



Kenya Power & Lighting Company Limited v Misoi & another (Suing as the Legal Representatives and Administrators of the Estate of the Late Faith Chelangat) & another (Civil Appeal E018 of 2024) [2025] KEHC 11783 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E018 OF 2024
CM KARIUKI, J
JULY 31, 2025**

BETWEEN

KENYA POWER & LIGHTING COMPANY LIMITED APPELLANT

AND

ALICE CHEPNGETICH MISOI & CHEBET JUDITH (SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF THE ESTATE OF THE LATE FAITH CHELANGAT) 1ST RESPONDENT

TIAPATTI OLE LETOLUO 2ND RESPONDENT

(Being an Appeal under Section 65 1(b) of the Civil Procedure Act Cap 21, Laws of Kenya and Order 42 Rule I of the Civil Procedure Rules 2010 from the judgement of the Honorable. G. Sagero (Mr.) (SRM) delivered on 24th June 2024 in Narok CMCC No. E154 of 2021)

JUDGMENT

1. This appeal arises from the judgment of the Chief Magistrate's Court at Narok in Civil Suit No. E154 of 2021, delivered on 24th June 2024, wherein the trial court entered judgment in favour of the 1st Respondent and made the following awards:
 - a. Liability apportioned at 80:20 in favor of the 1st Respondent.
 - b. Pain and suffering: Kshs. 30,000.
 - c. Loss of expectation of life: Kshs. 100,000.
 - d. Loss of dependency: Kshs. 1,500,000.
 - e. Special damages: Kshs. 16,310.

1, 646,310/=



- f. Less 20% contribution: Kshs. 329,262
Total net award: Kshs. 1,317,048,
plus, costs and interest at court rates.
2. The Appellant, being dissatisfied with the whole judgment and decree of the Hon. Senior Resident Magistrate delivered on 24th June 2024 in Narok CMCC No. E154 of 2021, appeals to the High Court on the following eight (8) grounds of appeal:
1. That the Learned Trial Magistrate erred in law and in fact in failing to find that the 1st Respondents did not discharge their evidential burden of proof of their allegations as is required under Section 107 of the *Evidence Act*, thus arriving at an erroneous finding that the Appellant was to blame for the accident.
 2. That the Learned Trial Magistrate erred and misdirected himself in law and in fact and misapplied the evidence of parties on how the accident giving rise to the primary suit occurred thereby arriving at a wrong finding on liability between the Appellant and the 1st Respondents yet it strongly came out during the hearing that the deceased and the Respondents were grossly negligent and solely responsible for the accident leading to her demise.
 3. That the Learned Trial Magistrate erred in law and in fact by completely disregarding and/or completely failing to consider the Appellant's evidence and that of its witnesses on liability and submissions on proof of negligence hence coming to the erroneous finding on liability of 20% as against the Respondents and 80% as against the Appellant and in effect breaching the Appellant's constitutional rights of access to justice and fair hearing.
 4. That the Learned Trial Magistrate erred in Law and in fact by attaching weight and giving credence to the evidence of the 1st Respondent's alleged eye-witness, yet it strongly came out during the hearing that the testimony by the said witness was falsified and thus lacking in probative value.
 5. That the Learned Trial Magistrate erred in Law and in fact in awarding a global sum of Kshs. 1,500,000 under Loss of Dependency, which was overly excessive, arbitrary, and inordinately high in view of the occupation and age of the deceased, that it presented a miscarriage of justice.
 6. That the Learned Trial Magistrate erred in Law and in fact by failing to consider the Appellant's submissions and judicial authorities on liability and quantum and wholly relying on the 1st Respondent's evidence and submissions, thereby arriving at an erroneous finding.
 7. That the Learned Trial Magistrate erred in law and in fact by failing to consider all the averments made in the Appellant's pleadings in response to the plaint, thereby reaching wrong conclusions of law and fact.
 8. That the Learned Trial Magistrate failed to adequately evaluate the evidence and exhibits on record and thereby arrived at an unsustainable finding on liability and quantum.

