



**Mitra Enterprises Limited v Samson & another (Suing as the Legal Representative of the Estate of Nelson Muhambe (Deceased)) (Civil Appeal 27 of 2023) [2025] KEHC 5480 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CIVIL APPEAL 27 OF 2023  
JN KAMAU, J  
APRIL 24, 2025**

**BETWEEN**

**MITRA ENTERPRISES LIMITED ..... APPELLANT**

**AND**

**ROSE VOSEBWA SAMSON ..... 1<sup>ST</sup> RESPONDENT**

**KENNEDY UKIRU ISIGI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NELSON  
MUHAMBE (DECEASED)**

*(Being an appeal from the Judgment and Decree of Hon R. M. Ndombi (PM) delivered at Vihiga in the Senior Principal Magistrate's Court Civil Case No E41 of 2022 on 5th October 2023)*

**JUDGMENT**

**Introduction**

1. In her decision of 5<sup>th</sup> October 2023, the Learned Trial Magistrate, Hon R. M. Ndombi, Principal Magistrate, apportioned liability at 70-30% in favour of the Respondents herein and entered judgment in their favour against the Appellant in the following terms:-

Pain and Suffering Kshs 30,000/=

Loss of expectation of life Kshs 100,000/=

Loss of dependency

$\frac{2}{3} \times 26 \times 12 \times 13,572$  Kshs 2,714, 400/=

Kshs 2,844,400/=



Less 30% contribution Kshs 853,320/=

Kshs 1,991,080/=

Plus costs of the suit and interest at court rates.

2. Being aggrieved by the said decision, on 24<sup>th</sup> October 2023, the Appellant herein filed a Memorandum of Appeal of even date. It relied on five (5) grounds of appeal.
3. Its Written Submissions were dated 1<sup>st</sup> August 2024 and filed on 2<sup>nd</sup> August 2024 while those of the Respondent were dated and filed on 4<sup>th</sup> September 2024. The Judgment herein is based on the said parties' Written Submissions which they relied upon in their entirety.

### Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another vs Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the parties' Written Submissions, it appeared to this court that all the Grounds of Appeal were related and the only issue that had been placed before it for determination was whether or not the quantum that was awarded by the Trial Court was excessive in the circumstances warranting its interference. All the Grounds of Appeal were therefore dealt with together.
7. The Appellant submitted that this court was under duty to reconsider and re-evaluate the evidence on record and draw its own independent and informed conclusion and that in doing so it must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her.
8. It added that it was also an established principle of law that a judicial officer had to analyse all elements of a case substantively before coming up with a determination. It asserted that the above celebrated principles were well settled in various binding and persuasive authorities among them the cases of *Mary Wanjiku Gachigi vs Ruth Muthoni Kamau Civil Appeal No 172 of 2000*, Ann Wambui Nderitu *vs Joseph Kiprono Ropkoi & Another Civil Appeal No 345 of 2000* and *Virani t/a Kisumu Beach Resort vs Phoenix East Africa Assurance Company Ltd Civil Case No 88 of 2002*(eKLR citations not given).
9. It contended that adherence to the principles of judicial precedent or stare decisis was of utmost importance in the administration of justice. In this regard, it placed reliance on the case of *Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others* [2013] eKLR and a Canadian case, *David Polowin Real Estate Ltd vs The Dominion of Canada General Insurance Co(2008)O.A.C 151(C.A)* where the common thread was that adherence to precedence should be the rule not the exception.
10. It blamed the Trial Court for failing to consider its submissions dated 21<sup>st</sup> August 2023 and the authorities it relied upon. It asserted that the Trial Court also failed to consider the plethora of controversies and/or contradictions as laid out by the Respondent's witnesses. It pointed out that throughout the trial, the Respondent did not call any medical doctor to testify in court to confirm the



nature and degree of injuries suffered as a result of the alleged accident so as to aid the Trial Court when exercising its discretion on awarding of quantum of damages.

