Ahmed & another (Suing on their own behalf and in their capacity as the administrators of the Estate of the Late Omar Kulala Swalehe) v Jang Xi Youse Construction Group Company Limited & another (Civil Appeal E075 of 2023) [2026] KECA 780 (KLR) (24 April 2026) (Judgment)

Neutral citation: [2026] KECA 780 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPEAL E075 OF 2023

SG KAIRU, KI LAIBUTA & GW NGENYE-MACHARIA, JJA

APRIL 24, 2026

BETWEEN

SWALEHE KULALA AHMED ..... 1ST APPELLANT

KULALA SWALEHE NGOVI ..... 2ND APPELLANT

SUING ON THEIR OWN BEHALF AND IN THEIR CAPACITY AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE OMAR KULALA SWALEHE

AND

JANG XI YOUSE CONSTRUCTION GROUP COMPANY LIMITED ..... 1ST RESPONDENT

ISMAEL KIPONDA ..... 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of the High Court of Kenya at Mombasa (F. Wangari, J.) delivered on 10th March 2023 in Civil Appeal No. E234 of 2021)

JUDGMENT

1. Before us is a second appeal from the judgment and decree of the High Court of Kenya at Mombasa (F. Wangari, J.) dated 10th March 2023 in Mombasa HC Civil Appeal No. 234 of 2021.

2. The genesis of the appeal is the appellants' suit filed by way of a plaint dated 10th April 2019 as amended on 4th March 2020, and by which the appellants herein, Swaleh Kulala and Kulala Swaleh Ngovi (suing on their own behalf and as the administrators of the estate of the late Omar Kulala Swalehe) filed suit against the respondents, Jang Xi Youse Construction Group Company Limited and Ismael Kiponda (the respondents herein) in Kwale RMCC No. 191 of 2019.

3. The appellants' case in the trial court was that the deceased, a male adult aged 27 years, worked as a mason earning an average net daily income of Kshs. 1,000 and as a boda boda operator earning an average net daily income of Kshs. 1,500; that, on 7th January 2019, the deceased was lawfully riding his motorcycle along the Kinango– Samburu to Mombasa–Nairobi highway when he was struck by the 1st respondent's motor vehicle, which was alleged to have been carelessly and recklessly driven by its authorised driver, the 2nd respondent, as a consequence of which the deceased suffered fatal injuries; that the 1st respondent was vicariously liable for the 2nd respondent's negligence; that the appellants relied on the doctrine of res ipsa loquitor; and that the deceased's father and siblings had lost means of immediate and prospective support.

4. By reason of the matters aforesaid, the appellants sought damages under the *Fatal Accidents Act* and the *Law Reform Act*; special damages of Kshs. 249,700; as well as costs and interest.

5. In their statement of defence dated 20th May 2019, the respondents denied the allegations set out in the appellants' plaint and averred that, if there was an accident involving the deceased on the material date, the same was solely caused and/or substantially contributed to by the deceased's negligence in the manner in which he rode and controlled his motorcycle thereby causing it to collide with the 1st respondent's motor vehicle. They prayed that the appellants' suit be dismissed with costs.

6. The case proceeded to hearing on 20th January 2021 and the appellants called three witnesses, namely PW1, a police officer who produced the police abstract report prepared by his colleague; PW2, who was presented as an eyewitness to the accident; and PW3, the 1st appellant. The respondents did not adduce any oral evidence but, by consent, they adopted the witness statement of the 1st respondent's Human Resources Manager as evidence in chief and produced its list and bundle of documents as exhibits.

7. In its judgment dated 27th October 2021, the trial court (Hon. P. Wambugu, PM) found the respondents wholly liable for the accident and entered judgment in favour of the appellants in the following terms:

> " 1. Lost years Kshs. 1,500,000
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> 2. Pain and Suffering Kshs. 100,000
>
> 2. Loss of expectation of life Kshs. 150,000
>
> 2. Special damages Kshs. 249,200
>
> 2. Costs to the plaintiff
>
> 2. Interest at court rates from the date of this judgment till payment in full."

8. Aggrieved by the trial Magistrate's decision, the respondents lodged an appeal to the High Court of Kenya at Mombasa in Civil Appeal No. 234 of 2021 in which they faulted the trial court for attributing full liability to them contrary to the evidence before him, and without giving any adequate reasons for the decision; for awarding inordinately high and excessive damages for lost years, and yet dependency was never proved; for awarding inordinately high damages for loss of expectation of life, and for pain and suffering without any basis; and for awarding special damages for loss of the motorcycle and insurance without any basis, and without appreciating that they constituted material damage claims, which ought to have been filed separately.

