

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CIVIL APPEAL NO. E023 OF 2023

TIMOTHY ONGETA CHUMA APPELLANT

VERSUS

JOYCE CHELANGAT KORIR & KIPLANGAT KORIR ENOCK

(suing as the Legal Representatives of the estate of

Robinson Kiprotich Cheruiyot (Deceased)

..... RESPONDENTS

(Being an Appeal from the Judgment of Principal Magistrate, Kibelion K. at the Principal Magistrate's Court at Bomet, Civil Suit Number 4 of 2021)

JUDGEMENT

1. The Respondents (then Plaintiffs) as the Legal Representatives of the deceased Robinson Kiprotich Cheruiyot, sued the Appellant (then Defendant) for general and special damages that arose from a road traffic accident which occurred on 31st July 2020 along Bomet-Narok Road.

2. The trial court conducted a hearing where the Respondents called three witnesses before closing their case. The Appellant called two witnesses and closed his case. In its Judgement delivered on 26th April 2023, the trial court awarded the Respondents a net sum of Kshs 1,856,491/=
3. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 9th May 2023 appealing against the liability and the global award of Kshs 2,500,000/= as loss of dependency.
4. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.

5. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiffs'/Respondents' case.

6. Through their Plaint dated 10th December 2020, the Respondents stated that the deceased Robinson Kiprotich Cheruiyot was involved in a road traffic accident on 31st July 2020. That he was hit by motor vehicle registration number KBM 139A while riding motorcycle registration number KMEZ 806j along Bomet-Narok road.

7. It was the Respondents' case that the Appellant was negligent in causing the accident. The particulars of the negligence were stated in paragraph 5 of the Plaint. That as a result of the accident, Robinson Kiprotich Cheruiyot suffered fatal injuries.

8. The Respondents prayed for special and general damages against the Appellant under the Fatal Accidents Act and the Law Reform Act.
9. Through their written submissions dated 30th July 2025, the Respondents submitted that the Appellant was negligent in causing the accident through negligent driving.
10. It was the Respondents' submission that the trial court did not err when it awarded a global sum of Kshs 2,500,000/= as loss of dependency. That the trial court exercised its discretion and analyzed the circumstances presented before it. They relied on **section 4 of the Fatal Accidents Act, P.J Dave Flowers Ltd vs David Simiyu Wamalwa (2018) eKLR** and **Moses Mairua Muchiri vs Cyrus Maina Macharia (Suing as the Personal Representative of the estate of Mercy Nzula Maina (Deceased) (2016) eKLR**. That the award was not manifestly excessive to warrant interference by this court.

The Appellant's/Defendant's case.

11. Through his statement of defence dated 16th February 2021, the Appellant denied the occurrence of the accident and further denied being the registered owner of motor vehicle registration number KBM 139A. The Appellant further denied that the deceased was the rider of motorcycle registration number KMEZ 806J.

12. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the deceased. The particulars of negligence were listed in paragraphs 7 of his Defence.

13. Through his written submissions dated 25th June 2025, the Appellant submitted that the trial court did not analyze the evidence to determine his negligence in causing the accident contrary to **Order 21 Rule 4 of the Civil Procedure**

Rules. That the Judgment ought to contain a concise statement of the case, point for determination, the decision and the reasons thereof. He relied on **Kiarie Wamutu vs Mungai Kiarie & another (1982) eKLR, Godfrey Gatere Kamau vs Peter Mwangi Njuguna (2008) eKLR** and **Francis Barasa Lurare & another vs Denis Nyongesa Maloba (2020) eKLR**. The Appellant further submitted that he was not given any reason behind the trial court's apportionment of 70:30 and that the trial court had abdicated its duty.

14. It was the Appellant's submission that there was no evidence proving his negligence. That PW2 was an unbelievable and unreliable witness. It was his further submission that PW2's evidence was evidence of someone who did not witness the accident

15.The Appellant submitted that his witness, DW2 showed that the accident occurred in the Appellant's vehicle's lane and that the bodies of the deceased were also found in the vehicle's lane. That the trial Magistrate ignored his evidence. The Appellant further submitted that he took evasive action by braking hard and that the rider of the motorcycle was to blame for the accident.

16.It was the Appellant's submission that the global award of Kshs 2,500,000/= was excessive and had no basis. That the trial court used wrong principles in determining the award. The Appellant proposed an award between Kshs 1,000,000/ to Kshs 1,500,000/= and relied on **Teresia Wanjiru Githinji vs Lucy Kanana M'rukaria & another (Suing as Legal Representative of Ernest Gutuura Nabea (Deceased) (2021) eKLR, Zachary Abusa Magoma vs Julius Asiago Ogentoto & Jane Kerubo Asiago (2020) eKLR et.al.**

17. I have gone through and carefully considered the Record of Appeal dated 8th August 2023; the Appellant's written submissions dated 25th June 2025 and the Respondents' written submissions dated 30th July 2025. The two issues that I have sieved for my determination are: -

- i. Whether the trial court erred in apportioning liability
- ii. Whether the award of Kshs 2,500,000/= as loss of dependency was excessive.

Liability.

18. This is a sister file to Bomet High Court Civil Appeal Number E024 of 2023, Timothy Ongeta Chuma vs Sammary Chepngetich Laboso and Kipngeno Langat (Suing as the Personal Representatives of the estate of Chepkorir Ridar). The deceased in the present case, Robinson Kiprotich Cheruiyot was the rider of motorcycle registration number KMEZ 806J while the deceased in the aforementioned case was the pillion passenger.

19. On 16th March 2022, while at the trial court, parties entered into a Consent and agreed that the trial court's finding on liability in Bomet High Court Civil Appeal Number E024 of 2023, Timothy Ongeta Chuma vs Sammary Chepngetich Laboso and Kipngeno Langat (Suing as the Personal Representatives of the estate of Chepkorir Ridar) would apply in the present case. The Consent was adopted as a Judgment of the court on 16th March 2022.

20. In Bomet High Court Civil Appeal Number E024 of 2023, Timothy Ongeta Chuma vs Sammary Chepngetich Laboso and Kipngeno Langat (Suing as the Personal Representatives of the estate of Chepkorir Ridar), I found that the Respondents (then Plaintiffs) were wholly liable for causing the accident. As such, they had failed to discharge their burden of proof by their failure to prove causation.

21. Flowing from the above, I hereby set aside the Judgement dated 26th April 2023 and dismiss the suit in the trial court.

22. In the end, the Appeal dated 9th May 2023 succeeds. Each party shall bear their own costs in this Appeal and the Appellant shall have the costs in the trial court.

Judgement delivered, dated and signed at Bomet this 8th day of October, 2025.

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**Hon. JULIUS K. NG'ARNG'AR
JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

Barasa for the Appellant

Chumba for the Respondents