

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIVASHA  
CIVIL APPEAL NO. E056 OF 2024**

**JAMES MAINA**

**KARIUKI.....APPELLANT**

**-VERSUS-**

**REGINA NAINI MAINA (Suing as the legal representative of the  
Estate of the late EDWARD REUBEN MAINA MWANGI)**

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

**PAUL MWANGI MAINA (Suing as the legal representative of the  
Estate of the late EDWARD REUBEN MAINA MWANGI)**

**.....2<sup>ND</sup> RESPONDENT**

**FARAJ LOGISTICS LIMITED.....3<sup>RD</sup>**

**RESPONDENT**

**JUDGEMENT**

**Background of the Appeal**

1. The instant appeal stems from a fatal road traffic accident that occurred on the 8<sup>th</sup> day of May 2018 along the Naivasha-Mai Mahiu road, specifically within the Governor area, involving a collision between two motor vehicles: registration number KBR 825V, a Toyota Corolla, and motor vehicle registration number KCF 268Y, a Mercedes Benz trailer, which was coupled with trailer registration number ZF 2652. The first vehicle was at the material time being operated by the late Edward Reuben Maina Mwangi (hereinafter referred to as “the Deceased”), while the latter vehicle was owned and/or operated by the Appellants herein, Faraj Logistics Limited and James Maina Kariuki.
2. As a direct consequence of the collision, the Deceased sustained instant fatal injuries and was pronounced dead at the scene of the accident.

Subsequently, the Respondents acting in their capacity as the legal representatives and administrators of the Estate of the Deceased, instituted a civil suit in the Chief Magistrate's Court at Naivasha, designated as CMCC No. E240 of 2021. In their Complaint, the Plaintiffs sought several heads of relief, including general damages for pain and suffering and loss of expectation of life under the Law Reform Act, damages for loss of dependency under the Fatal Accidents Act and special damages relating to funeral and administrative expenses.

3. The trial court after evaluating the evidence presented by both the parties, delivered a judgment on the 9<sup>th</sup> day of May 2024. In the said judgment, the trial court arrived at a finding of shared culpability, apportioning liability for the accident at a ratio of 50:50 between the Deceased and the Defendants. Regarding the assessment of quantum, the learned trial magistrate computed the total damages at Kshs. 1,235,638.00. However, upon applying the 50% deduction necessitated by the finding of contributory negligence, the final award to the Plaintiffs amounted to Kshs. 617,819.00, along with interest and half the costs of the suit.
4. Being dissatisfied with the determination of the trial court on both the issue of liability and the assessment of quantum, the Appellant lodged the instant appeal vide Memorandum of Appeal dated 7<sup>th</sup> June 2024. The grounds are as follows, **THAT:**
  - a. **The Honourable Learned Magistrate erred in law and in fact by finding the Appellant 50% liable for the accident, despite evidence that suggested the Deceased was the primary party at fault.**
  - b. **The Honourable Learned Magistrate erred in law and in fact by disregarding the overwhelming and substantive evidence tendered by the Defense during the trial, which aimed to establish the sole negligence of the Deceased.**
  - c. **The Learned Magistrate erred in fact by failing to reach the conclusion that the Deceased was the sole author of his own misfortune, given the circumstances of the collision.**

- d. The Honourable Learned Magistrate erred in law and in fact in the assessment of damages payable to the Estate, leading to a figure that the Appellant contends is excessive and not grounded in proper legal standards.**
  - e. The Learned Magistrate misdirected himself by failing to consider or apply sufficient weight to the evidence and the comprehensive submissions provided by the Appellant during the trial proceedings.**
  - f. The Honourable Learned Magistrate erred in law and in facts by relying on extraneous evidence, or evidence not properly supported by the record, in arriving at the final decision on liability.**
5. The Appellant pleads with the Court allow the appeal, set aside or vary the trial court's judgment and review both the issue of liability and quantum downwards as against the Appellant.

### **Summary of the Respondents' Case**

6. The Respondents' case at the trial court was built upon the assertion that the accident was caused by the gross negligence of the Defendants' driver. They alleged that on the material day, the Deceased was lawfully and carefully driving his motor vehicle, registration number KBR 825V, along the Naivasha-Mai Mahiu road. According to the Plaintiffs, the Defendants' Mercedes Benz trailer (KCF 268Y/ZF 2652) was being driven at an excessive speed. As the trailer approached a matatu that was parked on the side of the road, the driver of the trailer swerved into the lane of the Deceased to avoid the parked vehicle, thereby causing a head-on collision.
7. Heavy reliance was placed on the evidence of the 1<sup>st</sup> Respondent (PW1) who confirmed her husband having died instantly on 08/05/2018 in a road traffic accident involving their vehicle, KBR 825V. Under cross-examination, she admitted that she was not present at the scene and therefore did not personally witness how the collision occurred. She testified that the Deceased was a transporter and a mechanic employed

by Gemini Stores, where he was in charge of the fleet. She asserted that he earned Kshs. 65,000.00 per month. That the Deceased was 50 years old at the time of his death and left behind four children. She identified him as the sole breadwinner for the entire family.

