Langat & another v Ojok (Suing as the legal representative of the Estate of the Late Dennis Okae Ojok) (Civil Appeal E017 of 2025) [2026] KEHC 2823 (KLR) (5 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2823 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CIVIL APPEAL E017 OF 2025

WA OKWANY, J

FEBRUARY 5, 2026

BETWEEN

DANCAN KIRUI LANGAT ..... 1ST APPELLANT

JH CAR DEALERS LIMITED ..... 2ND APPELLANT

AND

JOSEPHER MELLOD OJOK (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE DENNIS OKAE OJOK) ..... RESPONDENT

(Being an appeal from the judgment of Hon. Eunice Kelly Aomo, (PM) delivered on 14th January 2025 in Naivasha MCCC No. E179 of 2022)

JUDGMENT

1. The Respondent herein sued the Appellants before the trial court seeking damages under the *Law Reform Act* and *Fatal Accidents Act* following the death of the deceased in a road traffic accident that occurred along the Naivasha–Nakuru Highway on 13th August 2021.
2. The Respondent alleged that the 1st Appellant drove motor vehicle Reg. No. KDD 158A negligently thereby causing the accident in which the deceased lost his life.
3. The Appellants denied liability in their defence filed on 13th April 2022, attributing the accident solely to the deceased who was driving motor vehicle KAH 003B.
4. After hearing evidence from both sides, the trial court delivered judgment on 14th January 2025, and determined liability at 80%: 20% against the Respondent/deceased's estate. Damages were awarded to the Respondent as follows: -
    a. Pain and suffering: Kshs. 50,000
    b. Loss of expectation of life: Kshs. 100,000

c. Loss of dependency: Kshs. 11,520,000

d. Special damages: Kshs. 45,200

e. Funeral expenses: Kshs. 50,000

Less 80% liability: Kshs. 2,429,200 plus costs and interest.

5. Aggrieved by the trial court's decision, the Appellants filed this appeal challenging the trial court's findings on both liability and quantum.

6. The Appellants raise several complaints, chiefly, that the learned Magistrate:

i. Shifted the burden of proof, contrary to the principle that he who alleges must prove. ii. Relied on uncorroborated evidence of PW4 (alleged eyewitness), which contradicted police evidence and the sketch map. iii. Erroneously apportioned liability, despite police findings blaming the deceased. iv. Misapplied Lakhamshi v AG (1971), arguing it does not apply to the facts of this case. v. Erroneously adopted Kshs. 45,000 as multiplicand, despite no documentary proof of the deceased's income. vi. Relied on pleadings instead of actual proof of income. vii. Failed to appreciate contradictory testimony between Respondent and PW3 on the deceased's earnings. viii. Failed to find that dependency was not proved, warranting dismissal of the claim for loss of dependency.

7. The Appeal was canvassed by way of written submissions which I have considered.

Summary of the Evidence

Respondent's Case

8. The Respondent called four (4) witnesses:

9. PW1, Joseph Mellod Ojok, the Respondent herein adopted his witness statement and produced the letters of administration issued to him in respect to the deceased's estate. He admitted that he did not file the deceased's Death certificate, payslips, Birth certificates of the dependants, receipts for funeral expenses, police abstract or letters of administration. He confirmed that he was not present at the accident scene.

10. PW2, PC Samson Okello, produced the police abstract (PExh.1) and confirmed that the accident was still under investigation. He stated that he was not the investigating officer and further, that he did not visit the scene and had no Occurrence Book (OB).

11. PW3, Job Odhiambo Nduri, testified that the deceased worked at Kayole Hospital as an administrator earning Kshs. 60,000 per month. On cross-examination he could not produce employment records, payslips, NHIF/NSSF records, bank remittances. He stated that he did not author the employment letter but that he signed it on behalf of the Director.

12. PW4, Samson Angungu, an eyewitness testified that the deceased's motor vehicle was overtaking when the collision occurred. On cross-examination, he stated that he did not record any statement with police and was not able to identify officers who recorded his later statement. He stated that the accident occurred at night and confirmed that the road had three lanes, including an accelerating lane.