11. It submitted that just because a plaintiff showed up in court with prayers was not a justification that they were entitled to the prayers sought as the said prayers had to be supported by evidence to enable the court reach a just and fair decision.
12. It further contended that courts had to reach awards that reflected the nature and gravity of the injuries because no two (2) cases were exactly the same as was held in the case of Stanley Moore vs Geoffrey Mwenda NYR [2004] eKLR. It added that in the case of Mbaka Nguru and Another vs James George Rakwar [1998] eKLR where it was held that the award must reflect the trend of previous, recent and comparable awards.
13. On their part, the Respondents urged this court to uphold the Trial Court's finding on quantum as the Appellant had not demonstrated how inordinately low or inordinately high the award was in each of the heads informing general damages for a deceased person. They were emphatic that the court must be abreast of the holdings of several higher courts in various jurisdictions that an appellate court could not interfere with an award by a lower court for the sake of it. They pointed out that for a court to disturb an award on quantum, that award had to be inordinately high or inordinately low so as to warrant interference. They invited this court to analyse whether the award by the Trial Court vis-à-vis the authorities that were cited was unusual or disproportionately excessive before interfering with it.
14. Right at the outset, this court wished to point out that while a trial court could exercise its discretion to award quantum based on the material that was adduced during trial, nothing stopped an appellate court from re-evaluating the evidence that had been adduced vis-a-vis considering comparable awards and coming to its own conclusion as was held in the cases of Selle & Another vs Associated Motor Boat Co Ltd & Others (Supra) and Kenya Ports Authority vs Kushton (K) Ltd (2009) 2 EA 212.
15. It therefore considered the issues that the Appellant had raised under the following separate and distinct heads.

## **I. Damages Under the Law Reform Act**

### **A. Pain and Suffering**

16. The Appellant submitted that as per the Post-Mortem Report and the Death Certificate that were tendered in evidence, Nelson Muhambe (hereinafter referred to as "the deceased") died on the same day the accident occurred. It asserted that he died on the spot and hence an award of Kshs 10,000/= would suffice for damages under this head.
17. To support its argument, it placed reliance on the case of Suluenta Kennedy Sita & Another vs Jeremiah Ruto [2017] eKLR where the court awarded Kshs 10,000/= for pain and suffering where the deceased died immediately after the accident as was in the case herein.
18. It also cited the case of Dismas Muhami Wainarua vs Sapon Kasirimo Maranta (Suing as administrator and or personal representative of the Estate of Partinini Sapon (deceased)) [2021] eKLR where the court held that the evidence by the plaintiff was the final determinant when assessing the same.
19. On their part, the Respondents pointed out that during trial, they submitted that an award of Kshs 75,000/= was sufficient under this head. They placed reliance on the case of Premier Diary Limited vs Amarijt Singh Sagoo & Another [2013] eKLR where the court upheld an award of Kshs 75,000/= for a deceased who died instantly on the spot at the scene of the accident.



20. They further relied on the cases of Sukari Industries Limited vs Clyde Machimbo Juma[2016]eKLR where the court upheld an award of Kshs 50,000/= for a deceased who died immediately after the accident and Retco East Africa Limited vs Josephine Kwamboka & Another[2021]eKLR where the court upheld an award of Kshs 100,000/= for a deceased who died thirty (30) minutes after the occurrence of the accident. They urged this court to uphold the award of Kshs 30,000/= awarded by the Trial Court as it was reasonable.
21. Notably, the deceased did not die on the spot as the Appellant had claimed. The evidence showed that the accident occurred on 30<sup>th</sup> November 2021 at Sabatia Primary School along Kapsabet-Chavakali Road involving the Appellant’s Motor Vehicle KBW 756H/ZC2405 Mercedes Benz (hereinafter referred to as “the subject Motor Vehicle”) which hit him as he was walking along the said road.
22. Although the Respondents did not witness the said accident, No 59708 PC John Koech (hereinafter referred to as “PW 2”) testified that the deceased was assisted by a good Samaritan who took him to Vihiga County Referral Hospital for treatment but he later passed on.
23. In the cases of Acceler Global Logistics vs Gladys Nasambu Waswa & Another [2020] eKLR and Sukari Industries Limited vs Clyde Machimbo Juma [2016] eKLR as quoted in the case of Wachira Joseph & 2 Others vs Hannah Wangui Makumi & Another [2021] eKLR, the courts therein awarded a sum of Kshs 50,000/= for pain and suffering.
24. Bearing in mind that the Respondents did not challenge the award of Kshs 30,000/= for pain and suffering, this court found and held that the same was reasonable in the circumstances as it was within the awards given by other courts for this head.

