kshs.500/- per day but did not tender any evidence to establish the fact. The trial magistrate adopted the minimum wage guidelines applicable to unskilled workers. The same in my considered view was erroneous because there was no evidence that the deceased worked anywhere as an unskilled worker. In situations where there is no documentary proof to establish the income of the deceased for one reason or the other, the best approach is to adopt a global amount or lump sum award to compensate the next of kin. The deceased was a young woman aged 21 years old and in my view an award of lump sum of Kshs.2 Million was a fair award under loss of dependency [see Moses Marina Muchiri v Cyrus Maina Macharia [2016] where the court held that where it is difficult to ascertain income of the deceased a global award is more suitable].

12. I agree with the appellant that there was no evidence offered to base adoption of dependency ratio of 2/3. The respondent ought to have tendered birth certificate of the child or any other documentary proof to demonstrate the question of dependency. Dependency is a question of fact it cannot be assumed. However in view of the lump sum approach, the issue of dependency ratio does not apply.

13. In summary this court allows this appeal only to the above extent and awards the respondent as follows;

- i. Pain and suffering - Kshs.10,000/-
- ii. Loss of dependency -Kshs.100,000/-
- iii. Loss of expectation of life -Kshs.2,000,000/-

Subtotal -Kshs.2,110,000/-

Less 70% contribution -Kshs.1,477,000/-

Total -Kshs.634,000/-

The appellant will have half costs in this appeal but the respondent will have costs and interests of the above award in the lower court.

**DELIVERED, DATED and SIGNED at KITALE this 30<sup>TH</sup> day of JUNE, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Nyabuto for the Appellant

Okile for the Respondent

Duke/Chemosop-Court Assistants

