



**Njenga (Suing as the Administrator of the Estate of Martin Ruigu Njengai - Deceased) v Bare & 2 others (Civil Appeal E141 of 2024) [2026] KEHC 4819 (KLR) (9 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL APPEAL E141 OF 2024**

**WA OKWANY, J**

**APRIL 9, 2026**

**BETWEEN**

**MARY MWIHAKI NJENGA (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF MARTIN RUIGU NJENGAI - DECEASED) ..... APPELLANT**

**AND**

**IBRAHIM AHMED BARE ..... 1<sup>ST</sup> RESPONDENT**

**AWARE LOGISTICS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**TASLIM TRANSPORT LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Appellant sued the Respondent for damages under the *Law Reform Act* and the *Fatal Accidents Act* following the fatal accident involving the deceased, Martin Ruigu Njengai, who was said to have been lawfully driving motor vehicle registration number KAN 597G, when the 1st Respondent negligently drove motor vehicle registration number KDB 891V thereby causing a collision and fatality.
2. The Appellant pleaded negligence on the part of the Respondents including excessive speed, failure to keep proper lookout, driving on the wrong lane and failure to avoid the accident.
3. The Appellant also pleaded that the deceased was aged about 48 years, was a businessman earning at least Kshs. 60,000/= per month, and left behind dependants.
4. The Respondents denied the claim and attributed the accident to the sole negligence of the deceased.
5. After hearing the case, the trial court entered judgment for the Plaintiff (now Appellant), apportioned liability at 50:50 and awarded damages as follows: -
  - a. Pain and suffering – Kshs. 10,000/=
  - b. Loss of dependency – Kshs. 695,131.12



- c. Loss of expectation of life – Kshs. 100,000/=
- d. Special damages – Kshs. 550/=
- e. Costs plus interest (subject to liability)

### **The Appeal**

- 6. The Appellant was dissatisfied with the decision on quantum of damages, and in particular the computation of loss of dependency and the omission of burial expenses, and lodged the appeal herein.
- 7. The Appellant contends that the trial court erred by failing to award proved burial expenses of Kshs. 80,000/=, by wrongly adopting a minimum wage multiplicand of Kshs. 7,240.95 for the deceased despite evidence showing that he was a businessman, by applying an unjustifiably low multiplier of 12 years for a deceased aged 47 years with no underlying health conditions, and by using the multiplier method under the *Fatal Accidents Act* in a manner that resulted in an erroneous assessment of the deceased's earnings.
- 8. The Appellant further argues that had the court been unconvinced on the deceased's exact income, it ought to have departed from the multiplier approach and instead adopted a global/lump sum approach in assessing damages for loss of dependency.
- 9. The 1st and 3rd Respondents opposed the appeal and filed a Cross-Appeal, challenging the finding on liability and urging that liability should have been assessed at 100% against the deceased, leading to dismissal of the suit. The suit against the 2nd Respondent was withdrawn.

### **Evidence before the Trial Court**

- 10. At the hearing, the Appellant testified and produced documentary evidence including the death certificate, police abstract, the Chief's letter and receipts in support of special damages.
- 11. PW2 a police officer testified and produced the police abstract but stated that investigations were still pending.
- 12. The Appellant called PW3 (Charles Mutahi) who alleged that he visited the scene and took photographs.
- 13. The defence called DW1 (driver/eye witness), DW2 (investigator) who visited the scene weeks later and DW3 (police officer) who blamed the deceased for the accident.
- 14. The appeal was canvassed by way of written submissions which I have considered.

### **The Appellant's Submissions**

- 15. The Appellant submitted that the trial court erred by failing to award burial expenses of Kshs. 80,000/= and in assessing damages under the *Fatal Accidents Act*, particularly by adopting minimum wage rather than a reasonable earnings estimate or appropriate method, including the global award approach.
- 16. The Appellant relied on several authorities including the case of Catholic Diocese of Kisumu vs. Sophia Achieng Tete [2004] eKLR on when an appellate court may interfere with the trial court's finding on quantum, and the case of Moses Mairua Muchiri vs. Cyrus Maina Macharia [2016] eKLR on adopting global award where multiplicand cannot be ascertained.



