



**Somo Transporters Limited v Amin & another (Suing as the Administrators of the Estate of Mahat Yusuf - Deceased) (Civil Appeal E041 of 2024) [2025] KEHC 13821 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13821 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E041 OF 2024  
KW KIARIE, J  
OCTOBER 3, 2025**

**BETWEEN**

**SOMO TRANSPORTERS LIMITED ..... APPELLANT**

**AND**

**MOHAMED JUMALI AMIN ..... 1<sup>ST</sup> RESPONDENT**

**MUMINA HASSAN IBRAHIM ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF MAHAT YUSUF - DECEASED**

*(Being an appeal from the judgment and decree in the Makindu Senior Principal Magistrate's Court, PMCC Nos. 75, 76 & 77 of 2019 by Hon.A. Ndungu (Principal Magistrate))*

**JUDGMENT**

1. Somo Transporters Limited, the appellant, was the defendant in Makindu Senior Principal Magistrate's PMCC Nos. 75, 76 & 77 of 2019. They had been sued for a claim of general and special damages following a road traffic accident involving their motor vehicles, with registration numbers KCC 534M ZE 9882 and KBK 060V ZE4158. As a result of the accident, there were fatalities and injuries. The appellant was held 100% liable.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Eboso & Company Advocates. In Civil Appeal NO. E041 of 2024, he raised the following grounds for appeal:
  - a. The learned magistrate showed extreme bias against the appellant by ignoring all the evidence it produced that clearly demonstrated that the motor vehicle involved in the material accident was registration Number KAY 899 N and not KBK 060V as alleged by the respondent.



- b. The learned magistrate erred in law and in fact in finding that the motor vehicle registration number KBK 060V was involved in the material accident, even though the appellant availed a police officer who confirmed that the motor vehicle involved in the material accident was motor vehicle registration number KAY 899N.
  - c. The learned magistrate showed extreme prejudice by totally ignoring the appellant's submissions on issues of law and evidence and thereby made an erroneous finding on liability.
  - d. The learned magistrate erred in law and fact in applying a multiplier of 30 years for a deceased who passed away at the age of 22.
  - e. The learned magistrate showed extreme prejudice by totally ignoring the appellants' submissions on issues of law and evidence and thereby made an inordinately high award of damages.
3. In Civil Appeal NO. E042 of 2024, he raised the following grounds for appeal:
- a. The learned magistrate showed extreme bias against the appellant by ignoring all the evidence it produced that clearly demonstrated that the motor vehicle involved in the material accident was registration Number KAY 899 N and not KBK 060V as alleged by the respondent.
  - b. The learned magistrate erred in law and in fact in finding that the motor vehicle registration number KBK 060V was involved in the material accident, even though the appellant availed a police officer who confirmed that the motor vehicle involved in the material accident was motor vehicle registration number KAY 899N.
  - c. The learned magistrate showed extreme prejudice by totally ignoring the appellant's submissions on issues of law and evidence and thereby made an erroneous finding on liability.
4. In Civil Appeal NO. E043 of 2024, he raised the following grounds for appeal:
- a. The learned magistrate showed extreme bias against the appellant by ignoring all the evidence it produced that clearly demonstrated that the motor vehicle involved in the material accident was registration Number KAY 899 N and not KBK 060V as alleged by the respondent.
  - b. The learned magistrate erred in law and in fact in finding that the motor vehicle registration number KBK 060V was involved in the material accident, even though the appellant availed a police officer who confirmed that the motor vehicle involved in the material accident was motor vehicle registration number KAY 899N.
  - c. The learned magistrate showed extreme prejudice by totally ignoring the appellant's submissions on issues of law and evidence and thereby made an erroneous finding on liability.
  - d. The learned magistrate erred in law and in fact in finding that the applicable minimum wage was that of a heavy commercial driver instead of a general worker, thereby applying a multiplicand of Kshs. 23,262.40 instead of Kshs. 10,107.10 for computing damages for loss of dependency.
  - e. The learned magistrate erred in law and in fact in applying a multiplier of 25 years for a deceased who passed away at the age of 26 years.
  - f. The learned magistrate showed extreme prejudice by totally ignoring the appellants' submissions on issues of law and evidence and thereby made an inordinately high award of damages.



5. The respondents opposed the appeals through Michael Ngure & Company Advocates. They argued that the awards were not excessive and should not be disturbed.
6. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
7. The appeals raise three issues for determination as follows:
  - a. Was the appellant's motor vehicle involved in the complained-of accident?
  - b. If so, was the liability correctly apportioned? and
  - c. Whether the damages awarded were inordinately high.
8. In their statement of defence, the appellant denied that the accident involving motor vehicles registration numbers KBK 060V/ZE 4158 and KCC534M/ZE 9882 occurred on the 27<sup>th</sup> of May 2016 or any other day.
9. Mohammed Ibrahim (PW2) testified that on 27 May 2016, an accident occurred involving motor vehicles with registration numbers KBK 060V/ZE 4158 and KCC534M/ZE 9882. His evidence was that this was caused by motor vehicle KCC534M/ZE 9882, which rammed into the rear of motor vehicle registration number KBK 060V/ZE 4158. A copy of the police abstract report that was produced confirmed this fact.
10. The finding by the trial magistrate on the occurrence of the complained-of accident cannot be faulted.
11. There was evidence on record that three vehicles were involved in the accident. After motor vehicle registration number KCC534M/ZE 9882 had rammed into the rear of motor vehicle registration number KBK 060V/ZE 4158, the latter was burnt beyond recognition. Mohammed Ali perished in the vehicle. A third vehicle was burnt in the accident, which was blamed on the driver of motor vehicle registration number KCC534M/ZE 9882.
12. The appellant called PC Doris Kithinji (DW2). Her evidence introduced another motor vehicle registration number, KBJ 887Y/ZD 2662. She conceded that she was not the investigating officer. Her evidence has no probative value. She cannot disown the copy of the police abstract report that was produced without explanation.
13. From the foregoing, I have no basis to interfere with the finding by the learned trial magistrate on liability.
14. In Civil Appeal NO. E042 of 2024, the deceased passed away at the age of 22 years. His estate was awarded Kshs. 1,474,628. The appellant argued that the award was inordinately high and criticized the use of a 30-year multiplier in determining the award.
15. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the



awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint vs Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.

16. In their submissions in the trial court, the appellant proposed an award of Kshs. 854, 760. They proposed a 20-year multiplier.
17. The deceased was a very young man, and this court is not persuaded to interfere with the multiplier used by the learned trial magistrate. Consequently, the appeal is dismissed with costs.
18. In Civil Appeal NO. E042 of 2024, the appeal is dismissed with costs due to the earlier findings stated.
19. In Civil Appeal No. E043 of 2024, the appellant contended that the learned magistrate should have applied the minimum wage of a general worker instead of that of a heavy commercial worker. He was criticized for using a 25-year multiplier for the deceased, who died at the age of 26 years.
20. Mohammed Jumale Amin (PW1) testified that the deceased in this case was a driver. The appellant presented no evidence to the contrary. He cannot argue on appeal that he was not. This would amount to introducing new evidence, which is not allowed. Equally, I have not been convinced that a 25-year multiplier was erroneous. The appeal is therefore dismissed with costs.

**DELIVERED AND SIGNED AT MAKUENI, THIS 3<sup>RD</sup> DAY OF OCTOBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