9. In its judgment dated 10th March 2023, the High Court (F. Wangari, J.) re-evaluated the evidence and found that PW2's testimony was inconsistent and insufficient to establish sole liability on the part of

the respondents; that the police abstract lacked probative value due to non-compliance with section 35 of the *Evidence Act*; and that the investigating officer was not called to testify. The court rejected the application of res ipsa loquitor, finding it inapplicable in a collision involving two vehicles, and in the absence of evidence in proof of strict liability. Consequently, the High Court held that the trial court erred in attributing full liability to the respondents and, instead, apportioned liability equally between the parties (at 50%:50%).

10 Regarding the quantum of damages, the High Court upheld the award of Kshs. 100,000 for pain and suffering, noting that the deceased died on the spot. However, the learned Judge reduced the award for loss of expectation of life from Kshs. 150,000 to Kshs. 100,000 in line with conventional awards. On the issue of lost years, the court affirmed the trial court's use of the global sum approach, finding the award of Kshs. 1,500,000 reasonable given the deceased's age and circumstances. It also upheld the special damages of Kshs. 249,200, thereby confirming that they had been properly pleaded and proved. The court ordered each party to bear their own costs of the appeal.

11. It is noteworthy that, except for the apportionment of liability and award on costs, the quantum of damages awarded by the learned Judge on 1st appeal are not in contention.

12. Aggrieved by the judgment of the High Court, the appellants filed the instant appeal vide their Memorandum of Appeal dated 15th May 2023 as amended on 12th March 2024, and on the grounds that:

> " 1. That the learned judge sitting on appeal failed to apply the correct principles and caution on the duty of an appellate court while re- evaluating the evidence as set out in Peters v Sunday Post Ltd (1958) EA 424 and cited in exercise of her jurisdiction.
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> 2. That the learned appeal judge in the High Court erred in failing to take into account matters she should have considered hence made a finding on apportionment of liability that was erroneous and made a decision that is perverse and bad in law.
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> 3. That the learned judge of appeal erred in law and in fact and acted contrary to the weight of the evidence in apportioning liability in negligence at 50% against the appellants and 50% against the respondents.
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> 4. That the learned trial judge erred in holding that the respondent had proved contributory negligence without calling any evidence to prove the same.
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> 5. That the learned judge of appeal erred in law and in fact in failing to hold that costs follow the event and in failing to give reasons for failing to give costs to the appellants proportionate to their success in the High Court."

13. Learned counsel for the appellants, M/s. Jengo Associates, filed written submissions, a list and digest of authorities dated 8th April 2024 while learned counsel for the respondents, M/s. Mogaka Omwenga & Mabeya, filed written submissions, a list and digest of authorities dated 22nd July 2025, all of which we have taken to mind.

14. Unless otherwise provided, this Court's mandate on 2nd appeal is limited to points of law. Section 72 (1) of the *Civil Procedure Act* provides:

> 72. Second appeal from the High Court

1. Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely—

    a. the decision being contrary to law or to some usage having the force of law;

    b. the decision having failed to determine some material issue of law or usage having the force of law;

    c. a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

15. In Stanley N. Muriithi & another v Bernard Munene Ithiga [2016] eKLR, this Court held that:

> "We are conscious of our limited jurisdiction when dealing with a second appeal. Our reading of Section 72(1) of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, which provides for the circumstances when a second appeal shall lie from the appellate decrees of the High Court, indicates that the appeal must be on matters of law."

16. In the same vein, this Court held thus in Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR that:

> " In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. In the case of Stephen Muriungi and another vs. Republic (1982-88) 1 KAR 360, Chesoni Acting JA (as he then was) said at page 366:
>
> 'We would agree with the view expressed in the English case of Martin v Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 that where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.'"

17. Having considered the record of appeal, the grounds on which it is anchored, and the rival submissions of the respective counsel, we find that two main issues fall to be determined, namely: whether the learned Judge erred in law by apportioning liability equally between the parties; and whether the learned Judge erred in law by directing that each party bears their costs of the appeal.

