



**China Henan International Co-operation Group Company Limited v Ontomu & another
(Suing as the Legal Representatives of the Estate of the Late Evans Mauti Manyange – Deceased)
(Civil Appeal E043 of 2024) [2026] KEHC 1745 (KLR) (16 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E043 OF 2024
DKN MAGARE, J
FEBRUARY 16, 2026**

BETWEEN

**CHINA HENAN INTERNATIONAL CO-OPERATION GROUP COMPANY
LIMITED APPELLANT**

AND

GIDION MANYANGE ONTOMU 1ST RESPONDENT

NAOMI NYABATE MANYANGE 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
EVANS MAUTI MANYANGE – DECEASED**

JUDGMENT

1. This is an appeal from the Judgment and decree of Hon. C.A. Ocharo (Chief Magistrate), dated 21.2.2024 arising from Kisii CMCC No. 471 of 2020.
2. The Memorandum of Appeal dated 15.3.2024 is against the award of liability and general damages. However, the Appellant filed a 14-paragraph mammoth Memorandum of Appeal. It is certainly not edifying for advocates to present 14 argumentative grounds of appeal, and end up arguing only one or two issues. This is anathema to the provisions of Order 42 Rule 1 of the Civil Procedure Rules, which posits as doth: -

“(1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.



- (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.
3. The Court of Appeal had this to say about compliance with Rule 86 of the Court of Appeal Rules (which is *pari materia* with Order 42 Rule 1 of the Civil Procedure Rules) in the case of *Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat* [2020] eKLR: -

“We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See *Abdi Ali Dere v. Firoy Hussein Tundal & 2 Others* [2013] eKLR) and *Nasri Ibrahim v. IEBC & 2 Others* [2018] eKLR. In the latter case, this Court lamented:

“We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs.” The 18 grounds of appeal presented by the appellant, *Robinson Kiplagat Tuwei* against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues...”

4. Repetitive grounds of appeal tend to cloud the key issues in dispute for determination by the court. The same issue was addressed succinctly by Court of Appeal in the case of *Kenya Ports Authority v Threeways Shipping Services (K) Limited* [2019] eKLR as follows:

“Our first observation is that the memorandum of appeal in this matter sets out repetitive grounds of appeal. The singular issue in this appeal is whether Section 62 of the *Kenya Ports Authority Act* ousts the jurisdiction of the High Court. We abhor repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the Court. In *William Koross V. Hezekiah Kiptoo Kimue & 4 others*, Civil Appeal No. 223 of 2013, this Court stated:

“The memorandum of appeal contains some thirty-two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memoranda of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better.”

5. The grounds are thus ancillary, repetitive, prolixious and a waste of judicial time. This court will have to deal with whether the magistrate erred in the award of the general and special damages and the liability of 70:30 for the Respondent.

Pleadings

6. The Plaintiff dated 18.9.2020 claimed damages for an accident that occurred on 13.2.2020 when the deceased was aboard motorcycle registration No. KMEK 957E when the Appellant’s driver or agent



- drove the Appellant's motor vehicle Reg. No. 4KA 006489 along Kisii-Migori Road so negligently that it lost control and collided with the motorcycle as a result of which the deceased suffered fatal injuries.
7. The Respondent set forth particulars of negligence for the accident motor vehicle and pleaded special damages as well as general damages under the *Law Reform Act* and *Fatal Accidents Act*.
 8. The Appellant entered appearance and filed defence dated 26.11.2020, denying the particulars of negligence and injuries pleaded in the plaint.
 9. The lower court heard the parties and rendered its judgment in which it found the Appellant 70% liable for the accident and awarded general damages for loss of expectation of life at Ksh. 100,000/=, loss of dependency at Ksh. 3,008,600/= and pain and suffering at Ksh. 10,000/=. The court also awarded funeral expenses of Ksh. 90,000/= and special damages of Ksh. 30,550/=.
 10. Aggrieved by the finding of the lower court, the Appellant lodged the appeal herein.