8. She stated that since the death of her husband, she has been selling second-hand clothes (mitumba) to support her children, who are not currently working. She stated her earnings from this business are approximately Kshs. 300 to Kshs. 400 per day. She further indicated that the family spent Kshs. 500,000.00 on burial arrangements. She noted that she had to borrow Kshs. 400,000.00 to finance these costs, with the remaining amount coming from contributions. Consequently, the Plaintiffs sought substantial damages to compensate for the loss of maintenance and support for the family and for the funeral expenses incurred.

### **The Appellant's Case**

9. The Appellant's contested the Respondents' version of events, filing a Statement of Defence that denied all allegations of negligence. They maintained that the accident was not caused by any act or omission on the part of their driver, servant, or agent. Instead, the Defendants averred that the Deceased was the party responsible for the collision. Their defense highlighted several particulars of negligence against the Deceased, including driving at a high speed, failing to keep a proper lookout, and encroaching upon the lane of the oncoming trailer.
10. The Respondent's version of the accident, supported by their witness, suggested that the Deceased was attempting to overtake a fleet of motor vehicles when he veered into the path of the oncoming trailer, which was traveling in its rightful lane.
11. Police Constable Letaya Sirere, stated that according to the reports he had, the Deceased was driving motor vehicle KBR 825V from the direction of Mai-Mahiu toward Naivasha. Upon reaching the accident site, the Deceased began overtaking a fleet of vehicles and collided head-on with

the Defendants' Mercedes Benz trailer (KCF 268Y/ZF 2652), which was traveling from Naivasha toward Mai-Mahiu.

12. The witness testified that the Deceased's vehicle (KBR 825V) was to blame for the accident. He noted that the point of impact was on the right-hand side lane toward Naivasha, which was the rightful lane for the Appellant's trailer. That the Deceased died on the spot, and injured passengers were taken to the hospital and then produced a police abstract that blamed vehicle KBR 825V for the accident.
13. During cross-examination, the witness admitted that he was not the Investigating Officer for this specific matter. He confirmed that the police file was still marked as *Pending Under Investigation*. He further admitted that he did not have a sketch map of the scene in court and that the Occurrence Book (OB) extract, which contained the initial report, had not been produced as evidence.

### **Summary of the Appellant's Submissions**

14. The Appellant's written submissions, dated 14/10/2024 argue vigorously against the trial court's findings on both liability and quantum.<sup>1</sup>
15. On Liability, the Appellant contends that the trial magistrate erred by apportioning 50% liability against him. He argues that the Plaintiffs failed to prove their case on a balance of probabilities as required by Section 107(1) of the Evidence Act. The Appellant points out that PW1 was not an eye-witness and could not provide a reliable account of the accident's mechanics. He asserts that the Respondents failed to call the Investigating Officer or any other witness to corroborate their claim that the trailer swerved to avoid a matatu.
16. In contrast, the Appellant highlights the testimony of DW1, which directly attributed the accident to the Deceased's reckless overtaking. The Appellant relies on **Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another Civil Appeal No. 345 of 2000 [2005] 1 EA 334** and **Mashru vs Odhiambo, Civil Appeal 21 of 2022 [2023] KEHC**

**25389 (KLR)** to argue that where evidence is scanty or lacks proximity to the cause of action, a defendant cannot be held liable. He urges the court to find that the Deceased was 100% liable for the collision, as he veered into the path of an oncoming vehicle that had the right of way.

17. Regarding the assessment of damages, the Appellant raises three main challenges. On Pain and Suffering, the Appellant argues that because the Deceased died on the spot, the award of Kshs. 50,000.00 is excessive. He proposes Kshs. 30,000.00 as a more appropriate sum, citing **Majani & another (Suing as the legal representatives/administrators of the Late Antony Liphede) v Godfrey [2023] KEHC 18048 (KLR)**, where a similar award was upheld for instantaneous death.
18. The Deceased was 50 years old. While the trial court used a 10-year multiplier, the Appellant argues for a multiplier of 7 years. This proposal is based on the vicissitudes and vagaries of life, such as the possibility of ill health or early retirement, which should be factored in to avoid an overestimation of future earnings. He cites **Mwiti & another v Kanyua (Suing as legal representative of the estate of Joseph Kirya Mhuri (Deceased)) (Civil Appeal E106 of 2021) [2022] KEHC 10924 (KLR)** to support this reduction.
19. The Appellant supports the trial court's decision to adopt the statutory minimum wage of Kshs. 7,240.00 rather than the unproven salary of Kshs. 65,000.00. He argues that in the absence of authenticated payslips, a letter of employment cannot serve as definitive proof of income. The Appellant concludes by requesting that the calculation for loss of dependency be revised as follows:  $Kshs. 7,240.95 \times 12 \times 7 \times \frac{2}{3} = Kshs. 405,493.20/=$

