

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT CIVIL APPEAL CASE NO. E068 OF 2024**

**DESDERIO KIOGORA.....APPELLANT**

**-VERSUS-**

**PETER NDEGWA GITHINJI and CECINDAH WAMBUI NDEGWA**

**(Suing as the administrators of the Estate of JOSEPH**

**MUTHUNGU NDEGWA alias JOSEPH MUTHUGU**

**NDEGWA.....1<sup>ST</sup> RESPONDENT**

**JOSEPH MACHARIA MAINA.....2<sup>ND</sup>**

**RESPONDENT**

**AGGREY MBOYA OGUTU.....3<sup>RD</sup>**

**RESPONDENT**

**JUDGEMENT**

1. Before this Court is the Memorandum of Appeal dated **22<sup>nd</sup>**

**October 2024** by which the Appellant **DESDERIO KIOGORA**

seeks the following orders:-

**“1. THAT the appeal be allowed.**

2. **THAT** this Honourable Court be pleased to vary, vacate,

review and/or set aside the judgment of the Lower Court both on liability and quantum.

3. **THAT** in the alternative to Prayer 2 above, that this Honourable Court be pleased to review, or set aside the award on quantum.

4. **THAT**, this Honourable Court be pleased to assess downwards the quantum of damages awarded to the Respondent.

5. **THAT** the Respondent does pay the costs of this appeal and the costs in the Lower court.

6. Such further relief be granted as may appear just and appropriate to the Honourable Court.”

2. The 1<sup>st</sup> Respondent **PETER NDEGWA GITHINJI** and **CECINDAH WAMBUI NDEGWA** (suing as the administrators of the estate of **JOSEPH MUTHUNGU NDEGWA** alias **JOSEPH MUTHUGU NDEGWA**, the 2<sup>nd</sup> Respondent **JOSEPH MACHARIA MAINA** and the 3<sup>rd</sup> Respondent **AGGREY MBOYA GUTU** all opposed the appeal.

3. The matter was canvassed by way of written submissions. The Appellant filed the written submissions dated **6<sup>th</sup> June 2025** whilst the 1<sup>st</sup> Respondent relied on their written submissions dated **29<sup>th</sup> July 2025**.

### **BACKGROUND**

4. This appeal emanates from an accident which occurred on **29<sup>th</sup>**

**November 2020** in which the Deceased **Joseph Muthungu Ndegwa** who was riding a motorcycle Registration **KMFG 240 R** (hereinafter '**the Motorcycle**') was involved in a collision with two motor vehicles Registration **KBK 822 B Toyota Corolla** (hereinafter '**KBK**') and **KCX 071H Subaru Forester** (hereinafter (**KCX**')). As a result of the accident the Deceased sustained fatal injuries.

5. The 1<sup>st</sup> Respondents who are the parents of the Deceased filed in the Magistrates Court at Mukurwe-ini Civil Suit No. **E033 of 2023** seeking damages and compensation on behalf of the estate of the Deceased.
6. In the Plaint dated **31<sup>st</sup> August 2023** it was alleged that the 2<sup>nd</sup> Defendant was registered owner of the **KBK** whilst the 3<sup>rd</sup>

Respondent was the beneficial owner and insurer of the **KBX**. The Appellant was the registered owner and driver of the **KCX**.

7. That on the material day at around **6:30pm** the Deceased was driving

his motorcycle along the **Mukurwe-ini - Nyeri road**. At **Mwololo area** the two vehicles **KBK** and **KCX** which were being driven recklessly and hit the Deceased's motor cycle thereby inflicting fatal injuries on the Deceased.

8. The matter was heard in the Lower Court by way of Vive Voce evidence. On **24<sup>th</sup> September 2024 HON AGADE Senior Principal Magistrate** delivered a judgment in which she apportioned liability at **100%** between the owners of the **KBK** and **KCX**. The trial court then proceeded to make the following awards;-

“(a) **General Damages**

Loss of Dependency - Kshs. 800,000/=

Pain and Suffering - Kshs. 50,000/=

(b) Special Damages - Kshs. 282,450/=

**TOTAL - Kshs. 1,232,450/=**

(c) Costs and Interest at Court rates from the date of the judgment until payment in full.