## **B. Loss of Expectation of Life**

25. The Appellant relied on the case of Mohammed Abdi Ali vs Paul Muturi Mwangi [2019] eKLR where the award of Kshs 150,000/= by the subordinate court was set aside and the appellate court awarded Kshs 60,000/= since no documentation was produced to substantiate the award of the trial court. It proposed that this court awards a sum of Kshs 60,000/= under this head.
26. On their part, the Respondents submitted that they had sought for an award of Kshs 150,000/= under this head but the Trial Court awarded Kshs 100,000/=. They urged this court to uphold the same.
27. It was this court’s considered view that the Appellant’s proposal would be on the lower side in view of the inflationary trends. On the other hand, the award of Kshs 100,000/= for loss of expectation of life was not unreasonable.
28. In arriving at this figure, this court associated itself with the holding in the case of Joseph Mugweru Njenga & Another vs Joseph Kamau Ng’ang’a [2018] eKLR where the court therein awarded a sum of Kshs 100,000/= under this head.

## **II. Damages Under the Fatal Accidents Act**

### **A. Multiplicand**

29. The Appellant submitted that the deceased died at the age of twenty-nine (29) years and that although the Respondent testified that the deceased was a casual labourer earning Kshs 1000/= per day, he did not adduce any evidence to support that assertion. It opined that a minimum wage of Kshs 13, 527/= for a casual labourer as at when the accident occurred should be adopted as the multiplicand.



30. On their part, the Respondents submitted that it had been held in several cases that where there was no proof of income, the trial court ought to revert to Regulation of Wages (General Amendment) Order as was held in the cases of Muthike Miciimi Nyaga (Suing as the Legal Administrator of the Estate of James Githinji Muthike (Deceased) vs Dubai Superhardware[2021]eKLR and Nyamira Tea Farmers Sacco vs Wilfred Nyambati Keraita (Suing as the Personal Representative of Mary Nyaboke Keriatia (Deceased) [2011]eKLR.
31. They contended that the deceased was a carpenter from which business he would earn approximately Kshs 30,000/= but that just like majority of Kenyans in casual employment, he did not have any records of his earnings or bank account records that could prove his earnings. They asserted that that notwithstanding, the courts had held consistently that it was not mandatory for documentary evidence to be produced to prove income especially where there were none and that in their absence the court was bound to fall back on the statutory minimum wage for the year of the deceased's death as was held in the case of Crown Bus Services Ltd & 2 Others vs Jamila Nyongesa & Amida Nyongesa (Legal Representatives of Alvin Nanjala (Deceased) [2020]eKLR.
32. They pointed out that it was clear from the deceased's Death Certificate that he was a carpenter. They asserted that the Appellant did not controvert their oral and documentary evidence to that effect. In that regard, they relied on the case of Caleb Juma Nyabuto vs Evance Otieno Magaka & Another [2021] eKLR where it was held that since the occupation of the deceased therein as a carpenter was evidenced in his death certificate and the same was not controverted, the same was sufficient proof that the deceased therein was a carpenter and hence, the minimum wage for an ungraded artisan was applicable.
33. They pointed out that the deceased died in 2021 at Vihiga where he resided and consequently, the minimum wage applicable for an ungraded artisan in Vihiga town, Vihiga County was Kshs 16,907.90. They pointed out that however, the Trial Court in her wisdom, applied the minimum wage of Kshs 13,527/= for a casual labourer in former municipalities in 2021. They urged this court to uphold the same.
34. To determine what the appropriate multiplicand in this matter was, this court had due regard to the case of Jacob Ayiga Maruja & Another vs Simeon Obayo [2005] eKLR where the Court of Appeal stated that it did not subscribe to the view that the only way to prove the profession of a person was by producing certificates or that the only way of proving earnings was by production of documents as this would occasion grave injustice to very many Kenyans who were illiterate and kept no records yet they earned their livelihood in various ways.
35. In the absence of proof of income of the deceased as a carpenter, this court revert to the appropriate Regulation of Wages (General)(Amendment) Order, 2018 as the deceased died on 29<sup>th</sup> November 2021. As both parties were agreeable to the minimum wage of a labourer of Kshs 13,572/= as awarded by the Trial Court, this court left the award undisturbed.