Evidence

11. During the hearing, PW1 was Naomi Nyabate Manyange. The deceased was her husband. She relied on her witness statement and produced the documents filed as exhibits. It was her case that the deceased was 25 years old and was a rider. He supported the family for Ksh. 3,000/= per month. She depended on the deceased and the one child between them also depended on the deceased. The deceased's parents also depended on him. It was her case that they spent Ksh. 90,000/= on the funeral expenses. On cross examination, it was her case that the letter from the chief confirmed that she was married to the deceased.
12. PW2 was No. 87122 Cpl. Inter Saoke of Gesonso Police Station. He produced the police abstract and confirmed the occurrence of the accident. The rider died on the spot. The rider hit the motor vehicle from behind as it attempted to overtake.
13. On cross examination, it was his case that the matter was pending under investigation. He did not witness the accident but the OB report showed that the motorcyclist hit the motor vehicle from behind.
14. PW3 was John Makori Ogembo. On 13.2.2020, he was at Riamasagara waiting to catch a matatu to drop him at Suneka. He saw the accident motor vehicle from Suneka to Kisii general direction. The motor vehicle swerved to the right as the motorbike was overtaking. The motorbike was then hit by the body of the motor vehicle and the motor vehicle ran over the deceased who was riding. On cross examination, he testified that he witnessed the accident and the motorbike did not have a passenger. The truck was white and red in colour. He did not see any vehicle coming from the opposite direction. The rider was overtaking and the impact was on the right side of the truck.
15. The Respondent's witness testified as DW1, one Zakary Gitera. He testified that the rider hit him from behind. It was about 9-11.30 a.m.
16. DW2 was Cpl. Inter Saoke. He testified that the accident occurred around 1600hrs. He was not the investigating officer but the investigating officer had recorded the time. He did not have a police file.

Submissions

17. The Appellant filed submissions dated 1.9.2025 and submitted that the lower court erred in awarding liability at 70:30 as the Appellant was not liable at all since the deceased rammed into the rear of the motor vehicle. Reliance was placed on *Multiple Hauliers K Ltd v Justus Mutua Malundu* based on which it was submitted that there was a presumption of negligence for whoever hit another from behind.



18. It was also submitted that the Respondent did not prove negligence against the Appellant. The Appellant relied inter alia on the case of *Cheptum v Cupstone Travel Limited & Another* (2022) eKLR.
19. On quantum, it was submitted that an award on loss of dependency was excessive. That the award ought to have been based on lump sum as income was not proved. It was proposed that a net award of Ksh. 138,110/= would be adequate compensation. No submission was made on special damages, loss of expectation of life and pain and suffering.
20. The Respondent filed submissions dated 4.9.2025. It was submitted that the apportionment of 70:30 liability would only be faulted in favour of the Respondent and not the Appellant. In this regard, it was submitted that the Respondent produced an eye witness while the Appellant's driver who testified could not tell what transpired as his story was hearsay. Reliance was placed on *Cheruiyot & Another v GOO & Another* (2025) eKLR.
21. On quantum, it was submitted that the award on pain and suffering was not challenged. On loss of expectation of life, the Respondent submitted that the award of Ksh. 100,000/= was fair as the deceased was 22 years.
22. On loss of dependency, it was submitted that the multiplicand approach was well based on the wage bill of the deceased as general laborer. The multiplier of 25 was also fair. Reliance was placed inter alia on *Eliud Papoi Papa v Rameshbhai Patel & Another* (2017) eKLR.
23. It was also submitted that funeral expenses of 90,000/= were necessary expenses and were well awarded and the special damages were proved as pleaded. Reliance was placed on *JNK v Chairman Board of Governors 92018*) eKLR. Based on this dictum, it was submitted that in spite of lack of receipts, the court ought not to turn a blind eye to the fact that there were funeral costs incurred as a result of the burial of the deceased.