9. Being aggrieved by this decision the Appellant filed this appeal which is premised on the following grounds;-

**“1. THAT the Learned Trial Magistrate erred in law and in fact in finding that the Appellant was wholly liable both jointly and severally for the occurrence of the alleged accident.**

**2. THAT the Learned Trial Magistrate erred in law and in fact in finding that the 1<sup>st</sup> Respondents had discharged their burden of proof against the Appellant on a balance of probabilities.**

**3. THAT the Learned Senior Principal Magistrate erred in fact in failing to appreciate that the Deceased partly contributed to the accident by failing to be cautious while riding his motorcycle as was his duty.**

- 4. THAT the Learned Trial Magistrate erred in law and in fact by failing to consider the Defense evidence tendered to find the 1<sup>st</sup> Respondents' case against the Appellant as unproven.**
- 5. THAT the Learned Senior Principal Magistrate misdirected himself in law by assessing damages that were manifestly excessive and incomparable to the common judicial awards.**
- 6. THAT the Learned Magistrate erred in awarding the sum of Kshs. 800,000.00/= by way of general damages for loss of dependency to the 1<sup>st</sup> Respondents.**
- 7. THAT the Learned Magistrate erred in awarding the sum of Kshs. 50,000/= by way of general damages for pain and suffering to the 1<sup>st</sup> Respondents.**
- 8. THAT the Learned Magistrate erred in awarding the sum of Kshs. 100,000.00/= by**

**way of general damages for loss of expectation of life to the 1<sup>st</sup> Respondents.**

**9. THAT the Learned Magistrate erred in awarding the sum of Kshs. 282,450.00/= by way of special damages to the 1<sup>st</sup> Respondents.**

**10. THAT the award in Quantum of Damages is in the circumstances so inordinately high that it amounts to a wholly erroneous estimate of the damages suffered by the estate of the Deceased.**

**11. THAT the award in Quantum of Damages is altogether disproportionate and is not in keeping with other comparable awards made in respect of similar circumstances.**

**12. THAT the Learned Senior Principal Magistrate erred both in law and in fact by giving a very high award in quantum contrary to the evidence given in court.**

**13. THAT the Learned Senior Principal Magistrate erred in Law in making such a high award as to show that the magistrate acted on wrong principles of law.**

**14. THAT the Learned Senior Principal Magistrate's award on damages was inordinately high as to be entirely erroneous.**

**15. THAT the whole judgment on liability and quantum was against the weight of evidence before the court."**

### **ANALYSIS AND DETERMINATION**

10. I have carefully considered this memorandum of appeal as well as the record of Appeal filed in this matter.

11. This is a first appeal. It is settled law that the duty of the first appellate

court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and

come up with its own findings and conclusions [**see Peters - vs- Sunday post limited [1958] E.A 424**]

12. In **SELLE and Another -vs- ASSOCIATED MOTOR BOAT COMPANY LTD & Others [1968] 1 E.A 123** it was stated that

**“An appeal to this court from the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that, this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”**

13. Likewise in **GITOBU IMANYARA & 2 Others -vs- Attorney general [2016] eKLR**, the Court of Appeal stated as follows:-

**“An appeal to this court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”**

14. The fact that the 1<sup>st</sup> Respondents have the requisite locus standi to file suit on behalf of the estate of the Deceased is not in any doubt. At **Page 14** of the Record of Appeal is a copy of a limited Grant Ad litem issued to the 1<sup>st</sup> Respondent on **1<sup>st</sup> September 2021** giving them authority to file suit on behalf of the estate of **Joseph Muthungu Ndegwa**.
15. Similarly the fact that the accident occurred as alleged is not in any doubt. At **Page 16** of the Record of Appeal is a copy of a Police Abstract dated **30<sup>th</sup> November 2011** confirming

that on **29<sup>th</sup> November 2020** vide **OB No. 29** a report was received of an accident which had occurred along the Mukurwe-ini - Nyeri road, which accident involved a motorcycle Registration **KMFG 240R** being driven by the Deceased and two motor vehicles Registration **KBK 822B** and **KCX 071 H**.