## **B. Multiplier**

36. The Respondents did not submit on this issue. On his part, the Appellant submitted that in determining the right multiplier, the right approach was to consider the age of the deceased, the balance of earning life, the age of dependents if any, the life expected, length of dependency, the vicissitudes of life and factor accelerated by payment in lump sum as was held in the case of Hannah Wangaturi Moche & Another vs Nelson Muya HCCC No 4533 of 1993 as quoted in PI vs Zena Roses Limited & Another[2015]eKLR.



37. It pointed out that the deceased was a twenty-nine (29) year old casual labourer who was to retire at the age of fifty (50) years old. It added that the risks involved imponderables and vicissitudes of life and it was unlikely that he would have worked to sixty (60) years. It urged this court to adopt a multiplier of twenty-one (21) years.
38. On their part the Respondents placed reliance on several cases among them the case of Attorney General vs Sarinah Francis (Suing as the Legal Representative of the Estate of Peter Musee Munene & Another [2020] eKLR where the court adopted a multiplier of twenty-six (26) years where the deceased was twenty-nine (29) years old and Peter Waithaka vs Wells Fargo Courier Services Ltd vs Another [2019] eKLR where the court upheld a multiplier of twenty-eight (28) years for a deceased who was twenty-seven (27) years old.
39. They contended that as the deceased was twenty-nine (29) years old, in private employment as a carpenter within Vihiga County and who also resided with his parents, they proposed a multiplier of twenty-six (26) years given the imponderables vicissitudes of life and which was awarded by the Trial Court. They asserted that the said multiplier was reasonable and should be maintained since the retirement age was still sixty (60) years.
40. This court had due regard to the case of Kenya Wildlife Services vs Geoffrey Gichuru Mwaura [2018] eKLR where it was held that there was no clear-cut approach when ascertaining a multiplier but that courts took into consideration the vagaries of life.
41. In determining the multiplier applicable in this case, this court considered the following cases:-
1. Kenya Power & Lighting Company Limited vs James Muli Kyalo & Another [2020] eKLR  
The appellate court reduced the multiplier adopted, of twenty- five (25) years, to twenty (20) years, for a 29-year-old.
  2. In Ngania *& 2 others v Adulu (Suing as the Legal Representative of the Estate of Clinton Morgan Kiprotich) (Civil Appeal E005 of 2023)* [2024] KEHC 4005 (KLR) (25 April 2024) (Judgment)  
The High Court upheld a multiplier of twenty (20) years for a twenty-nine (29) year old deceased.
42. Based on the above-cited cases among others, it was evident that a multiplier of twenty (20) years was applied in many cases where the deceased persons was aged twenty-nine (29) years old at the time of death.
43. Courts are guided by comparable cases to arrive at conclusions that are not so wide apart as to cause inconsistency and confusion to those relying on the decisions.
44. Towards this end, this court found and held that a multiplier of twenty-six (26) years by the Trial Court was unreasonable in the circumstances of the case. This court therefore came to the firm conclusion that a multiplier of twenty (20) years was reasonable in the circumstances.

### C. Dependency Ratio

45. The Appellant submitted that the Trial Court based its analysis of dependency on erroneous misinterpretation that the Respondents were parents to the deceased when no evidence was produced to that effect. It invoked Section 29 of the *Law of Succession Act* and argued that the persons listed as dependents of the deceased did not produce any documentation as proof that the deceased maintained them immediately prior to his death.



