

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**CIVIL APPEAL NO. E024 OF 2023**

**TIMOTHY ONGETA CHUMA ..... APPELLANT**

**VERSUS**

**SUMMARY CHEPNGETICH LABOSO & GEOFFREY KIPNGENO  
LANGAT (suing as the Legal Representatives of the estate  
of Chepkorir Ridah (Deceased).....**

**RESPONDENTS**

*(Being an Appeal from the Judgment of Principal Magistrate,  
Kibelion K. at the Principal Magistrate's Court at Bomet, Civil Suit  
Number 3 of 2021)*

**JUDGEMENT**

1. The Respondents (then Plaintiffs) as the Legal Representatives of the deceased Chepkorir Ridah, sued the Appellant (then Defendant) for general and special damages that arose from a road traffic accident which occurred on 31<sup>st</sup> 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 26<sup>th</sup> April 2023, the trial court awarded the Respondents a net sum of Kshs 3,950,415/=
3. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 9<sup>th</sup> May 2023 appealing against the liability and use of 25 years as the multiplier.
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 Complaint dated 10<sup>th</sup> December 2020, the Respondents stated that the deceased Chepkorir Ridah was involved in a road traffic accident on 31<sup>st</sup> July 2020. That she was hit by motor vehicle registration number KBM 139A as a pillion passenger aboard 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 Complaint. That as a result of the accident, Chepkorir Ridah 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 30<sup>th</sup> July 2025, the Respondents submitted that the Appellant was negligent in causing the accident. That PW2 was an eye witness and he testified that the Appellant caused the accident.
10. It was the Respondents' submission that the Sketch Map that DW2 relied on did not form part of the Appellant's exhibits and was not availed to the trial court. They relied on **Postal Corporation of Kenya & another vs Dickens Munayi (2014) eKLR**. It was their further submission that PW2 who was at the scene was the only impartial person who could give a true account on how the accident happened.
11. The Respondents submitted that a Police Abstract could not be used as evidence in apportioning liability. They relied on **Wangogu Kithinji & 2 others (Civil Appeal 293 of 2023) [2024] KEHC 6272 (KLR)**. They further submitted

that DW2 was not the investigating officer and that his testimony was hearsay. That the Appellant did not adduce any evidence to controvert the eye witness's account and had not demonstrated how the rider of the motorcycle was to blame for the accident.

12. It was the Respondents' submission that the Appellant had a higher duty to prevent the accident from occurring, a duty which he neglected. They relied on **Masembe vs Sugar Corporation & another (2002) 2EZ 434** and **Isabella Wanjiru Karanja vs Washington Malele Nbi Civil Appeal No. 50 of 1981**. It was the Respondents' further submission that the trial court did not err when it apportioned liability in the ratio of 70:30 in its favour.

13. The Respondents submitted that the trial court did not err when it awarded Kshs 3,950,415/= as general damages. That the award was not excessive to warrant this court's interference.

**The Appellant's/Defendant's case.**

14. Through his statement of defence dated 16<sup>th</sup> 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 a pillion passenger on motorcycle registration number KMEZ 806J.

15. It was the Appellant's case that if the accident occurred then it was caused by the negligence and carelessness of the deceased and a third party called Robinson Kiprotich Cheruiyot. The particulars of negligence were listed in paragraphs 7 and 8 of his Defence.

16. Through his written submissions dated 25<sup>th</sup> 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.

17. 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

18. 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.

19. It was the Appellant's submission that the trial court used the wrong principle in determining the suitable multiplier and ignored the authorities he cited in his submissions before the trial court. That he cited cases where the court had used multipliers between 15 years and 16 years for deceased persons aged between 28 years and 30 years to wit **Lucy Wambui Kihoro (Suing as Personal Representative of the Deceased, Douglas Kinyua Wambui) vs Elizabeth Njeri Obuong (2015) eKLR, Ajiwa Shamji Company Ltd vs Rehema Atieno Okoth (Suing as Personal and Legal Representative of Paul O. Ojwang) (2015) eKLR et.al.**

20. I have gone through and carefully considered the Record of Appeal dated 8<sup>th</sup> August 2023; the Appellant's written submissions dated 25<sup>th</sup> June 2025 and the Respondents'

written submissions dated 30<sup>th</sup> 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 trial court erred in using 25 years as the multiplier

**Liability.**

21. It is trite that he who alleges must prove, in other words, the Respondents had to prove their case against the Appellant on a balance of probabilities. I have gone through the Respondents' evidence where he called Geoffery Kipngeno (PW1), Gilbert Kiprono Cheruiyot (PW2) and No. 72792 PC Lwembe Reyland Nzai (PW3). PW1 who was the deceased's brother testified that he did not witness the accident.

22. PW3 testified that he was not the investigating officer. PW3 produced a Police Abstract as **P. Exh 2**. I have looked at the Police Abstract and it stated that the investigations were still pending. That said, PW3's testimony only confirmed the

occurrence of the accident. It is my finding that the testimonies of PW1 and PW3 were immaterial in terms of determining the circumstances that led to the occurrence of the accident.