## Respondents' Submissions

17. The Respondents opposed the appeal and faulted the trial court for failing to give weight to the evidence of DW1, DW2 and DW3 which, in their view, pointed to 100% negligence by the deceased. They maintained that the evidence of PW3 was unreliable and was not supported by police records or OB extracts.
18. The Respondents opined that the court ought not to have apportioned liability equally when evidence established blame.
19. On the cross-appeal procedure, the Respondents justified their cross-appeal and submitted that it was filed within reasonable time. They relied on the cases of Kenya Power & Lighting Co. Ltd vs. Peter Langi Mwasi [2018] KEHC 4833 (KLR) and Kindest Auctioneers vs. Orbit Chemicals Industries Ltd [2023] KEELC 21782 (KLR) which support permissibility of cross-appeals under Order 42 rule 32 CPR and reasonable timelines.
20. The Respondents urged the court to find against the Appellant on causation and liability. They anchored their argument on well-settled principles from both Kenyan and common law authorities. They cited the case of Isaac Kingangi M'Thai vs. Ngari Thitu & another [2018] eKLR, where the court considered the centrality of causation in negligence claims and emphasized that a claimant must demonstrate that the loss complained of would not have occurred if not for the defendant's breach. The case is often cited for reinforcing the idea that negligence is not proved merely by showing injury or loss, but by showing a sufficiently direct causal link between the impugned act and the harm suffered.
21. Reference was also made to the case of Stapley vs. Gypsum Mines Ltd (2) [1953] A.C. 663, where the House of Lords took a pragmatic view of causation and liability, observing that legal responsibility is not determined through abstract logic but through common sense and practical causation which means that the court should evaluate the facts realistically to decide whether the defendant's conduct materially contributed to the injury.
22. The case of William Kabogo Gitau vs. George Thuo & 2 others [2010] eKLR was also cited to reaffirm that civil liability is established on a balance of probabilities, and that a party must bring evidence demonstrating that their version is more likely than not, and where the evidence on causation or fault is speculative or evenly balanced, the claimant's case may fail.
23. On quantum (without prejudice), the Respondents supported the minimum wage methodology and urged restraint against excessive global awards where income is unproven. Reference was made to the case of Njagi vs. Ngugi & another (Estate of Gedion Kamwe) [2023] KEHC 17682 (KLR), where the court endorsed the approach that where the deceased's earnings cannot be proved by documentary evidence, the court may adopt minimum wage as a fair guide, but must remain consistent with the principle of reasonable compensation rather than enrichment. The decision drew support from Amazon Energy Ltd vs. Josephine Martha Musyoka & another [2019] eKLR, where the court cautioned that although courts may grant global sums in appropriate cases (especially where evidence is uncertain), such awards should remain moderate and should not exceed what would ordinarily be arrived at under a multiplier/multiplicand approach, because doing so would distort the compensatory aim of damages.



## **Duty of the Appellate Court**

24. This being a first appeal, this court is obligated to re-evaluate and reconsider the evidence on record and arrive at its own conclusion, bearing in mind that it did not see or hear the witnesses testify. (See *Selle & Another vs. Associated Motor Boat Co. Ltd* [1968] EA 123).

## **Issues for Determination**

25. Having considered the pleadings, record, submissions, and authorities, I find that the issues for determination are: -
- a. Whether the Respondents' Cross-Appeal is properly before the court.
  - b. Whether the trial court erred in apportioning liability at 50:50.
  - c. Whether the Appellant proved entitlement to burial expenses and whether the trial court erred in failing to award Kshs. 80,000/=.
  - d. Whether the trial court erred in the assessment of damages under the *Fatal Accidents Act*, particularly on earnings/multiplicand and method used.

## **Analysis and Determination**

### **Validity of the Cross-Appeal**

26. The Respondents submitted that although the *Civil Procedure Act* does not expressly provide timelines for a cross-appeal, the practice of filing cross-appeals is supported under Order 42 rule 32 and the same must be filed within a reasonable time.
27. In *Kenya Power & Lighting Co. Ltd vs. Peter Langi Mwasi (supra)* and *Kindest Auctioneers case (supra)* the Court affirmed that a cross-appeal may be filed within reasonable time and the court has power to make any order that ought to have been made by the trial court.
28. In the present case, I find that the cross-appeal was filed within reasonable time and is therefore competent and properly before court.

### **Liability (50:50)**

29. The trial court reasoned that since police investigations were reported to be pending and the competing evidence was not conclusive, liability could not be ascertained thus calling for the apportionment of liability at 50:50.
30. The Respondents contended that the evidence, including police records and defence witnesses, established that the deceased caused the accident by failing to keep to his lane. The Respondents further argued that PW3's evidence was unreliable and unsupported by police records.
31. This court is guided by the principle that determination of liability in road traffic cases is not a scientific affair but is resolved on common sense and evaluation of evidence, as discussed in *Isaac Kingangi case (supra)*.
32. It is also trite that the standard of proof in civil matters remains on a balance of probabilities, and that a party who establishes their case above the 50% threshold succeeds, as stated in *William Kabogo Gitau case (Supra)*.



33. From the material placed before the trial court it is clear that the police evidence produced was not conclusive as investigations were reported as pending. The trial court was faced with competing versions. While the defence insisted that blame lay with the deceased, the court found the basis unclear.
34. In such circumstances, courts have often adopted an equal apportionment where blame cannot be clearly fixed. I find no sufficient basis for interfering with the trial court's discretion on liability. The Cross-Appeal on liability therefore fails and liability remains 50:50.

