

REPUBLIC OF KENYA

IN THE HIGH COURT ELDORET

CIVIL APPEAL NO. 133 OF 2022

WEST KENYA SUGAR COMPANY LTD.

APPELLANT

=VERSUS=

**JOHN MOENGA MAYAKA & LILIAN NALIAKA KALENDA (Suing as the Administrators/Legal Representatives of the Estate of EDWARD MASEREBU (DECEASED)
RESPONDENTS**

Coram: Before Justice R. Nyakundi

Mongeri & Company Advocates

Bryan Khaemba, Kamau & Company Advocates

Kigen & Company Advocates

RULING

1. This Court on appeal in a judgment delivered on 22nd day of September 2024 pronounced itself as follows:

"In view of the above there is no legal requirement for the Court to deduct the amount awarded under the Law Reform Act from the award made under the Fatal Accidents Act from the judgment of the trial Court, I note that there is nothing to indicate that the Respondents benefitted from double compensations the argument by the Appellant on the issue cannot therefore stand. In the end, I hereby enter judgment in favour of the Respondents in the following terms:

- | | |
|---|------------------------------|
| <i>a) Liability</i> | <i>70% : 30%</i> |
| <i>b) General damages for pain and suffering</i> | <i>Kshs</i> |
| <i>50,000.00</i> | |
| <i>c) General damages for loss of expectation of life</i> | <i>Kshs</i> |
| <i>100,000.00</i> | |
| <i>d) General damages for loss of dependency</i> | <i>Kshs 16,775,800.00</i> |
| <i>e) Special damages</i> | <i><u>Kshs 69,000.00</u></i> |

<i>Sub-total</i>	<i>Kshs 16,994,800.00</i>
<i>Less 30% contribution</i>	<i>Kshs 5,098,440.00</i>
TOTAL AMOUNT PAYABLE	<u>Kshs 11,896,360.00</u>

Each party to bear its own costs of the appeal.

2. Following this judgment, the parties entered into a consent dated 22nd day of January 2024 duly signed, filed in Court on 22nd January 2024 with the following terms:

“BY CONSENT

(a) That the undisputed sum of Kenya Shillings Three Million Eight Hundred and Eighty-Six thousand, Six Hundred and Twenty-Three Only (Kshs 3,886,623/=) to be paid in two equal instalments as follows:

- (i) That Kenya Shillings One Million Nine Hundred and forty-three Three Hundred and Eleven and Fifty Cents Only **(Kshs 1,943,311.50/=)** to be paid on or before the 31st day of January 2024; and*
- (ii) That the remaining balance of Kenya shillings One Million Nine Hundred and Forty-Three Three Hundred and Eleven and Fifty Cents Only **(Kshs 1,943,311.50/=)** to be paid on or before the 29th day of February 2024.*

(b) That the disputed issues of accumulated interests and Auctioneer’s fees to be determined by the Court.

(c) That in default of any of the instalments [1] above, execution to issue.

3. This Consent Order is adopted as an order of this Court capable of being executed as a judgment and decree of the Court.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14TH
DAY OF OCTOBER 2025.**

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R. NYAKUNDI
JUDGE