Analysis

24. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
25. This court's jurisdiction to review the evidence should be exercised with caution. In the cases of *Peters vs Sunday Post Limited* [1958] EA 424, the court therein rendered itself as follows:-

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”
26. The court does not have the advantage of seeing and hearing the witnesses as did the lower court, yet it must reconsider the evidence, evaluate it itself and draw its own conclusions. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

27. The Appellant urged the court to find that the lower court erred in granting liability at 70:30 for the Respondent. The court is asked to establish whether the lower court erred in finding on a balance of probabilities, that the Respondent contributed to the accident. The legal burden of proof lies upon the party who invokes the aid of the law and asserts an issue based thereon. In *Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

28. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in *William Kabogo Gitau –vs- George Thuo & 2 Others* [2010] 1 KLE 526 stated that:

“In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

29. The Appellant herein was the registered owner of motor vehicle described by chassis number 4KA 006489. The Appellant’s case on liability was that the Respondent did not prove liability on the part of the Appellant. It was the contention on the part of the Appellant that PW2, the police officer, produced police abstract that showed that the deceased hit the motor vehicle from behind. On the other hand, the Respondent submitted that PW3, the eye witness confirmed that the Appellant’s driver swerved to the right causing the motor vehicle to hit the deceased from its right side. In *Evans Nyakwana –vs- Cleophas Bwana Ongaro* [2015] eKLR it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

30. PW3 was the eye witness. He placed the motor vehicle and the deceased at the scene of the accident and described, without controversy, the accident motor vehicle that was red and white in colour. He then unraveled what transpired, in so doing stating that the motorcycle was overtaking but the motor vehicle swerved and hit the motorcycle after which the deceased, who was riding, fell and was run over.
31. On the other hand, DW1’s case was that he was called and notified through by-standers that a motorcycle had hit him from behind and he had run over the rider.
32. DW1’s account was based on what the people beside the road informed him. He clearly did not witness the circumstances prevailing immediately before the accident. None of the persons said to



have informed DW1 of what had transpired were called as witnesses. The Respondent thus proved on a balance of probabilities that the Appellant's driver was negligent and it was upon the Appellant to prove contributory negligence. The lower court found contributory negligence of 30% against the Respondent and without a cross appeal, I am unable to interfere with the discretion of the lower court. The Appellant had the duty to prove contributory negligence against the deceased. In the case of *Mac Drugall App V Central Railroad Co.* Rbr 63 Cal 431 the court held that; -

“In an action to recover damages for a personal injury alleged to have been received through the negligence of the defendant, contributory negligence on the part of the plaintiff is a matter of defence and it is an error to instruct the jury that the burden of proof is on the plaintiff to show that the injury occurred without such negligence”.

33. Further, PW2, the police officer was not a witness to prove how the accident occurred. He was a police officer who confirmed that the accident occurred on the material date and was reported. He did not investigate the matter as the matter was pending under investigations. Therefore, a conclusion based on the evidence of PW2 on who caused the accident could not be proper.
34. Traffic Police Officers as civil servants need not necessarily find for the Plaintiff in a case. They may testify in court as witnesses of the plaintiff but produce a report that does not support the plaintiff's case. They may also testify in court for the defendant but produce a report that does not support the defendant's case. That is their role. Their duty is to confirm that the accident occurred, was reported and where available, to present as accurately as possible a report on the circumstances that led to the accident. It does not matter that the report will support one or the other case. The report might as well find no one to blame.
35. Therefore, in my view, the case of the Respondent that the Appellant's driver caused the accident was more believable and probable. The balance of probabilities is also about what is likely to have happened than the other. Lord Nicholls of Birkenhead in *Re H and Others (Minors)* [1996] AC 563, 586 held that;

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the even was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriated in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.....”

36. The accident could not be said to have occurred by magic where everyone was denying culpability but not asserting an act of God; or by unidentified flying object. In a court room situation, the court had to deal with empirical evidence on what is more probable than the other. The court can possibly get it wrong but if better still 50.01:49.99, there can be no better equal chance. This is the rule in *Embu Road Services V Riimi* (1968) EA22 and *25 Mzuri Muhhidin V Nazzar Bin Seif* (1961) EA 201, *Menezes Stylianicers Ltd* CA No.46 of 1962 in which the courts held inter alia; -

“Where the circumstances of the accident gave rise to the inference of negligence, the defendant, in order to escape liability, has to show that there was a probable cause of the accident, which does not create negligence or that the explanation for the accident was consistent only with absence of negligence. The essential point in this case, therefore is a question of fact, that is whether the explanation given by the Respondent shows that the probable cause of the accident was not due to his negligence or that it was consistent only



with absence of negligence”. See also Odungas Digest on Civil case law and Procedure 3rd Edition Vol 7 page 5789 at paragraph (D).