18. On the 1st issue, it is instructive what the learned Judge concluded on matters of both law and fact, which we take the liberty to replicate as hereunder, well aware of the fact that our mandate on 2nd appeal is restricted to points of law only:

> " 18. As correctly pointed out by the Appellants, the evidence as to who was to blame was led by PW2 who was presented as an eye witness
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> ....
>
> 19 Did PW2 witness the accident? ...PW2 was ahead of motor vehicle registration number KCK 428Y. The deceased was riding his motor cycle in the opposite direction. PW2's evidence in chief was that he saw the accident with his side mirror.
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> 20. On cross examination, he stated that he did not see the accident only to change that version on re-examination. As per his testimony, motor vehicle registration number KCK 428Y had dimmed its lights and the accident happened at 7:30 p.m. With all these inhibiting factors, it was imperative for the Respondents to lead more evidence than merely that of PW2. This is because according to me, PW2 cannot be conclusively classified as an eye witness for reasons that all he heard was an impact. He confirmed on cross examination that he did not see the accident.
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> 21. PW1 on his part confirmed that the police file was pending under investigation. He equally stated that he never visited the scene of the accident since the investigating officer was one Sergeant Odera Julius. Police abstract showed that the accident was by collision of two motor vehicles. No sketch map was produced to show for instance, the point of impact and the final resting place of the vehicle(s). The failure of the police to determine from the scene of the accident which motor vehicle was to be blamed greatly compromised a conclusive finding of who was to blame for the accident.
>
> 22. I note that the investigating officer was never called to testify in this case. The only reason offered was that he was on transfer. I note that the police abstract was produced by consent of the parties. However, were the requirements of section 35 of the *Evidence Act* complied with?
>
> .... It is not in doubt that the maker of the police abstract was never called and this really diminished a conclusive finding as to who was to blame ....
>
> 26. Though the Appellants did not lead any evidence on liability, that fact of itself does not absolve the Respondents from discharging their burden as required ....
>
> 27. It was the Respondents' duty to prove on a balance of probabilities that the Appellants were entirely to blame. I have stated elsewhere that since the accident was a collision of two (2) motor vehicles, and in the absence of a conclusive eye witness, liability could not be presumed at 100% merely because the Appellants led no evidence. I therefore find and hold that the trial magistrate erred in finding the Appellants 100% liability [sic]. I accordingly apportion liability at 50% each."

19. Taking issue with the learned Judge's decision, counsel for the appellants submitted that PW2 gave direct evidence to the effect that he witnessed the accident; that his evidence-in-chief, taken as a whole, pointed to the fact that he witnessed the accident through his side mirror; and that the learned Judge did not consider PW2's evidence in its entirety.

20. Counsel cited the case of Mwanasokoni v Kenya Bus Services Ltd [1985] KECA 82 (KLR) for the proposition that a court sitting on a first appeal should be mindful of the advantages enjoyed by the trial judge who saw and heard the witnesses, and was in a comparably better position than the court to assess the significance of what was said, how it was said and, equally important, what was not said.

21. According to counsel, there was sufficient evidence to establish a prima facie case that the 1st respondent's driver solely caused the accident, but that the learned Judge shifted the burden on the respondents to prove contributory negligence, which burden the respondents failed to discharge.

22. Counsel further cited the cases of Ahamad Abolfathi Mohammed & another v Republic [2018] KECA 743 (KLR) for the proposition that circumstantial evidence enables a court to deduce a particular fact from circumstances or facts that have been proved; and that such evidence can form as strong a basis for proving the guilt of an accused person just as would direct evidence; and Ignatius Makau Mutisya v Reuben Musyoki Muli [2015] KECA 612 (KLR) for the proposition that the burden of proof in civil cases must carry a reasonable degree of probability, but not so high as is required in a criminal case; and that, if the evidence is such that the tribunal can say: 'we think it more probable than not', the burden is discharged but, if the probabilities are equal, it is not.

23. Counsel further submitted that there was no basis to support the holding that the deceased was 50% liable for the accident; and that it was incumbent upon the respondent to prove the particulars of contributory negligence pleaded against the deceased. Counsel cited the case of CMC Aviation Ltd v Kenya Airways Ltd (Cruisair Ltd) [1978] KECA 9 (KLR) for the proposition that, until a party's pleadings are proved or disproved, or there is admission of them or any of them by the parties, they are not evidence, and no decision can be founded upon them.

24. Citing the case of Chrispine Otieno Caleb v Attorney General [2014] KEHC 8485 (KLR), counsel submitted that, where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since, in so doing, the party fails to substantiate its pleadings. According to counsel, findings of fact made without any evidence, such as the finding of contributory negligence herein, becomes issues of law liable to be determined on second appeal to this Court. They urged us to allow the appeal.

25. In rebuttal, learned counsel for the respondents submitted that the learned Judge was right in apportioning liability equally between the parties; that the record clearly shows that there was no overwhelming evidence on liability as alleged by the appellants; that PW2, the supposed eyewitness, confirmed on cross-examination that the accident happened at 7:30 pm; that he heard the impact, but that he did not see what transpired; and that the learned Judge was right in concluding that PW2 was not a conclusive eye witness.

