



**Wanyande (Suing as the Administrator of the Estate of the Late
Moses Onyango Oloo) v Abdi & another (Civil Appeal E839 of 2023)
[2025] KEHC 11674 (KLR) (Civ) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11674 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E839 OF 2023

WM MUSYOKA, J

AUGUST 1, 2025

BETWEEN

**FREDRICK OTIENO WANYANDE (SUING AS THE ADMINISTRATOR OF
THE ESTATE OF THE LATE MOSES ONYANGO OLOO) APPELLANT**

AND

ADEN ABDI 1ST RESPONDENT

NUH ALI MAHMOOD 2ND RESPONDENT

*(Appeal from the judgement and decree of Hon. Mrs L. Njora, Senior Principal
Magistrate, in Milimani CMCCC No. 6380 of 2015, of 11th August 2023)*

JUDGMENT

1. The suit, before the trial court, was by the appellant, against the respondents. It was a fatal injury claim, arising from a motor traffic accident, involving the deceased person, whose estate the respondent is administering, and a motor vehicle owned and controlled by the respondents. The appellant had sought general damages under the *Law Reform Act*, Cap 26, Laws of Kenya, and the *Fatal Accidents Act*, Cap 32, Laws of Kenya, special damages and costs.
2. The respondents did not defend the suit, and it proceeded based on formal proof. Judgment was delivered in favour of the appellant. Liability was assessed at 100%, the prayer for damages under the *Fatal Accidents Act* was dismissed, special damages were awarded at Kshs. 7,220.00, Kshs. 50,000.00 for pain and suffering and Kshs. 150,000.00 for loss of expectation of life.
3. The appellant was dissatisfied, hence this appeal. The grounds are that there was a misinterpretation of section 4[1] of the *Fatal Accidents Act*, erring in holding that the suit had been brought for benefit



- of the appellant instead of the beneficiaries; failing to appreciate that the suit was brought on behalf of the beneficiaries and not the appellant, for he brought it as administrator; applying wrong principles on dependency; and failing to consider relevant factors.
4. The matter was never placed before a Judge, contrary to Order 42 rule 13[1] of the Civil Procedure Rules, for directions before hearing. However, the appellant did file his submissions, which I have read through, and noted the arguments made.
 5. There is only one issue for determination: whether an award under the *Fatal Accidents Act* should have been made.
 6. The trial court declined to award damages under the *Fatal Accidents Act*, on grounds that the appellant was not a dependant of the deceased, for he was his uncle, and he was not entitled to benefit from the estate personally.
 7. The suit herein was representative. It was brought by the appellant on behalf of another or others. He had not brought it personally, for his own benefit, but as administrator of the estate of the deceased. That was clear from the title of the suit. He pleaded, at paragraph 4 of the plaint, that he brought the claim as administrator of the estate, on his own behalf and on behalf of the widow of the deceased and her 3 children, being dependants of the deceased. He also, at paragraph 5, grounded his claim on the *Fatal Accidents Act*, and went on to give the particulars required under the *Fatal Accidents Act* in that paragraph and at paragraph 6. He listed the dependants, at paragraph 5, who did not include himself. At paragraph 6, he detailed the age of the deceased, and what he was earning from his daily hustles.
 8. The pleadings, therefore, clearly brought the suit within the purview of section 4[1] of the *Fatal Accidents Act*, and the dismissal of the suit, on that aspect, was wrong in principle. The court should have assessed damages under that head, which I shall here below proceed to do.
 9. The deceased was a jua kali artisan or operator. Evidence on what he earned was vague. In such cases, the court reverts to the Regulation of Wages [General] Order. I shall apply the one for 2013, for the deceased died that year. Under the Regulation of Wages [General] [Amendment] Order, 2013, the minimum wage, for an unskilled labourer, was set at Kshs. 13,201.55. The deceased died at age 31. He had a wife and children. A multiplicand of Kshs. 13,201.55 would suffice. A dependency rate of 2/3 would apply, for a married man, with children, who appear to have been minors.
 10. For a multiplier, I have considered several relevant decisions, with respect to a person in the age bracket of the deceased. I have come across *Siyaram Enterprises & Another v Samuel Nyachani Nyachani* [2015] eKLR [Chitembwe, J], where the deceased died at 31, and a multiplier of 16 was adopted. In *Muriuki Ruth v Mueni Mbaluku & Another* [2020] eKLR [Ong'udi, J], the deceased died at 32 and a multiplier of 25 was adopted. I will adopt a median of 20 years, for 25 would be on higher side, in my view, and 16 would be on the lower side.
 11. Consequently, for the purpose of assessing general damages, under the *Fatal Accidents Act*, for loss of dependency, I adopt a multiplier of 20, a multiplicand of 13, 201.55 and a dependency ratio of 2/3. It works out as follows: $13,201.55 \times 20 \times 2/3 = 2,112,248.00$.
 12. The appeal herein has merit, in view of what I have discussed hereabove, at paragraphs 7 and 8. Consequently, I shall allow it, in terms that the order in the judgement of the trial court, dismissing the claim under the *Fatal Accidents Act*, is hereby set aside, and substituted with an order awarding Kshs. 2,112,248.00 as general damages under that head. The appellant shall have the costs of this appeal. The trial court records to be returned to the trial court, while this appeal file shall be closed. Orders accordingly.



DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 1ST DAY OF AUGUST 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Mideva, instructed by Gakoi Maina & Company, Advocates for the appellant.

