



**Mawingo Construction (2010) Limited v Karanja & another (Suing as the Legal Representatives and Administrators of the Estate of John Kimani Maina - Deceased) (Civil Appeal E017 of 2024) [2025] KEHC 11825 (KLR) (6 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11825 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E017 OF 2024  
HI ONG'UDI, J  
AUGUST 6, 2025**

**BETWEEN**

**MAWINGO CONSTRUCTION (2010) LIMITED ..... APPELLANT**

**AND**

**SIMEON NJOROGI KARANJA ..... 1<sup>ST</sup> RESPONDENT**

**JANE WANJIKU KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF  
THE ESTATE OF JOHN KIMANI MAINA - DECEASED**

*(Being an appeal from the Judgment and decree of Hon. Wilson Rading (Principal Magistrate) delivered on 22nd February, 2019 in Naivasha CMCC No. 529 of 2018)*

**JUDGMENT**

1. The appellant herein was the defendant in the lower court while the respondents were the plaintiffs. The respondents vide the plaint dated 5<sup>th</sup> June, 2018 sued the appellant claiming general damages under the Law Reform Act and Fatal Accidents Act, special damages for Ksh 86,100/= costs of the suit plus interest. The claim was based on the injuries the deceased suffered as a pillion passenger on motor cycle registration number KMDT 678Q riding along Mai Mahiu – Naivasha road at Munio area within Nakuru county when the driver of motor vehicle registration number KBR 428D/ZE 0885 negligently stopped on the road abruptly resulting in an accident.
2. After the full trial the trial court delivered its Judgment on 22<sup>nd</sup> February, 2024 apportioning liability in the ratio of 70:30 against the appellant. The court awarded the respondent general damages for pain and suffering and loss of expectation of life at Ksh 20,000/= and Kshs 100,000/= respectively; damages under the Fatal Accident Act at Ksh 504,000/= plus special damages at Ksh 86,100/=.



3. The appellant being aggrieved by the whole Judgment lodged this appeal dated 18<sup>th</sup> March, 2024 on the following grounds:
  - i. That the learned trial magistrate erred in law and fact in failing to critically analyse the evidence on the issue of liability and arrived at an erroneous finding on liability.
  - ii. That the learned trial magistrate erred in law and in fact in failing to evaluate the evidence in its totality and in failing to take into consideration submissions and authorities submitted by the Appellant.
  - iii. That the learned trial magistrate failed to critically analyse and apply the causative role of the deceased and thus arrived at the erroneous finding; the appellant shouldering the larger blame.
4. I wish to state that this appeal is related to Naivasha HCA No. E016 of 2024 as it involved the same motorcycle registration No. KMDT 678Q and its pillion passengers plus motor vehicle registration No. KBR 428D/ZE 0885. A comprehensive Judgment has been rendered in the said Naivasha HCA No. E016/2024.

### **The appellant's submissions**

5. These are dated 5<sup>th</sup> march, 2025 and were filed by G. & G. Advocates LLP. The appellant is basically challenging the court's apportionment on liability. Counsel urged the court to review the evidence tendered by the various witnesses namely PW1, PW2 and DW2. He submitted that the police officer was categorical that the motor vehicle was not to blame, since it's the motor cycle which rammed into it. He referred the court to section 107 of the Evidence Act and the cases of:
  - i. Statpack Industries Ltd V James Mbithi Munyao [2005] eKLR
  - ii. Lochab Transporters Limited V Arison Obara Obara & Winnie Moraa Obara (suing as administrators of the estate of Dominic Mogaka (deceased) & another [2020] eKLR.
6. Counsel further submitted that the trial court considered irrelevant matters e.g inferring negligence on the part of the appellant's driver on account of having fled from the scene of accident on the face of the crowded motor cycle riders. He thus urged the court to allow the appeal, set aside the Judgment and dismiss the respondents suit with costs.

