



Kwamboka & another (Suing as the Legal Representatives of the Estate of Fredrick Mayaka Manyara – Deceased) v Mose (Civil Appeal E046 of 2025) [2026] KEHC 4451 (KLR) (19 March 2026) (Judgment)

Neutral citation: [2026] KEHC 4451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E046 OF 2025
TW CHERERE, J
MARCH 19, 2026**

BETWEEN

**LILLIAN KWAMBOKA 1ST APPELLANT
ELIJAH MOKUA NYANGESO 2ND APPELLANT
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF FREDRICK
MAYAKA MANYARA – DECEASED**

AND

RICHARD BIRONGA MOSE RESPONDENT

*(Being an appeal from the Judgment and Decree in Nyamira
MCCC E293 of 2023 by Hon. A. Ogutu (PM) on 16th July 2025)*

JUDGMENT

1. The proceedings before the subordinate court were commenced by a Plaintiff dated 06th December 2023 filed by the Appellants in their capacity as legal representatives of the estate of Frederick Mayaka Manyara (deceased). The Plaintiff pleaded that on 1st September 2023, along the Nyamira–Kisii Road at Kemera area, the deceased was riding motorcycle registration number KMEF 819L when motor vehicle registration number KCG 874Z, owned and driven by the Respondent, was negligently driven and caused to collide with the motorcycle thereby fatally injuring the deceased. Particulars of negligence were pleaded against the Respondent including driving without due care and attention, failing to keep proper lookout, failing to give way to other road users and failing to control the motor vehicle.
2. The Respondent filed a Statement of Defence dated 21st December 2023 denying negligence and asserting that if the accident occurred, which was denied, the same was wholly or substantially caused by the negligence of the deceased. The Defence attributed negligence to the deceased including riding



- recklessly, failing to keep proper lookout, failing to control the motorcycle and riding the motorcycle while carrying more than one pillion passenger contrary to traffic regulations.
3. After hearing the witnesses and considering the evidence on record, the learned trial magistrate concluded that the deceased substantially contributed to the occurrence of the accident. The court particularly found that the deceased was riding the motorcycle while carrying two pillion passengers, which the court considered a violation of traffic regulations and a factor contributing to the accident. The trial court consequently apportioned liability 80% against the deceased and 20% against the Respondent.
 4. The Appellants filed a Memorandum of Appeal dated 30th July 2025 raising several grounds. In substance the Appellants contend that the learned trial magistrate erred in law and fact in apportioning liability largely against the deceased, erred by relying on extraneous matters, failed to properly consider the Appellants' submissions and judicial authorities, and generally reached a decision that was against the weight of the evidence.
 5. As this is a first appeal, this court is obliged to reconsider and re-evaluate the evidence on record and arrive at its own independent conclusions while bearing in mind that it did not have the benefit of seeing and hearing the witnesses testify. The duty of a first appellate court was explained in *Selle v Associated Motor Boat Co Ltd* [1968] EA 123, where the Court of Appeal held that an appellate court must reconsider the evidence, evaluate it itself and draw its own conclusions though it must give allowance for the fact that the trial court had the advantage of seeing and hearing the witnesses. The same principle was reaffirmed in *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR, where the Court of Appeal emphasized that although the appellate court has jurisdiction to review the evidence, it should not lightly interfere with findings of fact unless it is shown that the trial court misapprehended the evidence or applied wrong principles.
 6. From the grounds of appeal and the submissions of the parties, the issues that arise for determination are the following:
 1. Whether the learned trial magistrate erred in law and fact in apportioning liability at 80% against the deceased and 20% against the Respondent.
 2. Whether the learned trial magistrate misapprehended the evidence in concluding that the deceased substantially contributed to the occurrence of the accident.
 7. The law regarding interference with a trial court's apportionment of liability is settled. In *Khambi & Another v Mahithi & Another* [1968] EA 70, the Court of Appeal held that where a trial court has apportioned liability between the parties, an appellate court should not interfere unless it is satisfied that the trial court acted on wrong principles or that the apportionment is plainly erroneous. A similar approach was adopted in *Kenya Power & Lighting Co Ltd v Esther Wanjiru Wokabi* [2014] eKLR, where the Court of Appeal stated that an appellate court will only interfere with findings of fact if they are based on no evidence or on a misapprehension of the evidence.
 8. The determination of liability in negligence cases involves consideration of both causation and contributory negligence. Contributory negligence arises where the conduct of the injured party contributes to the occurrence of the accident. In *Stapley v Gypsum Mines Ltd* [1953] AC 663, the House of Lords explained that determining causation in accident cases is essentially a matter of applying common sense to the facts of each case in order to determine how the accident occurred and how blame should be apportioned.
 9. The evidence on record shows that the deceased was riding a motorcycle along the Nyamira–Kisii road when the accident occurred. One significant factual issue emerging from the evidence is that the