46. It was categorical that dependency was a matter of fact and must be proved by evidence as was held in the case of *Abdalla Rubeya Hemed vs Kayuma Mvurya & Another* [2017]eKLR. It further invoked Section 4(1) of the *Fatal Accidents Act* and asserted that the wife, children and parents of the deceased were entitled under the statute upon proof of dependency.
47. It was its contention that the notification of birth produced as exhibit did not mention the name of the alleged son of the deceased hence the same should be disregarded by this court.
48. It submitted that as it was clear from the Chief's Letter that the deceased had no wife as a result of which a dependency ratio of 1/3 would be applicable. The total of their proposed quantum on loss of dependency was as follows:-
- $$13,572 \times 12 \times \frac{1}{3} \times 21 = \text{Kshs } 1,140,048/=$$
49. On their part, the Respondents submitted that the deceased left them and his child as beneficiaries as was evidenced by the Chief's Letter which was uncontroverted. They contended that the Trial Court was right in applying the ratio of 2/3 since under the *Fatal Accidents Act*, a child and a parent were considered dependents.
50. Notably, the Chief's Letter dated 3<sup>rd</sup> January 2022 indicated that the Respondents were the parents of the deceased and that he left behind one child aged two (2) years old. It was evident that he had separated from his wife. The said Chief's Letter indicated that the deceased's name was Samwel Muhambe. However, the Acknowledgment of Birth Notification (For parents) indicated the child's name as Samuel Nyongesa Misiko. Only the mother's name was indicated in the said Notification.
51. The extent of dependency was a question of fact as held in *Leonard Ekisa & Another vs Major Birgen* [2005] eKLR. The court stated that there was no rule of law that 2/3 of the income of a person was to be taken as available for family expenses but that the extent of dependency was a question of fact that was to be established in each case.
52. As it was not clear to this court if Samwel Muhambe was the same person as Samuel Nyongesa Misiko and the fact that the deceased was not married and there was no proof that the parents depended on him, this court found and held that a dependency ratio of 1/3 as had been proposed by the Appellant herein was appropriate in the circumstances of this case.
53. In arriving at the said conclusion, this court had due regard to the following cases:-
1. *Dickson Taabu Ogutu (Suing as the legal representative of the Estate of Wilberforce Ouma Wanyama) vs Festus Akolo & Another* [2020] eKLR The Court of Appeal upheld a multiplier of 1/3 on the deceased who was unmarried.
  2. *Dismas Muhami Wainarua vs Sapon Kasirimo Maranta (Suing as administrator and or personal representative of the estate of Partinini Supon (Deceased))*[2021]eKLR  
The court held that although the deceased left behind parents, the ratio could not have been 2/3. A ratio of 1/3 was found to be appropriate.
  3. *Petronila Muli vs Richard Muindi Savi & Catherine Mwendu Mwindu*[2021]eKLR  
It was held that a dependency ratio of 1/3 was fair in the circumstances where the deceased was survived only by his parents who were said to be farmers.
54. In the circumstances foregoing, the dependency ratio of 2/3 be and is hereby set aside and/or vacated and replaced with a dependency ratio of 1/3.



### III. Deduction of the Award under the Law Reform Act from the Award Under Fatal Accidents Act

55. The Appellant submitted that since the dependents were the same under the Law Reform Act and Fatal Accidents Act, the award under the Law Reform Act of Kshs 70,000/= (Pain and Suffering and Loss of Expectation of Life) (sic) should be subtracted from the award under the Fatal Accidents Act as follows:-

Kshs 1,140,048 -Kshs 70,000= Kshs 1, 070,048/=.

56. It argued that failure to subtract the award of Law Reform Act from the award made under the Fatal Accidents Act would mean that there would be double compensation. To buttress its point, it relied on the case of Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenja (Deceased) vs Kiarie Shoe Stores Limited NYR[2015]eKLR where it was held that duplication occurs when the beneficiaries of the deceased's estate under the Law Reform Act and dependants under the Fatal Accidents Act were the same, and consequently the claim for lost years and dependency would go to the same persons.

57. It also cited the case of Kemfro vs A.M Lubia & Olive Lubia(1982-1988) KAR 727 where it was held that the net benefit would be inherited by the same dependants under the Law Reform Act and that had to be taken into account in the damages awarded under the Fatal Accidents Act because the loss suffered under the latter Act had to be offset by the gain from the estate under the Law Reform Act.

58. It urged this court to set aside the award by the Trial Court and replace it with an independent and progressive decision of this court. It relied on the case of Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenja (Deceased) vs Kiarie Shoe Stores Limited NYR (Supra) where it was also held that assessment of damages lay in the discretion of the trial court and an appellate court would not disturb an award of damages unless it was so inordinately high or low as to represent an entirely erroneous estimate.