16. The 1<sup>st</sup> Appellant told the court that the Deceased who was their son sustained injuries as a result of the accident which injuries led to his unfortunate death. At **Page 17-20** of the record is a copy of the Post-Mortem form filled out in respect of an examination conducted on the body of the Deceased at Mukurwe-ini Sub-County Hospital. At **Page 21** of the record is a copy of the Death Certificate Serial No. **1107138** which indicates that the Deceased met his death as a result of injuries sustained in a Road Traffic Accident.
17. The trial court apportioned liability for the accident at **100%** to be apportioned between the driver of the **KBK** and the **KCX** stating that the drivers of both vehicles were equally to blame for causing the accident.

18. **PW1 PETER NDEGWA GITHINJI** was the 1<sup>st</sup> Respondent. He told the court that he was the father of the Deceased. **PW1** stated that on the material day he received a call from his wife (the 2<sup>nd</sup> Respondent) informing him that their son had been involved in an accident. **PW1** confirmed that he did not witness the accident and thus is not able to shed any light on what caused the accident.
19. **PW2 JAMES NDUNGU MBAU** was an eye witness to the accident. He relied on his witness statement dated **14<sup>th</sup> July 2024**. **PW2** stated that on **29<sup>th</sup> November 2020** he was in Mukurwe-ini Sub-county travelling to **Gakundu** on foot. Near Muote junction along the Othaya-Mukurwe-ini Road he noticed the two vehicles **KBK 822B** and **KCX 071 H**. That the **KBK** vehicle suddenly made a right turn into the path of the oncoming motorcycle which was being ridden by the Deceased.
20. **PW2** stated that the **KBK** hit the motor cycle which as a result of the impact was thrown onto the vehicle **KCX** and the motor cycle was stuck under the **KCX**. **PW2** told the court that he was about **50 metres** away from the scene of

the accident. As a result of the collision the rider of the motorcycle sustained fatal injuries. Police then came to the scene. **PW2** said that he later learnt that the rider of the motorcycle passed away.

21. The Appellant **Desiderio Kiogora** testified that he was driving the motor vehicle Registration **KCX 001H** to Nyeri from Mukurwe-ini. That the motorcycle was coming from Gatundu direction. Another vehicle **KBK 822B** was in front of his vehicle. The Appellant stated that the driver of the **KBK** made a sudden right turn. The Appellant slowed down and stopped.
22. The Appellant stated that he saw the motorcycle coming from the right lane where the **KBK** was turning into. The **KBK** hit the motorcycle and the rider was thrown onto the left side of the road. The motor cycle itself was thrown into the path of the **KCX** and it got stuck under the **KCX**. The Appellant stated that there was nothing he could have done to avoid the accident.
23. The driver of the **KBK** did not enter appearance in this case despite having been properly served.

24. In her judgment the trial magistrate concluded that the drivers of the **KBK** and the **KCX** were equally to blame for the accident and apportioned liability at **100%** against the two. I fault this finding on the part of the trial court for two reasons.
25. Firstly the trial court in apportioning liability at **100%** against the two drivers did not clarify to what degree each driver was liable. Were they each **100%** liable or were the two drivers liable in the proportion of **50%** each. The trial court was silent on this making this finding on liability ambiguous.
26. Secondly the evidence adduced by the eye witnesses was very clear that the accident was caused by the driver of the **KBK** who made a right turn without indicating and hit the motorcycle.
27. **PW2** who witnesses the accident stated clearly that it was the **KBK** which hit the motor-cycle first. That as a result of this first collision that the motorcycle was thrown into the path of the **KCX** and fell under the **KCX**.
28. **PW2** was an independent eye witness. He did not know the drivers of the **KBK** or the **KCX** nor indeed did he know the

Deceased. In my view **PW2** was an impartial observer who told the court only what he saw. He had no reason to favour any party in this suit.