deceased was riding the motorcycle while carrying two pillion passengers. The safety implications of such conduct have been considered in several judicial decisions.

10. In *Rukwaro & Another v Maina* [2025] KECA 177 (KLR), the Court of Appeal considered the legal consequences of riding motorcycles in breach of traffic regulations. The court held that pillion passengers riding illegally on a motorcycle expose themselves to danger and that riding contrary to traffic regulations may amount to contributory negligence because such conduct compromises the stability and control of the motorcycle.
11. Similarly, in *Rentco East Africa Limited v Dominic Mutua Ngonzi* [2021] eKLR, the court held that carrying more than one pillion passenger increases the risk of loss of control of a motorcycle and is therefore a factor that may properly be considered when determining contributory negligence.
12. The Appellants relied on *Martin Francis Ouma v Felista Akinyi Ochieng & Another* [2019] eKLR where the court emphasized that liability in road traffic accidents must be determined based on the specific facts of each case and that courts must assess the relative blameworthiness of each party when apportioning liability.
13. The Appellants also relied on *Hahn v Singh* [1985] KLR, which established the principle that special damages must be specifically pleaded and strictly proved. Although that authority principally concerns damages rather than liability, it underscores the importance of adherence to established legal principles when determining claims arising from negligence.
14. The Appellants further cited *Premier Dairy Limited v Amarjit Singh Sagoo & Another* [2013] eKLR, in which the Court of Appeal recognized that funeral expenses are ordinarily incurred in fatal accident cases even where receipts may not be readily available. Although the present appeal concerns liability, the authority was cited by the Appellants to illustrate the general approach of courts when dealing with claims arising from fatal accidents.
15. Upon reconsidering the evidence on record and the legal principles set out in the authorities cited by the parties, this court is not persuaded that the learned trial magistrate misdirected himself in determining liability. The evidence before the trial court demonstrated that the deceased was riding the motorcycle in breach of traffic regulations by carrying two pillion passengers. That conduct directly affected the stability and manoeuvrability of the motorcycle and was therefore a relevant factor in determining the extent to which the deceased contributed to the occurrence of the accident.
16. The law recognizes that apportionment of liability is essentially an exercise of judicial discretion based on the circumstances of the case. As emphasized in *Khambi & Another v Mahithi & Another* (supra), an appellate court should not interfere with such discretion unless the apportionment is manifestly erroneous or based on wrong principles. Having reconsidered the evidence and the authorities relied upon by the parties, this court finds no basis upon which to disturb the trial court's apportionment of liability.
17. In the result, the court finds that the appeal lacks merit and it is hereby ordered:
 1. The appeal on liability is hereby dismissed.
 2. The judgment of the Chief Magistrate's Court in *Nyamira MCCC E293 of 2023* delivered on 16th July 2025 apportioning liability at 80% against the deceased and 20% against the Respondent is hereby upheld.
 3. Each party shall bear its own costs of this appeal.

DELIVERED AT NYAMIRA THIS 19TH DAY OF MARCH 2026



WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

For Appellant - Mr. Orayo for Khan & Associates

For Respondent -Mr. Ombese for Peter M. Karanja Advocates

