



REPUBLIC OF KENYA



**Kiprop v Wakhungu & another (Suing as the Legal Representatives
of the Estate of Peter Lusweti Masengeli – Deceased) (Civil Appeal
87 of 2021) [2025] KEHC 10633 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10633 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL 87 OF 2021
RN NYAKUNDI, J
JUNE 23, 2025**

BETWEEN

MATHEW KIPROP APPELLANT

AND

VERSUS FAUZA NASAMBU WAKHUNGU 1ST RESPONDENT

JOHN GAIUS MASENGELI 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PETER
LUSWETI MASENGELI – DECEASED**

*(Being an Appeal from the Judgment and Decree of the Honourable Magistrate
E. Kigen delivered on 2nd July, 2021 in ELDORET CMCC NO. 878 OF 2017)*

JUDGMENT

Representation:

M/s Mose, Mose & Mose Advocates

M/s Mogire Nyamwaya & Co. Advocates

1. The Appeal emanates against judgment and orders of Honourable E. KIGEN (RM) delivered on 2nd July, 2021, in ELDORET CMCC No. 878 of 2017 vide Memorandum of Appeal dated 11th August, 2021.
2. The appeal is based on 7 grounds which fault the judgment and decree of the trial court and which are premised on the apportionment of liability and the award of damages. The grounds of appeal are as hereunder:



- a. That the Learned Trial Magistrate erred in Law and Fact in failing to appreciate the reasonable and sufficient evidence tendered in Court hence erroneously holding the defendant/Appellant substantially liable.
 - b. That the Learned Trial Magistrate erred in Law and Fact in failing to appreciate the reasonable and sufficient evidence tendered in Court when assessing and awarding damages.
 - c. That the Learned Trial Magistrate erred in Law and Fact in failing to consider the Appellant's Statement of Defence against the weight of evidence tendered by the Plaintiff.
 - d. The Learned Trial Magistrate erred in law and fact in failing to evaluate the evidence in its totality and in failing to take into consideration Submissions and Authorities submitted by the Appellant.
 - e. The Learned Trial Magistrate erred in law and fact in applying the minimum wage of Kshs. 13,309.80 while assessing loss of dependency, which is not clear it is for what category of workers against the fact that the deceased was self-employed and the fact that the estimate of income per month had been arrived at by the trial magistrate being Kshs. 5,000/= hence arriving at an award which award when viewed against comparable claims is manifestly excessive and inordinately high as to amount to a miscarriage of justice.
 - f. The said award of Damages is out of keep with other Kenyan awards for comparable/similar claims.
 - g. The Learned Trial Magistrate failed to exercise her discretion judiciously in awarding General Damages and failed to consider the Appellant's submissions and authorities and/or apply the settled principles of law and thus there was no good or proper basis for the said Assessment of Damages.
3. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

4. The Appellant's counsel submitted the appeal challenges the apportionment of liability and the award of damages, which the Appellant contends were not supported by the evidence adduced at trial.
5. On the issue of On Liability (Grounds 1, 3 of the Appeal), the Appellant Counsel argued that the trial court erred by apportioning 80% liability against him without sufficient evidence. The key points were:
 - a. The Respondents failed to prove negligence on the part of the Appellant's driver.
 - b. The Appellant's evidence, particularly from DW1 (the driver) and DW2 (an eye witness), indicated that the deceased caused the accident by entering the road abruptly.
 - c. PW1 (deceased's father) was not present at the scene, and the only eyewitness for the Respondent gave a contradictory account compared to the Appellant's witnesses.
6. The Appellant cited several authorities in support: *Evans Nyakwana v. Cleophas Bwana Ongaro* (2015) eKLR: Emphasized that the burden of proof lies on the plaintiff under sections 107, 109, and 112 of the *Evidence Act*; *Michael K. Kimaru v. Margaret Waithera Maina*: The court held that negligence must be proved and cannot be assumed; *Kiema Muthuku v. Kenya Cargo Handling Services Ltd* (1991) 2 KAR 258: Liability must be based on fault; mere allegation of negligence is insufficient; *Kenya Bus Services Ltd v. David Kanyari Mwangi* (Nairobi HCCA No. 438 of 2000): Suit dismissed due to failure



to establish negligence; Morrison Mbuthia Maina & Another v. Jane Wanjiku Mwangi & Another (2006) eKLR: No apportionment unless negligence is established.