#### **Burial expenses (Kshs. 80,000/=)**

35. The Appellant argued that the trial court failed to award burial expenses despite production of receipts, and urged that courts occasionally relax strict proof rules on burial expenses.
36. In *Capital Fish Kenya Limited vs. Kenya Power & Lighting Co. Ltd* [2016] eKLR, the Court reaffirmed that special damages must be pleaded and strictly proved, but recognized some relaxation in claims such as burial expenses.
37. Similarly, *Premier Dairy Limited vs. Amarjit Singh Sagoo & another* [2013] eKLR the court observed that bereaved families should not be denied compensation for burial expenses merely due to strict record-keeping expectations.
38. In the present case, the Appellant asserted that she produced receipts for burial expenses amounting to Kshs. 80,000/= during trial but that the trial court, however, only awarded Kshs. 550/= as proved.
39. Given the above cited authorities, burial expenses fall within the category that courts may recognize even where there are technical pleading deficiencies, provided the expense is reasonable and proved.
40. It is my finding that burial expenses of Kshs. 80,000/= are reasonable and ought to be awarded.

#### **Loss of Dependency (*Fatal Accidents Act*)**

41. The trial court adopted a minimum wage multiplicand of Kshs. 7,240.95, multiplier of 12 years, ratio of 2/3, arriving at Kshs. 695,131.12.
42. The Appellant argued that the deceased was a businessman and the court wrongly relied on the death certificate entry, while disregarding evidence of business.
43. In *Mbae vs. Mugambi* [2024] KEHC 3376 (KLR) the Court held that an entry in a death certificate is not sufficient proof of occupation.
44. In *Jacob Ayiga vs. Simon Obayo* [2005] eKLR, the Court of Appeal held that documentary evidence is not the only mode of proving earnings, as many Kenyans earn without strict documentation. The court rendered itself as follows: -

“We do not subscribe to the view that the only way to prove the profession of a person must be by the production of certificates and that the only way to prove earnings is equally the production of documents. That kind of stand would do a lot of injustice to many... who may keep no records and yet earn their livelihood.”

45. Further, in *Bash Hauliers Ltd vs. Judith Nabwire Wamalwa & another* [2020] eKLR the court recognized that MPESA and simple records can assist in proving earnings.



46. The question that arises is the appropriate method to be adopted even where earnings are not precisely proved. In *Albert Odawa vs. Gichumu Githenji Nku* [2007] eKLR, the court held the multiplier approach is not a dogma and may be abandoned where facts do not facilitate it.
47. In *Moses Mairua Muchiri vs. Cyrus Maina Macharia* [2016] eKLR and *Frankline Kimathi Maaru & another vs. Philip Akungu Mitu Mborothi* [2020] eKLR, the courts affirmed that where multiplicand cannot be ascertained with precision, the global sum approach may be applied.
48. In the instant case, the trial court itself acknowledged that the income was unclear as MPESA was not conclusive, and that occupation was contested yet it proceeded with minimum wage.
49. I find that, once the trial court accepted that earnings were not proved, the minimum wage approach was not necessarily wrong. However, given that the deceased was pleaded as a businessman and some evidence of enterprise was produced, an overly low multiplicand may occasion injustice.
50. The appellate court may interfere where wrong principles were applied, or relevant factors omitted, as stated in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* [2004] eKLR.
51. Balancing the parties' positions, and noting that courts caution against speculative awards, I am persuaded that the appropriate approach in this appeal is to retain the dependency ratio of 2/3 and a reasonable multiplier but substitute the minimum wage multiplicand with a fair global sum award for dependency.
52. The Appellant cited *M'ekotha & another vs. Karampu* [2023] KEHC 20798 (KLR) where the High Court upheld a global sum award of Kshs. 3,000,000/= for a businessman survived by a wife and children. While that decision is persuasive, each case depends on its evidence and circumstances.
53. Doing the best I can with the record placed before me, and guided by the need to avoid speculative figures while still doing justice, I find a reasonable global award for loss of dependency in this matter to be Kshs. 1,500,000/= which then substitutes the award of Kshs. 695,131.12/=.

Final Awards (as substituted)

- (a) Pain and suffering .....Kshs. 10,000/=
- (b) Loss of expectation of life.....Kshs. 100,000/=
- (c) Loss of dependency.....Kshs. 1,500,000/=
- (d) Special damages ..... Kshs. 550/=
- (e) Burial expenses .....Kshs. 80,000/=

Total = Kshs. 1,690,550/=

Liability remains 50:50.

54. The sum payable is therefore:  $Kshs. 1,690,550 \div 2 = Kshs. 845,275/=$

**Disposition**

- a. The Cross-Appeal by the 1st and 3rd Respondents is hereby dismissed.
- b. The Appellant's Appeal succeeds partially on quantum.
- c. The award on loss of dependency is set aside and substituted with Kshs. 1,500,000/=.
- d. An award of burial expenses of Kshs. 80,000/= is hereby allowed.



- e. All other heads of damages remain as awarded by the trial court.
- f. The total award is Kshs. 1,690,550/=, subject to 50:50 contribution, leaving Kshs. 845,275/= payable.
- g. The Appellant shall have costs of the appeal.
- h. Interest shall accrue as ordered by the trial court on the applicable heads until payment in full.

**DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. W. A. OKWANY**

**JUDGE**

**9/04/2026**

For Appellant Irungu

For Respondent 1<sup>st</sup> & 3<sup>rd</sup> Ms Ondieki for Burugu

Court Assistant Karani

30 days stay of execution is granted

File closed