Background

3. The suit giving rise to this appeal stems from a road traffic accident that occurred on 24th May 2021, involving the Appellant's motor vehicle registration number KAW XXXXZ, a Mitsubishi Fuso (FLR), and a motorcycle registration number KMFC XXXXG. The deceased, who was the subject of the fatal claim, was a pillion passenger on the said motorcycle. There was also a second pillion passenger on board, who was identified in the lower court proceedings as PW4.



4. The evidence presented at trial established that the accident occurred when the motorcycle, while ferrying the deceased and PW4, overlapped on the left side of the Appellant's vehicle, whereupon it skidded and lost control, causing it to fall onto the road surface.
5. Unbeknownst to the Appellant's driver, the left rear tyre of the Appellant's vehicle ran over the deceased, fatally injuring her. As a result, the legal representatives of the deceased's estate instituted a suit in the Chief Magistrate's Court seeking general damages, special damages, and compensation under the *Fatal Accidents Act*, pursuant to the Amended Plaintiff filed in the lower court.
6. Counsel for the 1st respondent made a request for interlocutory judgment against the Third Party, referring to the request filed on 6th October 2022, dated 22nd September 2022.
7. The Court has perused the record and notes the affidavit of service sworn by Daniel Maitheya on 21st July 2022, which confirms that the Third Party was duly served with the requisite pleadings.
8. Having satisfied itself that service was proper and that the Third Party failed to enter an appearance or file a defence within the stipulated time, the Court finds merit in the request.
9. Accordingly, an interlocutory judgment was entered against the Third Party as prayed.

Evidence.

PW1 – Alice Chepngetich Misoi

10. PW1, who testified in Kiswahili, identified herself as Alice Chepngetich Misoi, a resident of Buret Sub-County and the mother of the deceased, Faith Chelangat. She described herself as a "hustler" by occupation.
11. She testified that her daughter was involved in a traffic accident and adopted her recorded witness statement dated 15/10/2021 as part of her evidence in chief. She also produced several documents in support of the claim as follows:
 - i. Police Abstract – marked PMFI 1
 - ii. Post-Mortem Report – produced as Exhibit 2
 - iii. Death Certificate – produced as Exhibit 3
 - iv. Grant of Letters of Administration Ad Litem – produced as Exhibit 4(a)
 - v. Receipt for funeral expenses – produced as Exhibit 4(b)
 - vi. Copy of Motor Vehicle Records – produced as Exhibit 5(a)
 - vii. Chief's Letter – produced as Exhibit 6
 - viii. Demand Letter – marked as Exhibit 7
 - ix. Total receipts produced – Kshs. 510/=
12. She concluded by stating, "I pray for the rights of my client."
13. Under cross-examination, PW1 stated: Her ID number is XXX. She did not witness the accident and confirmed that the contents of her statement were based on what she was told by others. She was later shown the accident scene, but could not confirm if it was near a hospital. She reiterated that she and her family incurred funeral-related expenses for transporting the deceased's body from Narok to Kapkatet, and from Kapkatet to their home, although she could not recall specific receipts due to



being “confused” at the time. The deceased, Faith Chelangat, was a student at Maasai Mara University, aged 19 years at the time of her death. Although she claimed the deceased was engaged in business and occasionally helped her, she did not produce any documentary evidence of income. The deceased was unmarried and had no children. She listed the deceased’s siblings as dependants, including K, a minor under the age of 18, whose birth certificate she produced.