7. Alternatively, the Appellant's counsel urged that if liability must be apportioned, it should be shared equally (50:50), relying on: A.O. Bayusuf & Sons Ltd v. Samuel Njoroge Kamau (Nakuru HCCA No. 274 of 2004): Equal liability was apportioned where two versions of the accident existed
8. On the issue of Damages (Grounds 2, 5, 4, 6, 7 of the Appeal), the Appellant's argued that the award of Kshs. 3,194,352 under loss of dependency was excessive and not justified by the evidence. Key arguments include:

a) Loss of Dependency

9. The Learned Counsel submitted that the trial court adopted a multiplicand of Kshs. 13,309.80 based on the minimum wage, a multiplier of 30 years, and a dependency ratio of 2/3. The Appellant argued that:
 - a. The minimum wage applied was unclear and higher than what was legally applicable in 2016 (the correct figure being Kshs. 5,844.20 for a general labourer in Trans Nzoia).
 - b. The deceased's alleged income of Kshs. 4,000–5,000 per day was not supported by any documentary evidence such as a logbook, driver's license, or business records.
 - c. There was insufficient proof of marriage or paternity. No birth or marriage certificates were produced, and the chief's letter did not mention a spouse or children.
10. The Learned Counsel made reference to the following case laws: Leonard O. Ekisa & Another v. Major K. Birgen [2005] eKLR where the Court held that damages under the *Fatal Accidents Act* must be based on proof of dependency; Mwanza v. Ngalali Mutua & Kenya Bus Ltd (2007): Cited to support the use of lump sum where income records are lacking; Bon Ton Ltd v. Beatrice Kanaga Kereda [2018] eKLR where award reduced to Kshs. 800,000 on similar facts. The Appellant thus urged the court to apply the lump sum/global award method instead of the multiplier method due to lack of concrete evidence.

b) Multiplier

11. The Learned Counsel for the Appellant submitted that the 30-year multiplier was excessive for a 26-year-old deceased and failed to consider life's uncertainties. Counsel proposed a multiplier of 24 years instead, relying on: Guardian Bus Coach Ltd v. Omanga [2022] KEHC 18044: Multiplier of 18 years for a 32-year-old and Ronald v. Nyabuti [2023] KEHC 17988: Multiplier of 20 years for a 30-year-old.

c) Dependency Ratio

12. The Learned Counsel submitted that the 2/3 ratio was not warranted. The deceased had allegedly separated from his wife and no conclusive evidence of dependents was provided and also proposed 1/3 dependency ratio based on the paucity of evidence.

On Failure to Consider Evidence and Authorities

13. The Appellant's counsel contended that the trial magistrate: Failed to evaluate the evidence holistically; Ignored submissions and case law authorities provided by the defence and Used a wage rate not supported by any statutory or evidentiary basis. He invoked: H. West & Sons Ltd v. Shepherd [1964] AC 326: Awards must be reasonable, moderate, and comparable and Lim Poh Choo v. Camden and Islington Health Authority [1979] 1 All ER 332: Compensation must be fair to both parties.
14. In conclusion, the Appellant's counsel urged the appellate court to: Set aside the judgment of the lower court on both liability and damages; Dismiss the Respondents' suit entirely, or in the alternative and Apportion liability equally (50:50). Counsel also urged this Honourable Court to set aside the damages



award and substitute it with a fair, evidence-based award using the global award method or revised multiplicand/multiplier/dependency ratio.