29. The evidence of **PW2** corroborated the testimony of the Appellant. It is clear that the vehicle **KBK** was being driven in the overtaking lane in which the motor cycle was being ridden. The **KBK** hit the motorcycle which as a result of the impact was pushed under the **KCX**.
30. I take note that as per the Police Abstract the police found that the driver of the **KBK 822B** was to blame for the accident and it was recommended that the driver of the **KBK 822B Aggrey Mboya Ogutu** be charged with the offence of causing Death by Dangerous Driving.
31. The sketch map of the scene (**Page 62** of the Record) shows that it was the driver of the **KBK** who in turning to the right into the lane where the motor cycle was rightfully travelling hit the motor cycle.
32. As such I find that the party who was majorly to blame for the accident was the driver of the **KBK 822B**. Having said that the witness (**PW2**) stated that the **KCX** was also being

driven at a High Speed. In the circumstances the driver of the **KCX** was not able to stop on time to prevent the motor cycle from hitting his vehicle. Thus I find that the liability ought to be apportioned at **90%** against the driver of the **KBK 822B** and **10%** against the Appellant.

### **QUANTUM**

33. The Appellant challenged the awards made by the lower court on quantum.
34. On the question of quantum of damages, the **Court of Appeal** in **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 2 KLR 55** set out the circumstances under which an appellate court may interfere with an award of damages as follows:-

**“Assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiable interfere with the**

**quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”**

35. The **Court of Appeal** further postulated in the case of **Sheikh Mustaq**

**Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others**

**[1986] KLR 457** as follows:-

**“The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence**

in some material respect..... A member of an appellate court when naturally and reasonably says to himself “what figure would I have made?” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own. The Judges of both courts should recall that inordinately high awards in such cases will lead to monstrously high premiums for insurance of all sorts and is to be avoided for the sake of everyone in the country.”

36. Under the heading of “**Pain and Suffering**’ the trial court made an award of **Kshs. 50,000**.

37. In **Hyder Nthenya Musili & Another v China Wu Yi Limited &**

**Another [2017] eKLR**, the Court in discussing awards for pain and

suffering and for loss of life expectation stated as follows;-

**“.....The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs. 100,000/= while for pain and suffering the awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life.”**

38. Similarly in **West Kenya Sugar Co. Limited v Philip Sumba Julaya**

**(Suing as the Administrator and personal representative of the**

**estate of James Julaya Sumba) [2019] eKLR** the court observed that –

**“The principle is that damages for pain and suffering are recoverable if the deceased suffered pain and suffering as a result of his injuries in the period before his death. In addition, a Plaintiff whose expectation of life has been diminished by reason of injuries sustained in an accident is entitled to be compensated in damages for loss of expectation of life. The generally accepted principle is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident.”**

39. The accident occurred on **29<sup>th</sup> November 2020** at about **6:30am**.

The Deceased died on the same date at **6:40 pm**. Therefore the

Deceased died almost immediately at the scene of impact. I find that

the award of **Kshs. 50,000** for Pain and Suffering was in the circumstances appropriate and I do uphold that award.

40. Under the heading of Loss of life Expectation of life, the trial court made

an award of **Ksh. 100,000/=**. Based on the above cited authorities I

find that this award was appropriate and I do uphold that award

41. Using the global sum approach the court awarded an amount of **Kshs.**

**800,000/=** for loss of Dependency.

42. Under the heading loss of Dependency the award is made under the

**Fatal Accidents Act.** The principles to be considered were set out in

The case of **BEATRICE WANGUI THAIRU -VS- HON EZEKIEL**

**BARNGETUNY & Another Nairobi HCCC No. 1638 of  
1988**

(unreported) where **Hon. Justice Ringera (Retired)** stated  
as  
follows:-

***“The principles applicable to an assessment of damages under the Fatal Accidents Act are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchase. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum arrived at***

***must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature.”***

***[Own emphasis]***

43. Under Loss of dependency the Court will address two aspects being the

multiplier and the dependency ratio. In the case of **JANE**

**CHELAGAT**

**BOR -VS- ANDREW OTIENO ONOUU [1990 - 1994] E.A**

**47**, the

Court of Appeal held that:-

**“In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure**

**attacked if the appellate court is to interfere, whether on the grounds of excess or insufficiency.”**

44. For loss of Dependency the trial court made an award of **Kshs.**

**800,000.** Pw1 told the court that the Deceased was aged **twenty**

**(20)** years at the time of his death. He stated that the Deceased worked

as a supervisor at a Milling establishment and that he was earning a

monthly salary of **Kshs. 20,000** from which the Deceased used to

send his parents **Kshs. 8,000** a month for their upkeep.

45. It is trite law that he who alleges must prove. **Section 107** of the

**Evidence Act Cap 80** Laws of Kenya provides that:-

**“107 (1) Whoever desires any court to give judgment as to any legal right or liability**

**dependent on the existence of facts which he asserts must prove that those facts exists.**

**(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”**

46. It is not in dispute that the Deceased was **twenty (20) years** old

when he met his unfortunate death. He was single and had no children. In the African set up it would be expected that the Deceased would dedicate a portion of his income to assist his parents.

47. The trial court relied on a letter dated **14<sup>th</sup> January 2023**, as proof

that the Deceased was earning **Kshs. 20,000/=** per month.

Here

again I find that the trial court erred. That letter was not a pay-slip. It

was a letter purportedly authored by one **Mugo Mukui**, the Director of

Mukui Millers. The author of the letter was not called to testify

No reason was given for the failure to call this person as a witness.

48. Furthermore why did it need a letter from the Director to confirm what

salary the Deceased was earning. A genuine company should have a

payroll which could have been produced. Even if the Deceased

was being paid in cash he would have had to sign to confirm receipt of

his salary. No such confirmation documents were produced in court.

49. In the circumstances I find that the plaintiffs failed to tender proof of

the monthly earnings of the Deceased.

50. In **FRANKLINE KIMATHI MAARIU & ANOTHER -VS- PHILIP**

**AKUNGU MITU MBOROTHI** (Suing as administrator and personal

representative of **Anthony Mwituu Gakungu Deceased**)

**2020 eKLR**

the court held that

**“In the present case, there was no satisfactory proof of the monthly income. Where there is no salary proved or employment, the Court should be wary into subscribing to a figure so as to come up with a probable sum to be used as a multiplicand. In such circumstances, it is advisable to apply the global sum approach or the minimum wage as the appropriate mode of assessing the loss of dependency.”**

51. In the premises I find that the trial magistrate despite accepting the

letter dated **14<sup>th</sup> January 2021** was correct to apply the global sum

approach in assessing loss of dependency. In **Moses**

**MAIRUA v**

**Cyrus Maina Macharia (Suing as the personal representative of**

**the estate of Mercy Nzula Maina (deceased) [2016]**

**KEHC 5958**

**(KLR)** the court held that:-

**“.....where it is not possible to ascertain the multiplicand accurately, as appears to have been the case here, courts should not be overly obsessed with mathematical calculations in order to make an award under the head of lost years or loss of dependency. If the multiplicand cannot be ascertained with any precision, courts can make a global award, which by no means is a standard or conventional figure but is an award that will always be subject to the circumstances of each particular case.” [Own emphasis]**

52. The next question is whether the figure of **Kshs. 800,000** awarded as

loss of dependency was in the circumstances appropriate. In making

an award for loss of Dependency the court ought to be guided by

precedent in similar cases /authority.

**“(i) In Moses Maina Waweru vs Esther Wanjiru Githae**

**(Suing as the personal representative of the Estate of the late David Githae Kiririo Taiti [2022] eKLR the deceased died at the age of sixty-eight (68) years and left one dependant, the court made an award of Kshs. 800,000 for loss of dependency.**

**(ii) In China Civil Engineering & Another vs Manyoha**

**Kazungu Mweni & another [2019] eKLR where the Court of Appeal upheld a global sum award of Kshs. 700,000 for loss of dependency where the deceased was aged seventy nine (79) years old.**

**(iii) In Achenda & another (Suing as the legal**

**representatives/administrators of the Estate of the Late Jophan Achenda) vs. West Kenya Sugar Company Ltd (Civil Appeal E004 of 2022) [2023] KEHC 18044 (KLR) (26 May 2023) (Judgment) Wananda J. set aside the award of Ksh. 1,506,117.60/= for loss of dependency and awarded a global sum of Kshs. 2,000,000/= for a deceased who was 29 years old.**

**(iv) In Nancy Gesare Motari & Samwel Motari**

**Motende**

**(Suing as the Legal Representatives of the Estate of Motari Omanwa Dominic - Deceased) vs. Osano Simpson Nyambane, Civil Appeal No. E029 of 2024 Okwany J. set aside the award of Kshs. 1,800,000/= based on the multiplier approach and substituted it with a global sum of Kshs. 2,000,000/= for loss of dependency where the deceased died**

**at 24 years of age and left behind a wife and two young children below 5 years old.**

**(v) In Stanwell Holdings Limited & another vs.**

**Racheal**

**Haluku Emmanuel & another [2020] eKLR the court reduced an award of Kshs. 2,000,000/= for Loss of Dependency (a global sum) to Kshs. 1,000,000/= for the Estate of a 23 year old deceased.**

53. From the foregoing and taking into account the age of the deceased,

and the fact that he did not leave behind a wife and children, it is the

view of this Court that a global sum of **Kshs. 1,500,000/=** would have

been a more appropriate award under this heading. Thus the global

sum award of **Kshs. 800,000/-** is hereby set aside and in its place the

court makes an award of **Kshs. 1,500,000** for Loss of Dependency.

54. For special damages, it is trite that special damages must be specifically

proved. The trial court allowed the special damages as prayed. It is the

onus of this court to scrutinize the same. A receipt of Kshs. 80,000/-

from C.R. Mwaura Advocates, a receipt from Mukurweini hospital for Ksh

7,400/-, funeral preparations of Ksh. 96,950 (in four receipts of 18000,

Ksh 60,000, Ksh 15000 and 3950) Kshs 24,000/- in eight receipts from

Munyaka hotel (each at 3000); four receipts from Lopham Sacco

Transporters for Kshs 70,000; postal receipts of Kshs 420; and NTSA

receipts for Kshs. 1100 making a total of Kshs 279,870/-. I thus review

the award under special damages downwards to **Kshs. 279,870/=**.

55. Finally this appeal succeeds on liability and quantum. The findings of

the trial court are hereby set aside and substituted by the following

findings;

a) Liability is apportioned at **90%** to the 3<sup>rd</sup> Respondent and **10%** to the appellant respectively. For the avoidance of doubt, the Appellant shall shoulder **10%** of the figures below.

b) General Damages -

i. Pain and suffering Ksh. 50,000/-

ii. Loss of expectation of life Ksh. 100,000/-

iii. Loss of Dependency - 1,500,000/-

c) Special damages Ksh. 279,870

**TOTAL - Kshs. 1,929,870/=**

**10% apportioned to Appellant = Kshs. 192,987/=**

**90% apportioned to 2<sup>nd</sup> & 3<sup>rd</sup> Respondent =  
1,736,883/=**

56. Each party will bear their own costs for this appeal.

**Dated in Nyeri this 28<sup>th</sup> day of November 2025.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

ORIGINAL