Evidence of PW2 – PC Erick Nyamweya

14. PW2, Police Constable Erick Nyamweya, testified under oath in Kiswahili. He stated that he is attached to the Narok Police Station, specifically within the traffic department. He informed the court that although he was not the Investigating Officer, he was familiar with the matter and had come to produce the Police Abstract relating to the accident.
15. He testified that the accident occurred on 24th May 2021 and was recorded under OB No. 77, along Narok–Bomet Road, at the Stadium area. The vehicles involved were: Motor vehicle registration number KAW XXXZ, an Isuzu Fuso (FRR); and Motorcycle registration number KMFC XXXG, make FLYBOY. He confirmed that the police abstract did not indicate the direction of travel for either vehicle. He stated that there were two pillion passengers on the motorcycle—Faith Chelangat (the deceased) and Mirriam Jepkemoi, who sustained serious injuries.
16. He produced the Police Abstract as Plaintiff’s Exhibit 1 (P. Exhibit 1).
17. PW2 confirmed the following during cross-examination: He was not the Investigating Officer; the officer in charge of the investigation, PC Karenga, was on annual leave at the time of trial. Although he attempted to retrieve the OB for the incident, he was unable to trace it. He was only informed of the court date on Friday, 11th August 2023, and had no personal knowledge of the facts of the accident, having not attended the scene. He confirmed that two pillion passengers were aboard the motorcycle, which is a violation of traffic rules, as a motorcycle is lawfully permitted to carry only one pillion passenger. He could not identify which among the two passengers was the excess rider, nor could he confirm whether the motorcycle and the motor vehicle were on the same lane. He clarified that the driver of the motor vehicle was not blamed for the accident. His knowledge was limited to the contents of the Police Abstract.
18. Upon re-examination, PW2 reiterated that: The driver of the motor vehicle was not blamed for the accident. The case was pending under investigation at the time the abstract was issued. He could not confirm whether the driver was ultimately charged or exonerated. His testimony was based solely on the information in the Police Abstract.

Evidence of PW3 – Judith Chebet

19. PW3, Judith Chebet, testified in English. She identified herself as the sister of the deceased, Faith Chelangat, and stated that she is a teacher based in Nairobi.
20. She testified that Faith was 19 years old at the time of her death and had completed her Kenya Certificate of Secondary Education (KCSE) at age 17. After completing high school, Faith began engaging in income-generating activities, including making mats, ponchos, and crocheting, from which she allegedly earned approximately Kshs. 24,000 per month.
21. PW3 stated that the deceased was a first-year student at Maasai Mara University and that she was financially independent, paying her own school fees and even assisting their mother. On the day of the accident—Monday, 24th May 2021, the deceased was reportedly sitting for her university exams. PW3 said she spoke to Faith in the morning but did not reach her. Faith later called around noon, informing



him she was doing an exam. In the evening, the deceased left university to go to town to block her stolen phone line, and later that day, PW3 received a call informing her of the accident.

22. In cross-examination, PW3 stated: She confirmed that the deceased was doing exams on the day of the accident and that she had spoken with her. She did not witness the accident. The deceased was 19 years old, and the witness confirmed that she completed secondary school at age 17. PW3 verified that Faith was a student at Maasai Mara University. She testified that the deceased made ponchos and mats but could not produce documentary proof of the alleged Kshs. 24,000/= monthly income. PW3 noted that Faith was the fourth born in their family and that, although the deceased was financially independent, no receipts or documentation were produced to prove that she paid her school fees. She confirmed that Faith had paid Kshs. 24,000 for the first semester, but the second semester fees had not yet been paid. The deceased was single and had no children.
23. On re-examination by the plaintiff's counsel, PW3 added: Her late sister used to receive her earnings via Safaricom mobile money (M-Pesa). The deceased's phone was stolen on the day of the accident. She reiterated that the deceased had paid her own school fees.