Respondents Written Submissions

15. The Respondents' counsel submitted on the following issues. On the Role of the Appellate Court, the Respondents Counsel urged that while this court, being the first appellate court, has the jurisdiction to review evidence and re-evaluate the trial court's findings, the principles guiding appellate interference with damages are strict. The Respondents relied on the authority of: Francis K. Righa v. Mary Njeri (2021) eKLR, where the Court of Appeal, citing Butler (1984) eKLR, restated that: "...assessment of damages is more like an exercise of discretion by the trial court and that an appellate court should be slow to reverse the trial judge's findings unless he has either acted on wrong principles or alternatively the award arrived at is so inordinately high or low that no reasonable court would have arrived at such an award..." They submitted that no such misdirection occurred in the trial court, and thus the appeal ought not to succeed.
16. On liability, the Respondents counsel submitted that liability was not actively challenged in the appeal. They therefore urged the court to confirm the trial court's finding on liability, maintaining that the same was proper and should not be disturbed.
17. On the issue of quantum of damages, the Learned Counsel submitted that the trial court had awarded the following: Pain and suffering: Kshs. 50,000; Loss of expectation of life: Kshs. 100,000; Loss of dependency: Kshs. 3,194,352 (computed as $13,309.80 \times 12 \times 30 \times \frac{2}{3}$)

Pain and Suffering & Loss of Expectation of Life

18. The Respondents counsel submitted that the deceased did not die instantly but suffered before succumbing, hence the award was reasonable. Notably, the Appellant did not specifically appeal against these heads of damages. They thus prayed that the awards remain undisturbed.

Loss of Dependency

19. The Respondents strongly defended the trial court's method of assessing damages using the multiplier, multiplicand, and dependency ratio approach. The Learned Counsel submitted that: the deceased was a matatu driver, and this fact was confirmed during cross-examination of DW2 (Mary Nyawira) who testified that the matatu had been stopped by police for the presidential motorcade before the deceased was struck and the use of minimum wage was proper and supported by applicable law.
20. The Learned Counsel quoted the Regulation of Wages (General Amendment) Order, 2015, which puts the minimum wage for a driver at Kshs. 13,646.40. They argued that had the trial court used this correct wage, the award would have been even higher, and thus it should be upheld. In support, the Respondents counsel cited multiple authorities endorsing the use of minimum wage in the absence of proof of actual income: Kisii HCCA No. 112 of 2014 – Odoyo Obuyu v. Jane Kerubo Miruka & Another "There was no evidence of actual income hence the trial magistrate ought to have reverted to the minimum wage to determine the multiplicand."; Kitui HCCA 98 of 2018 – Petronila Muli v. Richard Muindi Savi The court categorized a motorcyclist as semi-skilled and adopted the minimum wage guideline and Meru HCCA No. E079 of 2021 – Justo Mungathia Mwithale v. Joseph Maore Angacia where the court upheld the decision to adopt a minimum wage multiplicand for a turn boy. The Respondents counsel emphasized that the trial magistrate applied the proper principles of law and exercised discretion judiciously, and therefore the appellate court should not interfere.



21. It was the Respondents counsel final submission that: the trial magistrate's findings on both liability and quantum were well supported by the evidence; the trial court properly applied legal principles and authorities in computing the award and there was no basis for appellate interference. The Respondents counsel therefore urged the Honourable Court to dismiss the appeal with costs and uphold the subordinate court's judgment in its entirety.

Analysis and Determination

22. I have read through the trial court record and the appeal as canvassed herein together with the submissions. The appeal is on both quantum and liability and as an appellate court, I am conscious of the fact that the duty of this court is to reconsider the evidence on record, evaluate it and reach its own conclusion. (See *Selle & Ano. vs. Associated Motor Boat Co. Ltd* (1968) EA 123).
23. The Court recognizes that appellate courts typically refrain from disturbing factual determinations made by trial courts, except in circumstances where such findings lack any evidentiary foundation, stem from a misunderstanding of the evidence, or result from the application of incorrect legal principles.
24. On appeals against quantum of damages, the Court of Appeal in *Kemfro Africa Limited t/a Meru Express Services, Gathogo Kanini vs. A.M.M. Lubia & Another* (1982-88) 1 KAR 777 enumerated the principles for consideration as follows: -

“.... the principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage....”