37. The appeal against liability is not merited and is dismissed.
38. On damages the lower court awarded of Ksh. 10,000/- under the head for pain and suffering. In Civil Appeal No. 42 of 2018 Joseph Kivati Wambua vs SMM & Another (suing as the Legal Representatives of the Estate of EMM-Deceased) paragraph 21 the Hon. Odunga J (as he then was) observed: -

“The Appellant has taken issue with the award for pain and suffering on the ground that the evidence on record showed that the deceased passed away the same day and therefore the Respondents ought to have been awarded a lesser sum. In my view what determines the award under that head is how long the deceased took before he either passed away or lost consciousness... a distinction ought to be made between a case where the deceased passes away instantly and where the death takes place some times after the accident. In the former, the award ought to be minimal as the legal presumption is that the deceased did not undergo pain before he died. However, where the deceased dies several hours after the accident during which time he was conscious and was in pain, an award for pain and suffering would not be nominal.” (emphasis mine).

39. The above case law points to the fact that the award of pain and suffering depends on whether the deceased died on the spot or after some time. That is, 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. Where a deceased died on the spot, courts have taken the approach that minimal damages should be granted unlike in a case where a deceased die later on. In this case, the deceased passed away on the spot. The amount that the court awarded of Ksh. 10,000/= was low but not inordinately low and also as the Appellant did not appeal, I uphold it.
40. On loss of expectation of life, I do not think Ksh. 100,00/= was excessive award. There was no evidence that the deceased was of ill health. He was 25 years at the time of his death In Mercy Muriuki & Another vs. Samuel Mwangi Nduati & Another (Suing as the legal Administrator of the Estate of the late Mwangi) [2019] eKLR it was observed that:

“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 award range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.”

41. Under dependency ratio, to interfere with the finding of the lower court on loss of dependency, this court has to find basis. The deceased herein was 25 years and was married. He had one child. There was no prove of income. There was however, no dispute that he was a boda boda rider. This must have earned him some income. The lower court applied the minimum wage approach for a general laborer in 2020 and awarded Ksh. 15,043/= per month. Minimum wage approach using general laborer was most ideal since the Appellant did not deny that the deceased was a boda boda rider. In Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 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 ground of excess or insufficiency.

55. The deceased died at 25 years old per the certificate of death produced and would be expected to work until the retirement age of 60 years. Regarding the vicissitudes of life, the multiplier of 25 years that the lower court applied was appropriate in the circumstances. The Court in *Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988 (unreported), Ringera J*, as he then was, held at page 248 that:

“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 purchases. 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 thus 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.”

42. I do not follow the proposal by the Appellant that a lump sum would apply for the deceased who was undisputedly engaged in income earning boda boda business. I also find that the award of dependency based on the ratio of 2/3 was not erroneous and did take into consideration that the deceased was married and had 1 child. I will not interfere with it. As was held by Odunga J (as he then was) in *J W N v Kassam Hauliers Limited [2020] eKLR*:

17. Conventionally Courts have taken married persons more so with children to spend more on their families than themselves and apportioned a dependency ratio of 2/3. On the other had they have taken unmarried people to spend more on themselves more than their dependants more so parents hence have apportioned a dependency ratio of 1/3 which has over time been enhanced to 1/2. In this case it was submitted that as the deceased was married with 3 children he spent more on his family than self hence a dependency ratio of 2/3 would suffice.