### **Respondent's submissions**

7. These are dated 16<sup>th</sup> June, 2025 and were filed by Wairegi Kiarie & Associates LLP. Counsel submitted on two issues. Referring to the case of Khambi & another [1968] E.A 70 he urged the court not to interfere with the finding on liability as there is no exceptional circumstance to warrant the same. He submitted that there was no negligence established against the deceased who had acted reasonably at all times. He placed blame on the motor vehicle driver.
8. On whether the trial court erred in awarding damages to the respondents, counsel contended that the awards were fair and just and they were based on decided cases. This was in respect to the award of pain and suffering at Kshs 20,000/= and ;oss of expectation of life at Kshs 100,000/=. He supported the decided cases relied on by the trial court.
9. Counsel submitted that the award of Ksh 504,000/= under the Fatal Accidents Act was in order since the deceased earned Ksh 6,000/= per month and he was aged 46 years at the time of incident. The dependency ratio of ½ adopted by the trial court was therefore fair, he urged. He placed reliance on the case of Dismas Muhami Wainaina V Sapon Karirimo Maranta (suing as administrator and personal



representatives of the estate of Partinini Supon (deceased) [2021] eKLR. He added that special damages were pleaded and proved.

### Analysis and determination

10. This being a first appeal, this court is called upon to re-evaluate and reconsider the evidence on record and arrive at its own conclusion. See:
  - i. Selle & another V Associated motor Boat & others 1968 E.A 123
  - ii. Peter V Sunday Post Ltd [1958] E. A 424
11. Having considered the record of appeal, grounds of appeal, both submissions and the authorities cited, I find the issues for determination to be:
  - i. Whether the trial Magistrate erred in apportioning liability in the ratio of 70:30 in favour of the respondents.
  - ii. Whether the award on quantum is inordinately high
12. On the first issue I am guided by the Court of Appeal decision in Michael Hubert Kloss & another V David Seroney & 5 others 2009 eKLR. Further in Farah V Lento Agencies [2006] 1 KLR 124, 124 the Court of Appeal on the same issue stated thus:

“Where there is no concrete evidence to determine who is to blame between the two drivers, both should be held equally to blame. As no side could establish the fault of the opposite party, liability for the accident could be equally on both the drivers. Therefore, each driver was to blame”
13. This court has in Naivasha HCA No. E016/2023 given a detailed covering of the evidence of the witnesses in respect to this accident. It is not disputed that the appellant is the owner of the vehicle registration No. KBR 428D/ZE 0885 which was rammed into by motor cycle registration No, KMDT 678Q belonging to the deceased respondent. There was no independent eye witness who testified. The truck driver blamed the motorcycle rider for the accident. Unfortunately, the rider and his pillion passenger passed on as a result of the collision. The truck driver and his passenger fled from the scene. If he was that innocent, why did they flee from the scene and not even call other witnesses to testify on what happened? This is not an irreverent issue as submitted by counsel.
14. I am of the humble view that both the driver and rider contributed to the accident. The rider was definitely speeding considering the impact. I have no reason to fault the trial court on apportioning liability the way he did.
15. Coming to the award of damages, I find no fault on the award made on pain and suffering, loss of expectation of life. The special damages, were pleaded and proved.
16. On damages under the Fatal Accidents Act the respondents produced a letter from the deceased's employer showing he was a casual labourer earning Ksh 6,000/= per month (PEXB 7). The Death Certificate (PEXB 4) shows he was 46 years old when he died. He would have worked up to the age of around 60 years. It is obvious that at age 46 years the deceased had a young family which depended on him and so the dependency ratio adopted is quite reasonable.
17. After carefully reading the Judgment and the reasoning behind the award made herein I am satisfied that the trial Magistrate did not err in any way in awarding Ksh 504,000/= as damages under the Fatal Accidents Act, upon careful calculations.



18. The upshot is that the Appeal lacks merit and is dismissed with costs to the respondents. The Judgment by Hon W. Rading is upheld.
19. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 6<sup>TH</sup> DAY OF AUGUST, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