Appellants' Case

13. DW1, PC Josphat Makau was the Investigating Officer. He investigated the accident and produced the police abstract and police file. He concluded that the deceased was 100% to blame for the accident,

having overtaken on a continuous yellow line into the accelerating lane. He confirmed that the Office of Director of Public Prosecutions (ODPP) reviewed the file and agreed that the deceased was at fault.

14. DW2, Dancan Kirui Langat, the 1st Appellant and driver of motor vehicle Reg. No. KDD 158A testified that he was in the middle/accelerating lane heading towards Nairobi when the deceased's vehicle traveling from the opposite direction encroached into his lane while overtaking. He stated that he was not able to swerve as there was another vehicle on his left side. He confirmed that road markings prohibited overtaking at the point.

Submissions

Appellants' Submissions

15. The Appellants argued that burden of proof was improperly shifted as the evidence of PW4 was unreliable and contradicted police investigations and sketch map. The Appellants observed that the deceased caused the accident by ignoring the continuous yellow line which prohibited overtaking. The Appellants noted that the trial court misapplied the decision in Lakhamshi vs. AG (1971), which they stated, is distinguishable. They cited the cases of Simon Kimani vs. Julius Robi (2018) eKLR, Tabitha Moraa Ratemo vs. David Mbogu (2021) KHEC 2598 (KLR) and Kiema Mutuku vs. Kenya Cargo Hauling Services Ltd (1991) 2 KAR 258 for the argument that there is as yet no liability without fault in Kenya and that a plaintiff must prove negligence.

16. The Appellants urged the Court to find the deceased 100% liable.

17. On quantum, the Appellants maintained that the deceased's alleged income of Kshs. 45,000 or Kshs. 60,000 was not proved as the Appointment letter is not proof of employment or earnings. They noted that no payslips, bank statements, NSSF, NHIF, or KRA returns were produced to support the alleged earnings and that dependency was therefore not proved. Reference was made to the decision in Gerald Mbale Mwea vs. Kariko Kihara (1997) KLR where it was held that the issue of dependency is always a question of fact to be proved by he who asserts it.

18. The Appellants urged this court to set aside the entire award on dependency, liability apportionment and dismiss the suit in the lower court.

Respondent's Submissions

19. The Respondent submittted hat the trial court's finding on liability was well-reasoned and in tandem with his testimony that the Appellants' vehicle swerved into the deceased's lane. The Respondent noted that PC Josphat Makau (PW2), the police officer, blamed the driver of KDD 158A for overspeeding and careless driving and further, that PW4, an eyewitness, also testified that the Appellants' vehicle was dangerously overtaking when the accident occurred.

20. The Respondent argued that the 1st Appellant's testimony was self-serving and inconsistent. For example; he claimed to have travelled from Kericho to Kinungi in two hours, a timeline suggesting overspeeding and that his version of the accident contradicted the testimony of PW2 and the sketch map.

21. The Respondent relied on the decision in Standard Chartered Bank Ltd vs. Intercom Services Ltd & Others [2004] 2 KLR 183, where the Court of Appeal held that the trial court must examine contradictions and demeanour of witnesses.

22. It was submitted that the trial court was best placed to assess credibility, and that its findings should not lightly be disturbed.

23. On loss of dependency the Respondent submitted that the trial court exercised proper discretion in adopting a multiplicand of Kshs. 45,000, despite uncontroverted evidence that the deceased earned Kshs. 60,000 as a radiographer/sonographer. The Respondent noted that a letter of appointment from Kayole Hospital was produced to confirm deceased's employment and a certificate (P. Exh. 1) showed his medical imaging qualification.

24. It was the Respondent's case that no evidence was tendered by the Appellants to dispute employment, authenticity of documents, or the occupation of the deceased.

25. The Respondent emphasized that the trial court did not mechanically adopt Kshs. 60,000 but judicially reduced it to Kshs. 45,000 to reflect statutory deductions and general contingencies, an approach consistent with superior court jurisprudence.