43. On special damages, the amount of Ksh. 26,740/= was pleaded and the lower court awarded Ksh. 26,740/=. With special damages, the rule is strict and somewhat mathematical. The court has to discern pleaded damages and proceed to find their proof. It is not based on estimates. The Court of Appeal in *Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177* stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

44. Special damages are thus very specific and constitute liquidated claim which must be pleaded and proved. This court’s task thus entails whether the trial court failed to award special damages that were



pleaded and proved. In *Joseph Kipkorir Rono vs. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003*, Kimaru, J held that:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred...Special damages and general damages are used in corresponding senses. Thus in personal injury claims, ‘special damages’ refers to past expenses and lost earnings, whilst ‘general damages’ will include anticipated loss as well as damages for pain and suffering and loss of amenities... Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Therefore in the instant case the loss of income as a direct consequence of this fraud would be both a general damage as well as a special damage. General damages particularly extent thereof would be unknown at the time of the trial and must await the conclusion of the case so that they may be assessed. Special damages on the other hand consist of those losses that could be calculated at the time of the trial. Special damages must be pleaded, but so must future pecuniary loss if it may lead to surprise. Non-pecuniary damage must not be quantified in a pleading...There ought to be a distinction between past pecuniary losses or expenses already incurred and could easily be calculated by say reference to receipts obtained and anticipated future pecuniary loss or expenses which is continuing and which though one may know the multiplicand you will not normally know how long the loss will take. Such an anticipated loss is general damage, which must of necessity await the completion of the suit to be assessed by the Court. Special damages on the other hand is calculable at the date of the trial out of which a round figure will be obtained. General damages are such as the law will presume to be the direct natural or probable consequences of the action complained of. Special damages on the other hand, are such as the law will infer, from the nature of the act. They do not follow in the ordinary course but are exceptional in their character and, therefore, they must be claimed specifically and proved strictly...Specific loss of profits consequential upon the loss of use of an article for a specific period to the date of the plaint is special damage, which must be pleaded. However, in certain circumstances loss of profits could be included within a claim for general damages... General damages consist of the nature of prospective loss of income while special damages consist of out of pocket expenses and loss of earnings or income incurred down to the date of trial and is generally capable of substantially exact calculation. Where damages has become crystallised and concrete since the wrong the defendant could be surprised at the trial by the detail of its amount.”

45. On special damages, I find that the amount pleaded was the amount proved and awarded at Ksh. 30,550/=. There was a receipt for legal fees of Ksh. 30,000/= but the Respondent did not produce the motor vehicle search or receipt and the award of Ksh. 550/= was unfounded.
46. On the special damages relating to funeral expenses, it goes without argument that the Respondent must have incurred expenses in relation to the funeral. The Respondent pleaded and testified that Ksh. 90,000/= was incurred. I find the projected amount to be reasonable. The Appellant did not dispute that expenses were incurred but failed to propose what then could be reasonable. I have no basis to



interfere with the reasoning of the lower court. I am guided by the Court of Appeal in the case of *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* [2016] eKLR that:

“We do not discern from our reading of this decision a departure from the time tested principle that special damages should not only be specifically pleaded but must also be strictly proved. ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc. However, the claim herein did not fall in that class.”

47. The court also takes note of the cases where receipts were not produced but funeral expenses found to have been expended. In *Alice O. Alukwe v Akamba Public Road Services Ltd & 3 others* [2013] eKLR, the plaintiff was awarded Kshs. 30,000/- for funeral expenses. The Court of Appeal in the case of *Jacob Ayiga Maruja & another Vs. Simeon Obayo* [2005] eKLR awarded the plaintiff Kshs. 60,000/-. While in *Lucy Wambui Kihoro (Suing As Personal Representative Of Deceased, Douglas Kinyua Wambui) v Elizabeth Njeri Obuong* [2015] eKLR, and in *J N K (Suing as the Legal representative of the Estate of MMM (Deceased) v Chairman Board of Governors [...] Boys High School* [2018] KEHC 7003 (KLR), the plaintiff was awarded Kshs. 50,000/-.
48. In the circumstances, I dismiss the appeal save for a paltry reduction of the special damages by Ksh. 550/= that was not proved.

Determination

49. The upshot of the foregoing is that I make the following orders: -
- a. The appeal is dismissed.
 - b. The award of Ksh. 30,550/= under special damages is reduced to Ksh. 30,000/=.
 - c. The Respondent shall have the cost of this appeal assessed at Ksh. 125,000/=.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 16TH DAY OF FEBRUARY, 2026.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Alusa for the Appellant

Ms. Kusa for the Respondent

Court Assistant – Michael

