



**Transport & Lifting Services Limited v Mbaja & another (Suing as the legal representatives of the Estate of Barack Mbaja Dawa) (Civil Appeal E104 of 2023) [2024] KEHC 12676 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12676 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E104 OF 2023  
RE ABURILI, J  
OCTOBER 17, 2024**

**BETWEEN**

**TRANSPORT & LIFTING SERVICES LIMITED ..... APPELLANT**

**AND**

**SCOVIA ATIENO MBAJA & DISMAS DAWA DAWA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF BARACK MBAJA DAWA) ..... RESPONDENT**

*(An appeal arising out of the Judgment & Decree of the Honourable E.A. Obina in the Chief Magistrate's Court at Kisumu delivered on the 8th June 2023 in Kisumu CMCC No. E074 of 2021)*

**RULING**

1. I have considered the application dated 14<sup>th</sup> October 2024 which is not opposed. It seeks review of the judgment of this court of 19<sup>th</sup> June 2024 apportioning liability at 40:60 against the appellant instead of 60:40 as was the case in the lower court. It is true that in the lower court, liability between the parties hereto was apportioned at 60:40 in favour of the Respondent.
2. However, in my judgment of 19<sup>th</sup> June 2024, I inadvertently interchanged the liability to 40:60 which was an error.
3. Section 99 of the *Civil Procedure Act* empowers this court to correct or amend clerical or arithmetical mistakes in Judgments, decrees and orders or errors arising from any accidental slip or omission and allows this court to at any time correct those errors or mistakes either on its own motion or on the application of any of the parties.



4. Having perused the Judgment of 19<sup>th</sup> June 2024, I am satisfied that there was an error on the face of the record in apportioning liability at 40:60. I hereby review and set aside that part of Judgment of 19<sup>th</sup> June 2024 and substitute it with liability as apportioned in the lower court which is 60:40 in favour of the appellant. I further set aside the calculations at paragraphs 52 and 54 of the said Judgment and substitute the same with the following:

Loss of dependency – Kshs.13,572 x 12 x 22 x <sup>2</sup>/3 = Kshs.2,388,673

Pain & Suffering – Kshs.20,000

Loss of expectation of life – Kshs.100,000

Total – Kshs.2,508,672

Less 60% contribution (Kshs.1,505,203.20)

Total Balance – Kshs.1,003,468.80

5. And paragraph 54 to read, costs awarded in the lower court shall also be less 60% contribution.
6. This ruling amends the judgment of 19<sup>th</sup> June, 2024 accordingly.
7. Each party to bear their own costs of this application.
8. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024**

**R.E. ABURILI**

**JUDGE**