26. It was submitted that given the deceased's age of 28 years, the trial court rightly applied a multiplier of 32 years and a dependency ratio of two-thirds before arriving at the sum of Kshs. 11,520,000 before applying 80% contribution. Reference was made to the decision in Butt vs. Khan (1981) KLR 349 where it was held that: -

> " An appellate court should not interfere with a trial court's award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate."

27. The Respondent contended that the Appellants have shown no misdirection, factual error, or application of wrong principles to justify interference with the trial court's findings.

28. On Special Damages, the Respondent asserted that Kshs. 287,200 were specifically pleaded and proved through supporting receipts but the trial court awarded Kshs. 95,200, demonstrating a cautious and conservative approach. The Respondent added that the Appellants did not challenge authenticity or admissibility of receipts.

29. The Respondent urged this court to uphold the trial court's findings on general and special damages.

30. I find that the main issues for my determination are whether the trial court erred in apportioning liability at 80:20 in favour of the Appellants and in adopting a multiplicand of Kshs. 45,000.

Analysis and Determination

Liability

31. It is trite that an appellate court must be slow to interfere with a trial court's finding of fact. This is the position that was adopted in Selle & Another vs. Associated Motor Boat Co. Ltd [1968] EA 123, where the Court of Appeal stated that: -

> " This court is not bound necessarily to accept the findings of fact by the court below but 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."

32. Similarly, in Peters vs. Sunday Post Ltd [1958] EA 424:

> " It is a strong thing for an appellate court to differ from the finding on a question of fact of the judge who tried the case... and had the advantage of hearing the witnesses."

Liability

33. It is trite that the burden of proof in negligence claims lies squarely on the plaintiff and never shifts. This principle was emphatically restated in Kiema Mutuku vs. Kenya Cargo Hauling Services Ltd [1991] 2 KAR 258, where the Court of Appeal held: -

> " There is as yet no liability without fault in the law of torts and a plaintiff must prove some negligence against the defendant."

34. In the present case, the Respondent did not witness the accident as he was not present at the scene. His evidence on liability rested primarily on the testimony of PW4, an alleged eyewitness. PW2, a police officer, testified that he was neither the investigating officer nor a visitor to the scene and merely produced a police abstract.

35. PW4 conceded that the accident occurred at night, that he did not record an initial statement with the police, and that he could not identify the officer who later recorded his statement. He testified as follows on how the accident occurred: -

> " I was standing on the side of the road, on left side facing Nakuru, deceased motor vehicle was travelling from Nairobi towards Naivasha. Motor vehicle registration number KDD 158A was headed opposite direction. It's to blame for accident. It was overtaking other motor vehicles at a higher sped. Police officers found me at scene. Accident occurred on left side on deceased's motor vehicle's lane. KDD 158A had crossed to lane of motor vehicle of deceased."

36. On cross- examination PW4 stated as follows: -

> I am not related to deceased. I did not know him. I witnessed accident, police found me at scene. I recorded my witness statement at my advocates office, not police station. I gave police officers my contact. Police did not call me to police station. One other witness at scene also had my contact because I was in a hurry to return to Nakuru after accident."

37. DW1, the investigating officer, on the other hand, produced the police file that contained the sketch map and testified that investigations established that the deceased overtook on a continuous yellow line and encroached into the accelerating lane, thereby causing the collision. His evidence was reinforced by the fact that the Office of the Director of Public Prosecutions reviewed the file and concurred that the deceased was wholly to blame.

38. Courts have consistently held that where oral testimony conflicts with documentary and objective evidence, documentary evidence must prevail unless cogent reasons are given. In Ndolo vs. Ndolo [2008] 1 KLR (G & F) 742 the court of appeal held that: -

> " The evidence of the appellant was purely oral and was contradicted by documentary evidence. In such circumstances, the documentary evidence must be given greater weight."

39. Similarly, in Trust Bank Ltd v Paramount Universal Bank Ltd & 2 Others [2009] eKLR it was held that: -

> " Where documentary evidence contradicts oral testimony, documentary evidence prevails."