26. Counsel further submitted that it is trite law that the burden of proof in an action for damages for negligence rests primarily on the plaintiff to show that he was injured as a result of a negligent act or omission for which the defendant would be responsible at law; that the legal burden of proof lay squarely with the appellants to prove all the elements of negligence as adduced in their plaint, but which were not proven to the required standard; and that the learned Judge properly analysed and assessed the crucial pieces of evidence and reached a fair, reasonable and justified conclusion or decision.

27. In addition, counsel cited the case of Chege v Pewaki Enterprises Limited [2023] KEHC 21362 (KLR) for the proposition that the burden of proof in civil cases rests with the plaintiff at all material times while the standard of proof is on a balance of probabilities; and that it is trite law that he who alleges must prove. They urged us to dismiss the appeal.

28. To our mind, the appellants' main grievance revolves around the High Court's re-evaluation of the evidence tendered at the trial, and around its departure from the trial court's finding that PW2 witnessed the accident. For this reason, the appellants come on 2nd appeal and invite this Court to consider whether the High Court properly analysed and re-evaluated the evidence on record.

29. In Ephantus Mwangi & another v Duncan Wambugu [1984] KECA 54 (KLR), this Court held that:

> " A Court of Appeal will not normally interfere with a finding of fact by the trial court, unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown, demonstrably, to have acted on wrong principles in reaching the findings he did ....
>
> Undoubtedly, as Mr Dhanji submitted, this court, as was said by Sir Kenneth O'Connor P in Peters v Sunday Post Ltd [1958] EA at p 429, has jurisdiction to review the evidence, in order to determine whether the conclusion originally reached on that evidence should stand. But earlier he had said:
>
> '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 who has had the advantage of seeing and hearing the witnesses .... But this is a jurisdiction (to review the evidence) which should be exercised with caution: it is not enough that the appellate court might itself have come to a different conclusion.'
>
> .... In Karisa and another v Solanki and another [1969] EA 318 at p 320, this Court's predecessor said that where a trial judge finds that one of the parties to an accident has not been guilty of any negligence, the court, even if it is doubtful that it would have arrived at the same decision, should not interfere with that finding unless it is satisfied the trial judge was plainly wrong.'"

30. At the trial of the present case, PW2 (Moses Malema) adopted his witness statement dated 10th April 2019 as evidence. In the witness statement, PW2 stated as follows:

> "That on 7th January 2019, I was at Vigurungani while riding my motor cycle registration number KMEQ 057B coming from Malomano heading to Vigurungani. Motor vehicle lorry registration number KCK 482Y behind me was heading in the same direction. There was a motor cycle registration number KMEE 926U ridden by the deceased Omar Kulala Swalehe... coming from the opposite direction. Since it was about 7:30 pm the motor vehicle had dim lights on.

I went past the deceased and just after that I saw on my side mirror the driver of the lorry KCK 482Y which was following me suddenly lose control of the lorry, drift to the right lane and crushed the motor cycle headed into the bushes. He was then able to stop the motor vehicle in the bushes. He came back to the road and instead of stopping he went past the scene of the accident and started driving back to the first defendant's yard as I followed him."

31. In his examination-in-chief, PW2 stated that:

> " I passed the motor cycle then I heard an impact and found out that the lorry had knocked the deceased. He had dim lighting and the motorcyclist could not see him.
>
> The accident occurred on the right lane. Lorry was following me.
>
> I saw the accident with side mirror. The lorry driver veered off the road. He lost direction and control and he fled. I followed them to the yard. Other rider (deceased) was on his lane."

32. In cross-examination, PW2 stated that:

> "It happened at 7.30 pm. I was above 10 meters away. I heard the impact and turned. I did not see. I heard and saw using my side mirror."

33. In re-examination, PW2 finally stated that:

> " I also heard and saw."

34. On the other hand, the respondent's evidence in chief came in the form of the witness statement of the 1st respondent's Human Resources Manager, Douglas Ondicho Ogero, who stated that:

> " On the 7th day of January 2019, the insured [motor vehicle]'s driver reported to work as usual and did his normal routine of dumping materials. On the same day at about 7:30 pm he had dumped sand/murram on the road and was returning to the quarry to be loaded with another. On his way he was involved in a road traffic accident with a third-party motorcycle whereby the rider of the motorcycle died on the spot. It happened that the motorcycle hit the right side of the body of the tipper as they passed each other."