23. That left the court with the evidence of Gilbert Kiprono Cheruiyot (PW2). PW2 testified that on the material day, he was heading towards Bomet from Sanchora and was behind the subject motor vehicle. PW2 further testified that the subject motor vehicle lost control and hit a motor vehicle that was heading towards Sanchora and after the collision, the people who were aboard the motor vehicle died on the spot. When PW2 was cross examined, he testified that the motorcycle had one pillion passenger and was carrying a sack of sugar and further that there were no other road users at that time. Upon further cross examination, PW2 testified that the motor vehicle and motorcycle were heading in opposite directions and that the bodies of the deceased were found on the left side facing Bomet direction.

24. On the other hand, Timothy Onget Chuma (DW1) testified that on the material day, he was driving along Narok-Bomet road and he saw a motorcycle that was carrying a pillion passenger and a sack of sugar and the motorcycle was at a high speed. DW2 further testified that as they approached each other, the motorcycle lost control and veered onto his lane, forcing him to brake hard. It was DW1's testimony that that the motorcycle rammed into the front side of his motorcycle. DW1 produced a Motor Vehicle Examination Report as **D. Exh 3**. When DW1 was cross examined, he reiterated that the motorcycle veered onto his lane and that he took evasive action by braking hard.
25. PC Mathias Chacha (DW2) testified that he visited the scene approximately 30 minutes after the accident had occurred and found that the subject motor vehicle faced the general direction of Bomet from Narok and the motorcycle which facing the opposite direction was on its lane and that the debris and blood were on the subject motor vehicle's lane.

When DW2 was cross examined he confirmed that the subject motor vehicle was heading towards Bomet and the motorcycle veered off its lane to the motor vehicle's lane. He further testified that the subject motor vehicle was hit from the front.

26. The Court of Appeal in **Michael Hubert Kloss & another v David Seroney & 5 others [2009] KECA 146 (KLR)** held that: -

***“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in Stapley vs. Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows:***

***‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of***

***law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case.....***"

(Emphasis mine)

27. From the above, it is undisputed that the subject motor vehicle was driving facing the general direction of Bomet while the motorcycle was riding in the opposite direction. DW1 and DW2 all testified that the motorcycle veered off its lane and hit the subject motor vehicle which was on its rightful lane. DW1 and DW2 further testified that the subject motor vehicle was hit from the front and the bodies of the rider and the pillion passenger were found in the motor vehicle's lane, a fact which PW2 confirmed upon cross examination. I have looked at the Motor Vehicle Examination Report **(P. Exh 3)** and it corroborated the fact that the subject motor vehicle was hit from the front.

28. It is common knowledge that in our country, we drive on the left-hand side. The testimonies above indicated that the Appellant was driving on his rightful lane when the accident occurred. It had also been demonstrated that the motor cycle debris and bodies of the deceased were found on the subject motor vehicle's lane. This contradicts PW2's testimony that the subject motor vehicle lost control and hit the motorcycle. It is quite unimaginable how a vehicle can lose control and hit a motor cycle on the opposite direction and still be stationed in its rightful lane. I agree with the Appellant that PW2's testimony was untruthful.
29. It is salient to note that it was revealed during the trial that the motorcycle had a pillion passenger, a rider and a sack of sugar. That was overloading as the motorcycle ought to have carried either the sack of sugar or the pillion passenger and not both. This would explain and corroborate DW2's testimony that the motorcycle lost control and hit him as in his rightful lane.

30. In their Complaint dated 10<sup>th</sup> December 2020, the Respondents alleged that the Appellant was negligent in causing the accident and listed the particulars of negligence in paragraph 5. In proving their case, the Respondents ought to have provided evidence linking the acts of the Appellant to the injury or death of the deceased. The Court of Appeal in **Kenya Breweries Ltd v Godfrey Odoyo [2010] KECA 498 (KLR)** held: -

***“.....the issue of causation is an important ingredient and without it no finding on liability ought to have been made at all.....”***

31. Similarly, in **Statpack Industries v James Mbithi Munyao [2005] KEHC 2043 (KLR)**, it was held that: -

***“Coming now to the more important issue of “causation”, it is trite law that the burden of proof of any fact or allegation is on the Plaintiff.***

***He must prove a causal link between someone's negligence and his injury. The Plaintiff must adduce evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessarily a result of someone's negligence....."***

32. Flowing from the above, it is my finding that the Respondents did not provide a link between the Appellant's act and the death of the deceased. There was no link as the evidence clearly showed that the rider of the motorcycle veered off his lane and rammed into the subject's motor vehicle which was on its rightful lane.
33. In the circumstances thereof and with respect to the trial court, I do not agree with the trial court's apportionment of liability. It is my finding that the rider of the motorcycle was 100% liable for causing the accident. I hereby set aside the

Judgement dated 26<sup>th</sup> April 2023 and dismiss the suit in the trial court.

34. In the end, the Appeal dated 9<sup>th</sup> 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 8<sup>th</sup> day of October, 2025.**

.....  
**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**