Evidence of PW4 – Miriam Chepkemboi

24. PW4, Miriam Chepkemboi, testified in English. She identified herself as a student residing in Macadonia, Narok, and confirmed that she was personally acquainted with the deceased, Faith Chelangat, with whom she was at the time of the accident on 24th May 2021.
25. She testified that on the material day, in the evening hours, she and the deceased were on their way back to Maasai Mara University after concluding their personal business in town. They were both riding on a motorcycle, with PW4 sitting in the middle, and Faith seated at the rear. She recalled that there was a motor vehicle behind them.
26. PW4 stated that she suddenly heard a bang, and they fell to the right side of the road. While lying on the ground, she heard people shouting, "wewe mtu wa lorry kuna mtu umekanyaga" (loosely translated: "you lorry driver, you have run over someone"). When she regained consciousness, she called out to the deceased and, upon turning her over, observed blood all over her body.
27. She further stated that they took a vehicle and rushed the deceased to the hospital, where she was pronounced dead.
28. PW4 maintained that they were hit from behind by a lorry, which caused them to fall. She added that Faith fell onto the tarmac and sustained fatal injuries. She described the deceased as hard-working, engaged in crocheting and mat-making, with numerous customer orders at the time.
29. Under cross-examination, PW4 testified as follows: At the time of the accident, she was 20 years old. Both she and the deceased were pillion passengers on the motorcycle. They both wore helmets and reflective jackets, although this was not indicated in her statement. She acknowledged that a motorcycle is legally required to carry only one pillion passenger. Both boarded the motorcycle at the same time. She reiterated that the motor vehicle hit them from behind, and she heard people shouting at the lorry driver. She stated that the motorcycle was on the road and not off the lane when the vehicle attempted to overtake. The front part of the vehicle passed, but the rear part struck them, causing the deceased to fall and be run over. She was not personally struck by the vehicle. The incident occurred during the evening, and it was dark and raining, with traffic congestion and speed bumps in the area. She did not see the motorcycle rider after the accident. She confirmed that it had been a long time since she gave her statement and that she was present when the deceased passed away. She referred to Inspection Report MFI 1.



30. In re-examination, PW4 clarified: Her full name is Miriam Chepkemboi, as reflected in the police abstract. She confirmed that the signature on the witness statement was hers. She reiterated that she was a pillion passenger on the motorcycle, which was in front of the Kenya Power motor vehicle and within its correct lane. She maintained that the motor vehicle was behind the motorcycle and attempted to overtake, leading to the accident.

35. Evidence of DW1 – John Onsare Nyamari

31. DW1, John Onsare Nyamari, testified in English and identified himself as a driver. He adopted his witness statement dated 24th February 2022 as his evidence-in-chief and produced one document, the Vehicle Inspection Report, which was admitted as Defence Exhibit 1.

32. He testified that on 24th May 2021, he was driving motor vehicle registration number KAW XXXXZ along the Narok–Bomet Road, heading toward Bomet. At the time, it had rained, and there was traffic congestion near the Narok stadium. He stated that he was driving slowly at approximately 5 km/h and was on the left lane of a single carriageway.

33. As he approached speed bumps and a zebra crossing, he heard a bang, stopped the vehicle, and alighted. Upon inspection, he discovered that a girl had been run over by the rear left wheel of his lorry. Another girl, whom he believed to be PW4 – Miriam Chepkemboi- was crying and shouting nearby.

34. DW1 stated that upon realizing the incident, he called his employer, informed him of the accident, and was advised to wait at the scene for the police, who arrived shortly thereafter. By the time the police arrived, the motorcycle rider had fled.

35. He stated that his vehicle had remained on the road, while the motorcycle was off the road on the left side, and he maintained that he was not overtaking at the time of the accident. He did not see the motorcycle before the incident and only noticed it after alighting from his vehicle. He denied hitting the motorcycle from behind and insisted that the motorcycle had slid and was overlapping from the left, which he claimed was against traffic rules.

36. He further testified that the motorcycle was carrying two pillion passengers, neither of whom was wearing a helmet or reflective jackets. He stated that he had not been charged with any offence arising from the accident but had been issued with a Notice of Intention to Prosecute (NIP) and required to deposit cash bail of Kshs. 50,000/=, which has not been refunded. He blamed the motorcycle rider for the accident and labelled the deceased as an excess passenger.

37. In cross-examination, DW1 testified: He heard a bang but did not witness the actual accident. He did not see the motorcycle rider overlapping. He confirmed that his rear left wheel ran over the deceased, and there was blood on the wheel when he alighted. He acknowledged paying cash bail and being issued with a Notice of Intention to Prosecute, although no charges had been filed against him to date. He admitted, "I did not see the accident with my eyes." He confirmed that it was his vehicle that ran over Faith Chelangat.

38. During re-examination, DW1 stated: He was told to pay cash bail to avoid being placed in the cells, which he believed was standard procedure. The motorcycle came from behind and was off the road to the left. Although there were alleged eyewitnesses, he did not secure any. He had not followed up to claim a refund of the cash bail.