### **Summary of the Respondent's Submissions**

20. The Respondents' written submissions, dated 05/03/2025 urge the High Court to uphold the lower court's decision, describing it as sound and based on a fair evaluation of the evidence. On Liability, the Respondents

argue that the 50:50 apportionment of liability was justified because the court was presented with two rival and plausible accounts of the accident.

21. They emphasize that since both drivers are deceased and there were no independent eye-witnesses, it is impossible to definitively favour one version over the other. They contend that the police officer (DW1) was not the Investigating Officer and his testimony was merely an opinion based on an initial OB report, which he could not produce.
22. The Respondents cite **Matunda Fruits Bus Services Ltd v Moses Wangila Wangila & another [2018] eKLR**, which posits that where rival accounts are equally plausible or doubtful, liability should be shared equally. They assert that the Appellant did not provide a sketch map or independent evidence to prove that the trailer was entirely within its lane, thus making the split of liability the most equitable outcome.
23. On Pain and Suffering, the Respondents argue that Kshs. 50,000.00 is not inordinately excessive and should not be disturbed. They refer to **Beatrice Mukulu Kang'uta & another v Silverstone Quarry Limited & another [2016] KEHC 2334 (KLR)**, where Kshs. 200,000.00 was awarded for pain and suffering for a victim who died the same day.
24. On Loss of Dependency, the Respondents support the use of a 10-year multiplier, arguing it accurately reflects the decade remaining until the statutory retirement age of 60. They also defend the 2/3 dependency ratio, noting that the Deceased was survived by a wife and four children. The Respondents remind the court of the principles in **Kemfro Africa Ltd t/a Meru Express Service v Lubia [1982-88] 1 KAR 727**, which state that an appellate court should only interfere with a damages award if it is so inordinately high or low as to be an erroneous estimate. They maintain that the trial magistrate acted within his discretion.

### **Issues, Analysis and Determination**

25. Having carefully perused the Memorandum of Appeal, the trial record, and the submissions from both parties, this court identifies the issue for

determination of this Appeal to be whether the learned trial magistrate erred in law and in fact by apportioning liability as well as award of quantum.

26. At the heart of this Appeal is the contention on the trial court's equal apportionment of liability. As a first appellate court, the mandate of this court is to re-evaluate the entire evidence on record and reach its own conclusions, while bearing in mind that it did not have the advantage of observing the witnesses firsthand.<sup>1</sup>
27. Notably, the burden of proof in civil litigation is governed by Sections 107, 108, and 109 of the Evidence Act. The party who asserts a fact must prove its existence on a balance of probabilities. In the instant, the Respondents carried the initial burden of proving that the Appellants were negligent. The Respondent's case rested on the testimony of PW1, who was not at the scene, and a theory that the trailer swerved to avoid a matatu. No eye-witness was called to substantiate this version of events.
28. Conversely, the Defendants relied on the testimony of DW1, a police officer who produced a police abstract blaming the Deceased for the accident. While the abstract is a relevant document, its weight is diminished when the officer producing it was not the one who investigated the scene and when the underlying documentation, such as the sketch map and OB extract, are absent from the record. As noted in **David Kajogi M'mugaa v Francis Muthomi [2012] KEHC 4363 (KLR)**, a police officer's opinion in an abstract is not conclusive proof of liability.
29. The trial magistrate found that both versions were plausible yet uncorroborated by independent evidence. In such circumstances, the decision in **Matunda Fruits Bus Services Ltd v Moses Wangila Wangila & another [2018] eKLR** provides clear guidance: when the court is faced with two rival accounts of a collision and cannot determine which is more probable, an equal apportionment of liability is a proper

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<sup>1</sup> *Abok James Odera & Associates v John Patrick Machira* eKLR

exercise of judicial discretion. This approach acknowledges the reality that in head-on collisions where both drivers succumb, the specific mechanics of the crash may remain uncertain.