40. In the present case, I note that the learned trial magistrate weighed the evidence presented by both sides and rendered herself as follows: -

> " The Deceased was blamed for the accident as per the evidence of DW2 as corroborated by DW1 and the documents produced by the defendants as exhibits, however, a further look at the evidence on record, I note that the defendants also failed to tender any evidence as to what they did, on their part, to avoid the accident or to mitigate the damage. For the said reason, I find it fair to and apportion liability in the ratio of 80:20, with the deceased bearing 80% and defendant 20% thereof."

41. The issue that this court has to grapple with is whether the trial court arrived at the correct verdict on liability. This is a case where the court was confronted with uncorroborated testimony of PW4, an eye witness, and the findings of the investigating officer who did not witness the accident first-hand.

42. The trial court cited the holding in Lakhamshi vs. Attorney General (supra) and apportioned liability at 80% against the deceased and 20% against the Appellants. In a nutshell, the trial court presupposed that both parties were at fault, albeit, at different degrees.

43. My finding is that looking at the facts of the case and the circumstances under which the accident occurred, at night when visibility could have been compromised by darkness and weather conditions, the trial court arrived at the correct finding on liability by holding both drivers responsible. I find that the trial court's conclusion that the deceased should bear greater blame is reasonable.

44. I find no misdirection, no misapprehension of evidence, and no violation of legal principles to justify interfering with the apportionment.

45. The apportionment of liability at 80:20 against the deceased is therefore upheld.

Quantum

46. It is trite that an appellate court should not disturb an award of damages unless the same is so inordinately high or low as to represent an erroneous estimate or if the trial judge acted on wrong principles. (See Butt vs. Khan [1981] KLR 349).

Loss of Dependency

47. The law is settled that claims under the *Fatal Accidents Act* are special claims that must be strictly proved and not presumed. In Gerald Mbale Mwea vs. Kariko Kihara & another [1997] KECA 103 (KLR) the Court held: -

> " Dependency is a matter of fact to be proved by evidence. It is not to be assumed."

48. The trial court adopted a multiplicand of Kshs. 45,000, despite evidence showing the deceased earned Kshs. 60,000 as a radiographer/sonographer.

49. Evidence on income included an appointment letter from Kayole Hospital and a certificate in medical imaging sciences (PExh.1).

50. Even though the Appellants argued that the letter was not sufficient proof of earnings, no evidence was tendered to contradict the deceased's employment. It is noteworthy that documents in support of the deceased's employment was properly produced, admitted without objection and was supported by qualification documents.

51. I note that the trial court prudently reduced the deceased's earnings to account for statutory deductions, contingencies and general judicial caution which is an approach that is consistent with decisions made in cases such as Chabhadiya Enterprise Ltd vs. Gladys Mutenyo Bitali [2018] eKLR, where the court noted that there was no documentary evidence on income but adopted an award based on lumpsum/global method.

Multiplier and Dependency Ratio

52. The deceased was aged 28 years at the time of his death. A multiplier of 32 years and dependency ratio of 2/3 was adopted. I find that those are standard rates for a young, professionally-employed adult. My finding is that the resulting figure of Kshs. 11,520,000 for los of dependency, before liability, is not excessive. I am guided by the decision in Mwanzia vs. Ngalali Mutua and Kenya Bus Services (Msa) Ltd & Another which was quoted with approval in Albert Odawa vs. Gichimu Gichenji, NKU HCCA No. 15 of 2003 (2007) eKLR where it was held that: -

> " The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do."

Special Damages

53. The trial court awarded Kshs. 95,200 even though Kshs. 287,200 had been proved. The Appellants did not challenge the authenticity of receipts. I find that this further demonstrates that the trial court acted conservatively, not extravagantly in awarding special damages.

54. In sum, I find that the Appellants have not demonstrated that the award was inordinately high or that the trial court applied wrong principles or ignored material evidence. It is my view that the award is reasonable and is firmly supported by evidence.

55. In sum, I find that the instant appeal is not merited and I therefore dismiss it in its entirety with costs to the Respondent.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF FEBRUARY, 2025

HON. W. A. OKWANY

JUDGE

05/02/2026

For Appellant No Appearance

For Respondent No Appearance

Court Assistant Karani