Directions of the court

39. The appeal was directed to be canvassed by way of written submissions. In compliance with those directions, the Appellant duly filed their written submissions. However, as of the time of preparing this judgment, the Respondents had not filed any written submissions, despite having been granted an opportunity to do so.

The Appellant's Submissions

40. The Appellant submitted that the learned trial Magistrate erred in finding that the 1st Respondent had discharged the evidentiary burden of proof required under Section 107 of the *Evidence Act*. It was argued that the testimonies of PW1 to PW3 were of limited probative value, as none of them witnessed the accident; their accounts were therefore hearsay.
41. Further, the Appellant took issue with the credibility of PW4, the only alleged eyewitness. It was submitted that PW4 had admitted during cross-examination that both she and the deceased were riding on a motorcycle without helmets or reflective jackets, which contradicted her oral assertions at the stand. The Appellant argued that PW4's version of events was riddled with inconsistencies, especially on the point of impact. She testified that the lorry hit the motorcycle from behind, yet the deceased was run over by the vehicle's rear left wheel. The Appellant contended that this narrative was logically implausible and contradicted by the vehicle inspection report (at page 47 of the Record of Appeal), which indicated that the vehicle had no visible damage—a fact inconsistent with a frontal impact.
42. The Appellant asserted that DW1's account—that the motorcycle was overlapping on the left, lost control, and fell under the rear tyre—was the only plausible explanation. The Appellant labelled PW4 as a witness of convenience, whose presence on the motorcycle also violated traffic laws, specifically Section 103B (1) and (2) of the *Traffic Act*, Cap 403, for carrying excess passengers without helmets or safety gear.
43. On quantum, the Appellant submitted that the trial court's award of Kshs. 1,500,000 under Loss of Dependency was inordinately high and not supported by evidence. The deceased was a 19-year-old student with no proof of income, and no documentary evidence was presented to support her alleged earnings from crocheting or mat-making. The Appellant urged the court to adopt a global award approach and proposed a sum of Kshs. 800,000 as adequate compensation. In support, the Appellant cited: *Stanwel Holdings Limited & Another v Racheal Haluku Emmanuel & Another* [2022] eKLR – where a global sum of Kshs. 1,000,000 was awarded for a 23-year-old gardener with dependents. *Abdullahi & 2 others v Mulae & another* (Suing as the Administrators of the Estate of the Late Muinde Kiti - Deceased) (Civil Appeal E047 of 2022) [2025] KESC 2337 (KLR) – where a 19-year-old deceased, survived by parents, was awarded Kshs. 1,200,000.
44. The Appellant further submitted that the trial court's finding on liability (80:20 against the Appellant) was unsupported by the evidence and contradicted the trial court's own finding that the deceased was run over by the rear wheels—a fact which aligned with DW1's testimony, not PW4's. The Appellant maintained that the motorcycle rider and the deceased were solely negligent, and the trial court failed to consider the totality of evidence, submissions, and applicable precedents.
45. It was also submitted that the trial court's evaluation of the evidence was superficial and inconsistent. The Appellant invoked the well-established duty of a first appellate court to re-evaluate the evidence and reach its own conclusions on both facts and law. Authorities cited in support included: *Selle & Another v Associated Motorboat Co. Ltd & Others* [1968] EA 123, *Peter Omolo v Match Masters*



Limited [2017] eKLR, Cecilia Mwangi & Another v Ruth W. Mwangi [1997] eKLR, and Civil Appeal No. 251 of 1996 – Nyeri.

46. In conclusion, the Appellant urged this Court to set aside the trial court’s finding on liability and dismiss the suit with costs. Alternatively, the Court was urged to re-apportion liability at 70:30 in favour of the Respondents, given their contribution to the occurrence of the accident. The Court was also urged to revise the award on loss of dependency downward to Kshs. 800,000/=.

The respondents’ submissions.

47. The Respondents did not file any written submissions, despite being accorded an opportunity to do so.

Analysis and Determination.

Duty of the court

48. In accordance with Section 78(2) of the *Civil Procedure Act*, this Court, sitting as a first appellate court, has the mandate to re-evaluate and re-analyze the evidence on record and to arrive at its own independent conclusions, while bearing in mind that it did not have the benefit of seeing or hearing the witnesses firsthand. The provision reads:

“The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

49. The guiding principle for a first appellate court is well articulated in the decision of *Selle & Another v Associated Motorboat Co. Ltd & Others* [1968] EA 123, where the Court held:

“An appeal to this court from a trial by the High Court is by way of a retrial, and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court 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 and should make due allowance in this respect.”

Issues

50. Based on the pleadings, evidence, submissions, and grounds of appeal, the following Issues for Determination arise in this appeal:
1. Whether the trial court erred in its finding on liability by apportioning 80% blame to the Appellant and 20% to the Respondents.
 2. Whether the trial court erred in law and in fact in relying on the evidence of PW4, and in disregarding the Appellant’s evidence.
 3. Whether the trial court erred in awarding Kshs. 1,500,000/= for loss of dependency in the absence of concrete proof of the deceased’s income.
 4. Whether the trial court properly evaluated the totality of the evidence, pleadings, and submissions before arriving at its findings.
 5. Whether the Appellant has made out a case for this Court’s interference with the trial court’s findings on liability and quantum.



Issue 1: Whether the trial court erred in its finding on liability by apportioning 80% blame to the Appellant and 20% to the Respondents

51. The primary ground of appeal relates to the finding of liability. The trial court apportioned liability at 80% against the Appellant and 20% against the Respondents. The Appellant contends that this finding was not supported by credible evidence, particularly because PW4, the sole eyewitness, gave inconsistent testimony.
52. From the evidence, it is not in dispute that the deceased, Faith Chelangat, was run over by the rear left wheel of the Appellant’s motor vehicle. DW1, the driver, confirmed this in both examination-in-chief and cross-examination. However, he stated he was unaware of the motorcycle’s presence before the impact and did not see how the accident happened.
53. PW4, the deceased’s companion, testified that the Appellant’s vehicle hit them from behind while overtaking, causing them to fall, after which the deceased was run over. While her testimony contains discrepancies, especially in describing how the impact occurred—DW1 himself did not witness the actual collision and admitted he heard a bang before stopping.
54. The police abstract and inspection report produced did not conclusively assign blame, but they confirm that no mechanical defect was found on the Appellant’s vehicle.
55. The court notes that both parties agree that the deceased and PW4 were riding as pillion passengers on a motorcycle carrying more than the legally permitted number under Section 103B (1) of the *Traffic Act*. This is evidence of shared negligence, and while it may not entirely exonerate the Appellant, it diminishes the deceased’s contribution to her own safety.
56. Given the conflicting accounts, and DW1’s own admission that he did not see the motorcycle, the Court finds that there was a degree of negligence on both sides. However, the apportionment of 80:20 does appear excessive, especially in view of DW1’s failure to observe his surroundings and the plausible finding that the motorcycle may have lost control independently.
57. This Court reapportions liability at 70% against the Appellant and 30% against the Respondents jointly, to better reflect the comparative negligence of each party.

Issue 2: Whether the trial court erred in relying on the evidence of PW4 and disregarding the Appellant’s evidence

58. The Appellant criticized the trial court’s reliance on PW4’s testimony, arguing that she was an unreliable witness and had a limited view of her surroundings, given that she was seated in the middle on the motorcycle. It was also noted that PW4 made some contradictory claims about the impact point.
59. This Court agrees that PW4’s evidence contained inconsistencies, particularly regarding whether the lorry’s front or rear wheels struck the motorcycle. Nonetheless, she remained the only eyewitness to the incident, and her account that the vehicle was attempting to overtake was not rebutted with direct evidence, as DW1 admitted not seeing the motorcycle at all prior to the incident.
60. The trial court did not err in giving weight to PW4’s testimony, although it should have done so with caution, given the absence of corroboration and the witness’s participation in unlawful conduct (as an excess passenger without safety gear). However, the trial court’s failure to properly evaluate DW1’s evidence, which was candid and consistent on certain material points (such as road conditions, traffic, and DW1’s conduct post-accident), constituted an error of judgment.



61. The trial court should have more critically examined both testimonies. The evidence of PW4 was not entirely reliable, and DW1's account warranted more weight. The Court finds that both sides contributed to the uncertainty of facts and supports a balanced view.

Issue 3: Whether the award of Kshs. 1,500,000/= for loss of dependency was justified in the circumstances

62. The trial court awarded Kshs. 1,500,000/= as a global sum for loss of dependency. The Appellant argues that the award was excessive, considering the deceased was a 19-year-old university student with no proof of income.

63. From the record, the deceased was said to be engaged in making ponchos and mats, but no documentary evidence was presented to support this claim. Her sister, PW3, and mother, PW1, both confirmed that she paid her own school fees and helped at home, but no receipts or mobile money statements were produced to substantiate this.

64. While courts may award a global sum for loss of dependency where the deceased was young and with potential, the amount must reflect the circumstances and evidence adduced. Precedents cited by the Appellant, such as Stanwel Holdings Ltd v Racheal Haluku (Kshs. 1M for a 23-year-old gardener with dependents) and Abdullahi v Mulae (Kshs. 1.2M for a 19-year-old) are relevant.

65. The trial court's award of Kshs. 1,500,000/= was excessive and not backed by evidence of earning capacity. A global award of Kshs. 1,300,000/= is deemed fair and proportionate under the circumstances.

Issue 4: Whether the trial court properly evaluated the totality of the evidence and submissions

66. It is evident from the judgment that the trial court placed disproportionate weight on the evidence of the Respondents while glossing over the Appellant's evidence, submissions, and cited authorities. The Appellant's evidence, particularly DW1's admission of not seeing the motorcycle, was crucial to determining foreseeability and reasonable care. Additionally, the trial court failed to critically analyze the inconsistencies in PW4's evidence and did not reconcile the contradiction between her account and the physical facts of the impact.

67. The trial court's analysis lacked depth and balance, and this Court finds that the evidence should have been re-evaluated more carefully.

Issue 5: Whether the trial court's findings on liability and quantum warrant interference by this Court

68. It is well established that an appellate court may interfere with findings of fact where the trial court acted on wrong principles, misapprehended the evidence, or made an award so high or so low as to represent an entirely erroneous estimate. See *Butt v Khan* [1978] eKLR and *Kemfro Africa Ltd v Lubia* [1982–88] 1 KAR 727.

69. This Court is satisfied that the findings on liability and loss of dependency fall into that category. The award on dependency was excessive, and the apportionment of liability was unjustified based on the evidence.

70. This Court is entitled to interfere and does so accordingly.



Final Disposition

71. Having carefully re-evaluated the evidence on record, considered the applicable legal principles, and analyzed the grounds of appeal, the Court finds merit in the appeal to the extent indicated.
72. Accordingly, the judgment of the Chief Magistrate's Court at Narok in Civil Suit No. E154 of 2021, delivered on 24th June 2024, is hereby varied as follows:
- i. Liability is reapportioned at 70% against the Appellant and 30% against the Respondents jointly.
 - ii. The award of Kshs. 1,500,000/= for loss of dependency is hereby set aside and substituted with an award of Kshs. 1,300,000/=.
 - iii. The awards under the other heads of damages remain undisturbed as follows:
 - a. Pain and suffering: Kshs. 30,000/=
 - b. Loss of expectation of life: Kshs. 100,000/=
 - c. Special damages: Kshs. 16,310/=Subtotal: Kshs. 1,446,310/=
 - a. Less 30% contribution: Kshs. 433,893/=
 - b. Net Award Payable: Kshs. 1,012,417/=
 - c. The sum shall attract interest at court rates from the date of judgment in the trial court until payment in full.
73. As the appeal has partially succeeded, each party shall bear its own costs of the appeal.
74. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 31ST DAY OF JULY. 2025

CHARLES KARIUKI

JUDGE