35. Considering the evidence as a whole, it was, and remains, unclear whether PW2 actually witnessed the accident from the point of impact, or merely observed the events that unfolded after the collision between the 1st respondent's motor vehicle and the deceased's motorcycle. To our mind, the surrounding circumstances, particularly the time of night and the fact that the lorry only had dim lights on, rendered it difficult to make a conclusive finding as to what precisely occurred to cause the collision between the lorry and the deceased's motorcycle.

36. It is also not lost on us that failure of the investigating officer to testify, coupled with PW1's failure to produce evidential documents relating to the police investigation beyond the abstract report, did little to assist the court in establishing liability. In the circumstances, we find no fault in the learned Judge's conclusion that PW2 could not be conclusively classified as an eye witness to the accident; and that the appellants had not sufficiently discharged the burden of proving that the respondents were wholly liable for the accident. Hence, the learned Judge's apportionment of liability at 50%, which we hereby affirm.

37. Turning to the 2nd issue as to whether the learned Judge was at fault in directing that each party bears their own costs of the appeal, counsel for the appellant submitted that it is trite law that costs follow the event. Citing the cases of Canyon Properties Limited & 3 others v Eliud Kipchirchir Bett & 2 others [2017] eKLR, counsel submitted that the discretion to award costs must be exercised judicially, without whim and caprice, upon defined legal principles, and that the purpose of costs is not to punish the losing party but to compensate the successful party for the trouble taken in litigating the suit; and Andrew Mukite Saisi v Tracker Group of Companies Limited [2020] KECA 852 (KLR) for the proposition that the object of ordering a party to pay costs is to reimburse the successful party for

amounts expended on the case; and that costs are a means by which a successful litigant recovers the expenses incurred in an action.

38. Counsel further cited the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] KEHC 7064 (KLR) for the proposition that, in determining the issue of costs, the court is entitled to look at, inter alia: (i) the conduct of the parties; (ii) the subject of litigation; (iii) the circumstances which led to the institution of the proceedings; (iv) the events which eventually led to their termination;, (v) the stage at which the proceedings were terminated; (vi) the manner in which they were terminated; (vii) the relationship between the parties; and (viii) the need to promote reconciliation amongst the disputants pursuant to Article 159(2) (c) of *the Constitution*.

39. According to counsel, the deceased died in a road accident and the driver of the 1st respondent's vehicle has not been charged because he absconded. Counsel stated that the respondents have not shown remorse by admitting partial liability, but filed an appeal even after failing to call any evidence on the occurrence of the accident; that it cost the deceased's family much pain to lose its child and funds to litigate the case from the Magistrate's court to this Court; and that this is a proper case where costs should be awarded to the appellants in the trial court, the High Court and in the Court of Appeal.

40. Counsel for the respondent made no submissions on this issue, save for submitting that none of the five grounds of appeal was proved; and that the appeal should therefore be dismissed with costs to the respondents.

41. We take to mind this Court's decision in Supermarine Handling Services Ltd v Kenya Revenue Authority [2010] KECA 373 (KLR) where the learned Judges held that:

> " Costs of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order. See Section 27 (1) of the *Civil Procedure Act*...
>
> Thus, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised unjudicially or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute "good reason" within the meaning of the rule."

42. In Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR), the Supreme Court observed that:

> "14. So the basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba's words [Judicial Hints on Civil Procedure, at p 94]: '[T]he object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure .... Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.'
>
> 15. It is clear that there is no prescribed definition of any set of 'good reasons that will justify a Court's departure, in awarding costs, from the general rule, costs-follow-the-event. In the classic common law style, the Courts have proceeded on a case-by-case basis, to identify 'good reasons' for such a departure ....
>
> 18. It emerges that the award of costs would normally be guided by the principle that 'costs follow the event': the effect being that the party who

> calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice."

43. On the authority of the afore-cited decisions of this Court and of the apex court, we find no basis to warrant interference with the High Court's orders on costs. Indeed, the learned Judge found both parties equally liable, which reasonably informed her decision to direct that each party bears their own costs of the appeal, and that settles the 2nd and last issue before us.

44. Having carefully considered the record of appeal, the grounds on which it was anchored, the rival submissions on the issues that fell to be determined, the cited authorities and the law, we find that the appeal fails and is hereby dismissed in its entirety. Consequently, the judgment and decree of the High Court of Kenya at Mombasa (F. Wangari, J.) delivered on 10th March 2023 be and is hereby upheld.

45. Considering the protracted inquiry into the unclear circumstances under which the accident in issue occurred; and as none of the parties persuaded the trial or the two appellate courts to find or hold otherwise, we hereby direct that each party bear their costs of this appeal. Orders accordingly.

DATED AND **DELIVERED AT MOMBASA THIS 24TH DAY APRIL OF 2026.**

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.

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JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR