

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BOMET**  
**CIVIL APPEAL NO. E019 OF 2024**

**PATRICK BARTORE KEMBOI & CHEPKIRUI KAREN** (suing as  
the Legal Representatives of the estate of  
**Moses Kiplangat Bartore (Deceased)**.....  
**APPELLANTS**

**VERSUS**

**CHERUIYOT GIDEON** .....

**RESPONDENT**

*(Being an Appeal from the Judgment of Resident Magistrate,  
Michuki M. at the Magistrate's Court at Bomet, Civil Suit Number  
E018 of 2021)*

**JUDGEMENT**

1. The Appellants (then Plaintiffs) as the Legal Representatives and of the deceased Moses Kiplangat Bartore, sued the Appellant (then Defendant) for general and special damages that arose from an accident which occurred on 25<sup>th</sup> July 2020.
2. The Respondent did not enter appearance and an interlocutory Judgement was entered on 6<sup>th</sup> May 2021. The trial court conducted a formal proof hearing.
3. In its Judgement dated 17<sup>th</sup> July 2024, the trial court dismissed the Appellants' claim stating that they had not proved their case.
4. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 17<sup>th</sup> August 2024 appealing against the whole Judgement.
5. 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.

6. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

**The Plaintiffs'/Appellants' case.**

7. Through their Amended Plaintiff dated 30<sup>th</sup> November 2022 the Appellants stated that the deceased Moses Kiplangat Bartore was involved in an accident on 25<sup>th</sup> July 2020. That he was run over by a tractor registration number KQJ 356.

8. It was the Appellants' case that the Respondent was negligent in causing the accident. The particulars of the negligence were stated in paragraph 4 of the Amended Plaintiff. That as a result of the accident, Moses Kiplangat Bartore suffered fatal injuries.

9. The Appellants prayed for special and general damages against the Appellant under the Fatal Accidents Act and the Law Reform Act.
10. Through their written submissions dated 14<sup>th</sup> November 2025, the Appellants submitted that once an interlocutory Judgement is entered, the question of liability becomes a foregone conclusion. They relied on **Felix Mathenge v Kenya Power & Lighting Company Limited (Civil Appeal No. 215 of 2002)**. That the trial court misapprehended the case and erred when it re-opened the issue of liability.
11. I have gone through and carefully considered the Record of Appeal and the Appellant's written submissions dated 14<sup>th</sup> November 2025. The only issue that I have sieved for my determination was whether the trial court erred when dismissing the Appellants' suit.

12. In regards to liability, I agree with the Appellants that once interlocutory Judgement had been entered against the Respondent, the issue of liability was settled. In the case of **Kioko (Suing as the Legal Representative of the Estate of Late James Mutunga) v Mwaniki [2025] KEHC 16779 (KLR)**, the court held: -

***“.....It was not necessary for the magistrate to make any findings on liability given that the interlocutory judgment was final in that respect. Nevertheless, albeit that it was superfluous. In the case of Felix Mathenge V. Kenya Power & Lighting Company Limited, Civil Appeal No.215 of 2002 the court stated;***

***“The respondent having failed to enter appearance within the prescribed time after the appellant had requested for it, it became mandatory upon the court to enter interlocutory***

***judgment and for the appellant to set down the suit for assessment of damages. Having entered interlocutory judgment, it was not open once again for the same court in the instant case to state that the appellant had not proved liability against the respondent. The role of the court after entering the interlocutory judgment in such a case like this was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to the quantum of damages”***

13. Similarly, in **Njuguna v Thumari** [2023] KEHC 26934 (KLR), the court held: -

***“The Respondent is held 100% liable on account of the interlocutory judgment.”***

14. Flowing from the above, it is my finding that the Respondent was 100% liable.

### **Quantum**

15. The trial court did not make an award under pain and suffering but gave an award of Kshs 200,000/= under loss of expectation of life. Having found the Respondent liable for causing the accident, the Appellants were to be awarded quantum. In regard to the pain and suffering and loss of expectation of life, the court in **Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal Administrators of the Estate of the late Robert Mwangi) [2019] KEHC 9014 (KLR)**, stated: -

***“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 was prolonged before death”.***

16. I have looked at the Death Certificate and Post Mortem Report produced as **P. Exh 2** and **1** respectively and they indicate that the deceased died on the material day being 25<sup>th</sup> July 2022. It is my finding that the deceased suffered minimal pain before he died. In the auspices, I find award of Kshs 50,000/= for pain and suffering and maintain the award of Kshs 200,000/= for loss of expectation of life.

17. 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.**

18. Under this head the trial court awarded Kshs 1,000,000/=.
- The Amended Plaintiff stated that the deceased operated an electronic shop which earned him approximately Kshs 60,000/=/. Patrick Bartore (PW1) reiterated the same in his testimony. I have gone through the record and I have note that there was no proof of income from the testimony and exhibits that the Appellants produced in court. With that in mind, I find that the safest way to make an award under this

head where there is no ascertainable proof of income would be to go the global sum way.

19. In determining the award under this head, I have considered, the fact that the deceased died aged 32 years old and the fact that the deceased was survived by his wife and two sons. I will therefore be guided by the global award approach and make an award of Kshs 1,500,000/=, substituting the award of Kshs 1,000,000/= made by the trial court.

20. With regard to special damages, the trial court awarded Kshs 26,000/=. The Appellants pleaded for funeral expenses and advocate' fees for filing the P&A. I have looked at the record and I have found the receipt for the funeral expenses among the bundle of receipts produced as **P. Exh 7**. There was no receipt for the Advocate's fees. I therefore uphold the award of Kshs 26,000/= as special damages.

21. The final ward is translated as follows: -

Pain and suffering	Kshs 50,000/=
Loss of expectation of life	Kshs 200,000/=
Loss of dependency	Kshs 1,500,000/=

Add special damages

Kshs 26,000/=

**Total**

**Kshs 1,776,000/=**

22. In the end, the Appeal dated 17<sup>th</sup> August 2024 is allowed.

Each party shall bear their costs in the Appeal.

**Judgement delivered, dated and signed at Bomet this 17<sup>th</sup>  
day of December, 2025.**

.....  
**HON. J.K.NG'ARNG'AR**

**JUDGE**

**Judgement delivered in the presence of;**

**Siele and Susan (Court Assistants).**

**Ngeno for the Appellant**

**No appearance for the Respondent**