25. As I have mentioned, the instant appeal is on damages and quantum. I shall proceed to consider both issues in turn.
26. On liability, the general rule is that a trial court's finding on apportionment of liability should not be interfered with save in exceptional cases as it is an exercise of discretion. In *Khambi and another v Mahithi and another* [1968] EA 70, it was held thus:

“It is well settled that where a trial judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial judge.”

27. The Court of Appeal has equally spoken on it in the case of *Chemwolo & Another –vs- Kubende* [1986] KLR 492 at page 498 where the court stated:

“With respect, it was not for the learned judge to read proceedings in the traffic case as if the evidence recorded there was the final position in the case. Not only is it notorious that different aspects of the evidence emerge during a civil case, while not disturbing a conviction, but it is also well-known that both parties to an accident might have driven carelessly and each could be convicted to careless driving for their respective types of carelessness.....It



would have been right to have held that there was some evidence upon which a triable issue as to contributory negligence arose on the strength of proceedings in the traffic case.”

28. It is trite that the standard of proof, in civil matters, is on a balance of probabilities. The burden of proof, on the other hand, is vested on the claimant. In *Miller vs. Minister of Pensions (1947) 2 ALL ER 372* the court discussed the burden of proof and stated: -
- “That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”
29. The plaintiff’s case rested on PW1, the father of the deceased, who testified that the deceased was lawfully walking as a pedestrian when the defendant’s motor vehicle KBX 938X was negligently driven, knocking the deceased and causing fatal injuries. PW2, Police Constable Cheserek Kiptoo, confirmed that an accident occurred when the suit lorry knocked a pedestrian who died on the spot.
30. The crucial evidence came from PW3, Daniel Busoli, an eyewitness who testified that the road had been cleared for a presidential motorcade and the lorry was flagged to make way but the driver continued driving. At Pemugi area, the driver was again flagged off, moved left, and knocked down the deceased who was off the road. This testimony in my considered view establishes specific acts of negligence through the driver’s failure to comply with police directions on two occasions. The defendant’s evidence came through DW1, Aaron Kipkemboi Ronoh, who testified that a matatu driven by the deceased was flagged off by police, after which the deceased emerged and suddenly entered the road when the lorry was in close proximity.
31. The trial court found that the defendant had seen police officers flagging down vehicles and was expected to have slowed down given the road conditions. The court noted DW2’s compromised evidence due to her poor visibility and tendency to blame the police officer. The special circumstances involving a presidential motorcade created heightened duties of care, requiring drivers to respond appropriately to police directions for public safety. The defendant’s failure to comply on two occasions represents a serious breach justifying substantial liability.
32. The trial court’s credibility assessment therefore, particularly finding DW2’s evidence unreliable due to her admitted limitations, represents the kind of factual determination that appellate courts should not disturb. The court had the advantage of observing witnesses firsthand and making credibility determinations based on their demeanor and reliability.
33. The trial court’s finding of 20% contributory negligence demonstrates a balanced approach, recognizing possible contribution from the deceased while maintaining that primary responsibility lay with the defendant. This reflects proper consideration of the evidence and the principle that drivers bear primary duty to avoid accidents, especially when given specific police directions.
34. The appellant has not demonstrated any error in principle in the trial court’s liability apportionment. The court properly evaluated witness credibility, considered all evidence, and applied established principles. The 80:20 apportionment then reflects appropriate analysis of relative fault based on the evidence, particularly the defendant’s repeated failure to comply with police directions in circumstances requiring heightened care. I therefore find no exceptional circumstances justifying



appellate interference with the trial court's liability apportionment. The finding is neither manifestly erroneous nor based on wrong principles, but represents careful evaluation of evidence and balanced assessment of fault.