30. Furthermore, the Appellant's argument that the Deceased was solely responsible because he was overtaking a fleet must be weighed against the Respondents' claim that the trailer swerved. Without a sketch map to show the point of impact relative to the centre of the road, it is impossible to reach a standard of 100% liability against either party. The trial magistrate's decision to split liability 50:50 appears to be a balanced and cautious determination based on the evidence available. This court finds no misdirection in this apportionment.
31. On Quantum, the court notes that the assessment of damages for pain and suffering under the Law Reform Act is inherently subjective but guided by past awards for comparable injuries. In the present case, the trial court awarded Kshs. 50,000.00 for pain and suffering. The Appellant seeks to reduce this to Kshs. 30,000.00, arguing that the Deceased died instantly.
32. The principle governing such awards is that damages are intended to compensate for the physical and mental anguish suffered between the time of the injury and death. When death is on the spot, the period of suffering is negligible, and courts typically award a nominal or standard conventional sum. In **Kimori & another v Kwamboka [2025] KEHC 5331 (KLR)**, the court reduced an award for general damages when the degree of injury was not established with certainty.
33. However, the question before an appellate court is not whether it would have awarded a different amount, but whether the amount awarded by the trial judge is inordinately high. While Kshs. 30,000.00 is a standard award for instant death in some jurisdictions, Kshs. 50,000.00 is not so excessive as to represent a wholly erroneous estimate. In **Francis Wainaina Kirungu (suing as personal representative of the estate of John Karanja Wainaina) v Elijah Oketch Adellah (2013) eKLR**,

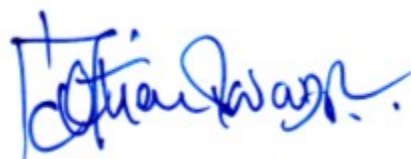
Kshs. 50,000.00 was indeed awarded where the deceased died shortly after the accident. Given the impact of inflation and the current judicial trends in Kenya, the award of Kshs. 50,000.00 for pain and suffering is within the acceptable range of judicial discretion.

34. On Loss of Dependency, the trial court rejected the Respondents' claim that the Deceased earned Kshs. 65,000.00 per month, noting that the letter from Gemini Stores was not an authoritative document and was not supported by payslips. Instead, the court adopted the statutory minimum wage for a casual worker at the time, which was Kshs. 7,240.00.
35. The adoption of the minimum wage in the absence of authenticated income proof is a standard judicial practice ensuring that a claim for dependency does not fail entirely for lack of evidence. Both the Appellant and the Respondents have essentially accepted this multiplicand in their submissions. This court affirms that the trial magistrate was correct to use the minimum wage given the lack of primary employment records.
36. The trial court adopted a 10-year multiplier, representing the period between the Deceased's age (50) and the statutory retirement age (60). The Appellant argues for a multiplier of 7 years to account for the vicissitudes of life. The court notes that a multiplier approach is a useful assessment method, but it is not a rigid dogma. Courts must consider factors such as the deceased's health, type of work and the general uncertainties of life. For a person aged 50, 10 years represents the absolute maximum of their expected working life. Kenyan courts often apply a small discount to this maximum to account for the possibility of illness, injury, or economic changes that might have shortened that working life.
37. In **Mwiti & another v Kanyua (Suing as legal representative of the estate of Joseph Kirya Mhuri (Deceased)) (Civil Appeal E106 of 2021) [2022] KEHC 10924 (KLR)**, a multiplier was reduced from 12 to 7 years for a younger deceased person. For an individual who was 50 years old and working as a transporter and mechanic, physically demanding

roles a multiplier of 8 years is more judicious than the maximum of 10. This adjustment respects the proximity to retirement while acknowledging the inherent risks of a working life.

38. The trial court applied a 2/3 dependency ratio. This is the conventional ratio applied to a married person with children, reflecting the portion of income that would have been dedicated to the family's upkeep. This ratio is upheld as it aligns with the family circumstances of the Deceased, who was supporting a wife and four children. By applying the adjusted 8-year multiplier to the agreed multiplicand and ratio, the calculation is as follows:  $\text{Kshs. } 7,240.00 \times 12 \times 8 \times \frac{2}{3} = \text{Kshs. } 463,360.00/=$  The court thus sets aside the trial court's award of Kshs 579,200 and substitutes it with an award of Kshs 463,360.00/=
39. The Plaintiffs pleaded special damages of Kshs. 517,138.00. However, the trial magistrate only awarded Kshs. 506,438.00, representing the sum that was strictly proven by receipts. It is a foundational principle of tort law that special damages must be specifically pleaded and strictly proven. The trial court correctly excluded unproven amounts. This award is upheld.
40. In upshot, this court having re-evaluated the record, finds that the judgment of the lower court was sound on apportionment of liability as well as on the special damages and damages under the heading; pains and suffering and loss of expectation of life. Those awards are upheld.
41. However, the court faults the award for loss of dependency by setting aside the trial court's award of Kshs 579,200 and substitutes it with an award of Kshs 463,360.00/=
42. Because the success is very minimal, the court awards to the appellants half of the costs of the appeal.

Dated, signed and delivered virtually this 27th day of March, 2026.



Patrick J O Otieno  
Judge