



**New Port Ventures Limited v Kiprotich & another (Suing as the Legal Representatives of the Estate of Vincent Kibet - Deceased) (Civil Appeal E025 of 2024) [2025] KEHC 14060 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14060 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E025 OF 2024  
JK NG'ARNG'AR, J  
OCTOBER 8, 2025**

**BETWEEN**

**NEW PORT VENTURES LIMITED ..... APPELLANT**

**AND**

**MESHACK KIGEN KIPROTICH ..... 1<sup>ST</sup> RESPONDENT**

**ROBERT KIPSANG KOSKEI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF VINCENT  
KIBET - DECEASED**

*(Being an Appeal from the Judgment of Chief Magistrate, Boke E. at the  
Chief Magistrate's Court at Bomet, Civil Suit Number E192 of 2023)*

**JUDGMENT**

1. The Respondents (then Plaintiffs) as the Legal Representatives of the deceased Vincent Kibet, sued the Appellant (then Defendant) for general and special damages that arose from a road traffic accident on 13<sup>th</sup> May 2023 along Bomet-Narok Road.
2. On 30<sup>th</sup> April 2024, parties then entered into a consent for liability in the ratio of 80:20 in favour of the Respondents.
3. The trial court conducted a hearing where the 1<sup>st</sup> Respondent testified and closed his case. The Appellants closed their case without calling any witness.
4. In its Judgement delivered on 27<sup>th</sup> August 2024, the trial court awarded the Respondents Kshs 50,000/= for pain and suffering, Kshs 100,000/= for loss of expectation of life, Kshs 896,000/= for loss of dependency, Kshs 150,000/= and Kshs 30,700/= as special damages.



5. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 31<sup>st</sup> October 2024 appealing against quantum specifically the trial court's award under the head of loss of dependency.
6. 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.
7. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

**The Plaintiffs'/Respondents' case.**

8. Through their Plaint dated 28<sup>th</sup> August 2023, the Respondents stated that the deceased Vincent Kibet was involved in a road traffic accident on 13<sup>th</sup> May 2023. That he was hit by motor vehicle registration number KCP 714G/ZE-3343 while riding motorcycle registration number KMFZ 189G along Bomet-Narok road.
9. It was the Respondents' case that the Appellant was negligent in causing the accident. The particulars of the negligence were stated in paragraph 6 of the Plaint. That as a result of the accident, Vincent Kibet suffered fatal injuries.
10. The Respondents prayed for special and general damages against the Appellant under the *Fatal Accidents Act* and the *Law Reform Act*.
11. At the time of writing this Judgment, the Respondents had not filed their written submissions despite being ordered by this court to do so on 16<sup>th</sup> July 2025.

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

12. Through its statement of defence dated 2<sup>nd</sup> November 2023, the Appellant denied the occurrence of the accident and further denied being the registered owner of motor vehicle registration number KCP 714G/ZE-3343.
13. 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 paragraph 8 of its Defence.
14. Through its written submissions dated 25<sup>th</sup> June 2025, the Appellant submitted that section 4 of the *Fatal Accidents Act* listed a wife, husband, parent or child as the dependants under this Act. That the Respondents as brothers of the deceased were therefore not dependants. It relied on *Mohamed Hirbo Shande & another vs George Mwenda Mwiti* (Legal Representative of the estate of Miriam Makena) (2021) eKLR and *Mwangi & Another* (suing as the Legal Representatives of the estate of the late Richard Mwangi Gathoni (Deceased) V Ngure & another (Civil Appeal 57 of 2020) [2023] KECA 448 (KLR) (14 APRIL 2023) (JUDGMENT)). The Appellant further submitted that the Respondents did not provide proof of the deceased's income.
15. I have gone through and carefully considered the Record of Appeal dated 6<sup>th</sup> January 2025 and the Appellant's written submissions dated 25<sup>th</sup> June 2025. The only issue that I have sieved for my determination was whether the trial court erred in awarding the Respondents loss of dependency.



16. Under the head of loss of dependency, Section 4 of the *Fatal Accidents Act* provides as follows: -

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

17. The trial court awarded the Respondents Kshs 896,000/= under this head by using a monthly wage of Kshs 8,000/=, a multiplier of 28 years and a dependency ratio of 1/3.

18. The Plaintiff listed the Respondents as the brothers of the deceased. The 1<sup>st</sup> Respondent's (PW1) testimony confirmed the same. In the case of *Mwangi & another (Suing as the Legal Representatives of the Estate of the Late Richard Mwangi Gathoni Deceased) v Ngure & another* [2023] KECA 448 (KLR) where the Court of Appeal held: -

“It is therefore clear that it is only in respect of claims brought for the benefit of the wife, husband, parent and child of a deceased under the Fatal Accident Act that ought to be brought in the name of the executor or administrator of the person deceased. Loss of dependency falls under Fatal Accident Act. Accordingly, the 2nd Appellant could not make a claim under the said Act for loss of dependency as he was not a dependant.”

19. Similarly, in *Easy Coach Limited v John Thomas Akalongo & another* [2014] KECA 177 (KLR), the Court of Appeal held: -

“As is clear from Section 4 of the *Fatal Accidents Act*, legal dependants of deceased persons are their spouses, children and parents. Deceased persons' siblings are not their legal dependants.....”

20. Flowing from the above, it is my finding that the Respondents as brothers of the deceased were not his dependents. It is my further finding that the trial court erred in awarding Kshs 896,000/= under this head. I hereby vacate the award under loss of dependency.

21. The Appellant did not challenge the award under pain and suffering, loss of expectation of life and special damages and I therefore uphold the awards of Kshs 50,000/= as pain and suffering, Kshs 100,000/= as loss of expectation of life and Kshs 30,700/= as special damages.

22. In the final analysis, it is my finding that there is a reason for this court to interfere with the trial court's award on general damages. This then translated the final award as: -

Pain and suffering Kshs 50,000/=

Loss of expectation of life Kshs 100,000/=

Add special damages Kshs 30,700/=

Kshs 180,700/=

Less 20% Contribution Kshs 36,140/=



Total Kshs 144,560/=

23. In the end, the Appeal dated 31<sup>st</sup> October 2024 is allowed. Each party shall bear their costs in the Appeal.

**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).

Migiro for the Appellants

N/A for the Respondents