35. On the next question of quantum, the established jurisprudence demonstrates that appellate courts will only intervene in damages assessments where the trial court has applied incorrect legal principles, fundamentally misunderstood the evidence in significant ways, or reached a quantum that is so extraordinarily excessive or inadequate as to constitute a wholly mistaken evaluation of the loss suffered.
36. In the case of *Kemfro Africa Limited t/a 'Meru Express Services [1976]' & Another V. Lubia & Another (No. 2) [1987] KLR*, the Court of Appeal held as follows:

“... The principles to be observed by the appellate Court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held to be that; it must be satisfied that either that the Judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

37. Similarly, in *Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR*, the Court of Appeal further pronounced itself as follows:

“... it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie [1941] 1 All ER 297*. It was echoed with approval by this Court in *Butt v. Khan [1981] KLR 349* when it held as per Law, J.A”

38. Regarding the methodology for damages assessment, Justice Kneller in the Court of Appeal's decision in *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja [1986] eKLR* established the following principles

“The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a trial judge.

1. Each case depends on its own facts;
2. awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);
3. comparable injuries should attract comparable awards.
4. inflation should be taken into account; and
5. unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone.”

39. Given that the instant claim is a fatal one. The court shall proceed to consider the various limbs under the *Law Reform Act* and the *Fatal Accidents Act*. According to the appellant, the evidence tendered



before the trial court did not meet the threshold for adoption of the multiplier, multiplicand and dependency ratio method. The appellant contended that the loss of dependency is a fact that must be proven and the court should not be left to speculate. That the respondents ought to demonstrate how the deceased used to support them and the listed dependants and to what extent they have lost the said support.

40. The Appellant further noted that the deceased's occupation and/or source of alleged pleaded earnings of approximately Kshs. 1,000/= daily was not pleaded. That PW1 did not tender any documentary evidence such as a log book and/or driving license to prove that the deceased owned a matatu as alleged and whether the deceased was a qualified driver.
41. On the question of loss of dependency which the appellant contested, I note that the trial court reverted to the minimum wage in determining the multiplicand, observing that there was no proof of the deceased's actual income. The court noted that the minimum monthly income for a general labourer at the time was Kshs. 13,309. However, I observe that the accident occurred on 24th August, 2016, and the applicable minimum wage at that time, as per [Legal Notice No. 11 of 2015](#), was Kshs. 11,279 for all other areas. This would be the appropriate figure if the court were to accept that the deceased was a driver, given the evidential challenges regarding his occupation that have been raised. It is important to note that when making such calculations, the court must be cognizant of the principle that it ought not be overly obsessed with mathematical precision in order to make an award under the head of lost years or loss of dependency.
42. On the question of loss of dependency which the appellant contested, I note that the trial court reverted to the minimum wage in determining the multiplicand, observing that there was no proof of the deceased's actual income. The court noted that the minimum monthly income for a general labourer at the time was Kshs. 13,309. However, I observe that the accident occurred on 24th August, 2016, and the applicable minimum wage at that time, as per [Legal Notice No. 11 of 2015](#), was Kshs. 11,279 for all other areas. This would be the appropriate figure if the court were to accept that the deceased was a driver, given the evidential challenges regarding this occupation that have been raised. It is important to note that when making such calculations, the court must be cognizant of the principle that it ought not be overly obsessed with mathematical precision in order to make an award under the head of lost years or loss of dependency. In principle therefore, the trial court did not err in its approach of reverting to the minimum wage given the absence of concrete evidence of actual earnings. However, a slight adjustment is warranted to reflect the correct minimum wage applicable at the time of the accident, being Kshs. 11,279/= rather than the Kshs. 13,309 adopted by the trial court.
43. Under the head of pain and suffering, the learned magistrate relying on the case of *Hider Atheena Musili & Another v. China Wu Yi Limited & Another* [2017] eKLR correctly noted that usually, the award made under the head of pain and suffering ranges from Kshs. 10,000/= to Kshs. 100,000/=. The learned magistrate subsequently awarded the sum of Kshs. 50,000/= after noting that although the deceased died on the same day. The Appellant submitted that the deceased did not undergo a prolonged period of pain to warrant such a hefty award of Kshs. 50,000/= in general damages for pain and suffering. I have perused the death certificate which indicates that the cause of death was severe hemorrhage due to crushed liver. The deceased must have suffered so much pain before passing on.
44. When assessing general damages for pain and suffering in fatal accident cases, the duration of the deceased's suffering is the primary determining factor. Minimal damages are typically awarded when death occurs instantly, while substantially higher compensation is granted when the victim endured extended pain prior to death. This principle was articulated by Justice P. Nyamweya (as she then was)