59. The position of deduction of an award under the Law Reform Act was settled in the case of Hellen Waruguru Waweru (Suing as the Legal Representative of Peter Waweru Mwenja (Deceased) vs Kiarie Shoe Stores Ltd [2015] eKLR where the Court of Appeal noted the confusion in regard to the concept of double compensation that was put across in the case of Kemfro Africa Limited t/a Meru Express Services & Another vs Lubia & Another (No. 2) Kemfro Africa Limited [1987] KLR 30. The Court of Appeal expressed itself as follows:-

“The version he relied on is from [1982-88] 1 KAR 727 which concentrates on the decision of Kneller JA in extracting the ratio decidendi. The same case, however, is more fully reported in [1987] KLR 30 as Kemfro Africa Ltd t/a Meru Express Services 1976 & Another vs Lubia & Another (No. 2) and the ratio decidendi is extracted from the unanimous decision of all three Judges. It was held, inter alia, that:

An award under the Law Reform Act is not one of the benefits excluded from being taken into account when assessing damages under the Fatal Accidents Act; it appears the legislation intended that it should be considered. The deduction of the entire amounts made under the LRA in this case was erroneous and once again, we have to interfere with the final award of damage.... there is no compulsion in law to make the deduction.”



60. In the case of Peres Wambui Kinuthia & Another vs S.S Mehta & Sons Limited [2015] eKLR the court interpreted the holding in Kemfro Africa vs Meru Express Services & Another vs Lubia & Another (Supra) thus:-

“Accordingly, what is required in order to avoid double compensation is for the court to have in mind and therefore take into account the award under the Law Reform Act when making an award under the Fatal Accidents Act.”

61. In this court’s view, this was the better way of construing Section 4 (2) of the Fatal Accidents Act and Section 2(5) of the Law Reform Act. This is because there would be no need to bring the suit under both statutes only for the award under the Law Reform Act to be deducted from the award made under the Fatal Accidents Act.

62. This court was of the considered opinion that the award under the Law Reform Act was a benefit springing from the estate of the deceased and surviving him or her after death which his or her beneficiaries would be entitled to benefit from. The award was different from that under the Fatal Accidents Act which was what the beneficiaries had lost due to the shortening of the life of the deceased by the negligent acts of the Appellant.

#### IV. Costs

63. The Appellant invoked Section 27 of the Civil Procedure Act and cited the case of Impresa Ing Fortunato Federice vs Nabwire [2001] 2 EA 383 as cited with authority in the case of Matigari General Merchants Ltd & Another vs Nelly Wairimu Muthoni & Another; Rose Wamuyu Wandaka (Interested Party)[2021]eKLR where it was held that the issue of costs in any suit was at the discretion of the judge dealing with the matter and that the discretion ought to be exercised judicially.

64. It contended that it was a general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so. It urged this court to grant it costs in the event it finds merit in its appeal.

65. As this was not an issue in dispute, this court agreed with the Appellant that costs follow the event. However, the court retained the discretion to depart from the said principle under exceptional circumstances.

#### Disposition

66. For the foregoing reasons, the upshot of this court’s decision was that the Appellant’s Appeal that was lodged on 24<sup>th</sup> October 2023 was partially merited. The effect of this is that the Judgment of Kshs 1,991,080/= that was entered by the Learned Trial Magistrate in Vihiga PMCC No E41 of 2022 on 5<sup>th</sup> October 2023 in favour of the Respondents herein against the Appellant herein be and is hereby set aside and/or vacated and the same be and is hereby replaced with a decision that Judgment be and is hereby entered in favour of the Respondents herein against the Appellant herein for the sum of Kshs 851,032/= made up as follows:-

Loss of Dependency Kshs 1,085,760/=

1/3 x 13,572 x 12 x 20

Loss of expectation of life Kshs 100,000/=

Pain and Suffering Kshs 30,000/=

Kshs 1,215,760/=



Less 30% contribution Kshs 364,728/=

Kshs 851,032/=

67. Plus costs and interest thereon. For the avoidance of doubt, interest on special damages will accrue at court rates from the date of filing suit while damages under the Law Reform Act and damages under the Fatal Accidents Act Cap 32 (Laws of Kenya) will accrue interest at court rates from the date of judgment of the lower court until payment in full. The order that interest would accrue on costs be and is hereby set aside and/or vacated.
68. As the Appellant was partly successful in its Appeal, each party will bear its own costs of the Appeal herein.
69. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 24<sup>TH</sup> DAY OF APRIL 2025**

**J. KAMAU**

**JUDGE**