in the matter of Hider Athena Musali & Another v. China Wu Yi Limited & Another (2017) eKLR, where the court observed:

“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 Kshs. 100,000/- while for pain and suffering range from kshs,10,000/- to Kshs.100,000/- with higher damages being awarded if the pain and suffering was prolonged before death. In the present case PW1 & 2 testified that the deceased died at the scene of the accident and I find that the award of Kshs. 10,000/- for pain and suffering is reasonable.”

45. On the issue of multiplier, the trial court used a multiplier of 30 years. The appellant argued that it was excessive and the trial court did not take into account the vagaries of life. He in proposed a multiplier of 24 years instead citing various authorities on the same. In the case of Roger Dainty vs Mwinyi Omar Haji & another (2004) eKLR, the Court of Appeal held that: -

“To ascertain the reasonable multiplier in each case the court would have to consider such relevant factors as the income of the deceased, the kind of work deceased was doing, the prospects of promotion and his expectation of working life.”

46. Taking into account that the deceased was not employed and was engaged in the matatu business, I find the trial court’s adoption of 30 years as reasonable.
47. Regarding the dependency ratio, the trial court applied a ratio of 2/3. The appellant contended that this ratio was excessive given the uncertainty surrounding the deceased’s dependents and the lack of conclusive evidence regarding his marital status and children. However, I note that the evidence, though not extensively documented, did establish the existence of dependents.
48. Turning to the award for loss of expectation of life, the trial court awarded Kshs. 100,000. This award falls within the conventional range and has not been specifically challenged by the appellant. I find no reason to interfere with this award.
49. Having considered the evidence and the submissions by both parties, I find that while the trial court’s approach was generally sound, certain adjustments are warranted to ensure the award reflects the correct legal principles and available evidence.
50. Before I pen off Section 26 & 27 of the [Civil Procedure Act](#) are applicable to the instant Appeal where it is expressly provided as follows:

“Where and in so far as decree is for the payment of money, the court may in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit. (2) When such a decree is silent with respect to the payment of further interest such aggregate sum as aforesaid from the dated of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

Subject to such conditions and limitations may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suit shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary



directions for the purpose aforesaid, and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers.

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per Annum and such interest shall be added to the costs and shall be recoverable as such

51. The trial court and also the Appeal's court generally are clothed with discretion to award costs to the successive party in a litigation and this discretion is guided by the principles of fairness and justice. In the same breath mostly in money decrees the court has the jurisdiction to award interest on the principal sum adjudged in a decree. In the case of special damages interest is awarded from the date of the cause of action whereas on general damages it flows from the date of the judgement at a rate deemed reasonable. The court rates is within the bracket of 12% -14% unless otherwise governed by the terms in the contract subject matter of the judgement.
52. In the end the court the award on damages and liability is entered in the following terms;
- i. Pain and suffering Kshs. 50,000/=
 - ii. Loss of expectation of life Kshs. 100,000/=
 - iii. Loss of Dependency Kshs. 2,706,960/=
 - iv. Special Damages..... Kshs. 14,200/=
 - v. TotalKshs. 2,871,160/=
 - vi. Less 20% Kshs. 574,232/=
 - vii. Sub-total Kshs. 2,296,928/=
 - viii. With regard to this Appeal, costs and interest are awarded appropriately in the following terms:
As for special damages interest is awardable from the date of the cause of action whereas general damages interest from the date of judgement and decree fashioned by the trial court.

Orders accordingly.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF JUNE 2025.

.....

R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Mogire for Respondent

