



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 949 OF 2002**

**AGNES MUTINDA NDOLO..... 1<sup>ST</sup> PLAINTIFF**

**DAVID MUTHUKU NDOLO ..... 2<sup>ND</sup> PLAINTIFF**

**- V E R S U S -**

**MBOYA WAMBUA.....1<sup>ST</sup> DEFENDANT**

**G. KINOGOO & F. MUKORA.....2<sup>ND</sup> DEFENDANT**

**ORDER ON FURTHER DIRECTIONS**

1. On or about the 5<sup>th</sup> day of December 2001, James Ndolo Muthuku (now deceased) was a fare paying passenger aboard motor vehicle registration no. KAN 166C, Isuzu matatu along Kangundo-Nairobi road when the same was involved in a road traffic accident with motor vehicle registration no. KQL 420, Isuzu Lorry. As a result of the accident, James Ndolo Muthuku sustained serious bodily injuries. The late James Ndolo muthuku filed this suit and sought for damages from the owners of the two motor vehicles. Unfortunately, James Ndolo Muthuku passed away on 28<sup>th</sup> March 2003 before his case could be heard. Consequently, Agnes Mutinda Ndolo and David Muthuku Ndolo successfully applied to succeed the deceased. The duo, hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs respectively were enjoined to this suit as the legal representatives of the estate of James Ndolo Muthuku, deceased. In the further amended plaint dated 4<sup>th</sup> March 2004, the plaintiffs sued Mboya Wambua the owner of the motor vehicle registration No. KAN 166C and G.K. Kingoo & E. Mukora as the registered proprietors of lorry registration no. KQL 420 make Isuzu as the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively.

2. On 25<sup>th</sup> September 2015, this court determined the question of liability in the test suit i.e Nairobi H.C.C.C no. 1079 of 2002 in which liability was apportioned between the 1<sup>st</sup> and 2<sup>nd</sup> defendant in the ratio of 50:50. This judgment thereof is in respect of quantum.

3. When this suit came up for assessment of damages, learned counsels recorded a consent order to have the assessment disposed of by written submissions. I have considered the submissions and the authorities supplied by the parties. The plaintiffs have given in their submission the particulars of the injuries the deceased suffered as follows:

***i. Fracture (comminuted, supracondyla) of the (L) femur***

***ii. Fracture (comminuted, supracondyla) of the (L) tibia***

***iii. Fracture of the (L) mid-tibia***

*iv. Fracture of the lower 3<sup>rd</sup> of the (L) fibula*

*v. Deep cut wounds on the posterior aspect of the (L) forearm*

*vi. Deep cut wounds of the posterior aspect of the (L) elbow joint.*

*vii. Deep cut wounds on the forehead.*

4. It is specifically stated in the further amended plaint and in the submissions that the deceased died while domiciled in Kenya on the 28<sup>th</sup> day of March 2003 as a result of the injuries. The 1<sup>st</sup> defendant on his part filed submissions stating that the plaintiffs had failed to tender evidence showing the link between the death of the deceased and the accident. A critical look at the annexures attached to the plaintiffs' submission show that those annexures are more of decided cases. On 16.11.2016, this court was invited to give directions on the question relating to assessment of damages. This court proceeded to give directions directing the parties to file and exchange written submissions to enable it quantify damages. Learned counsels appearing for the plaintiffs and the 1<sup>st</sup> defendant filed and exchanged written submissions. At the time of giving directions, the advocate appearing for the 2<sup>nd</sup> defendant was not present in court. That may explain the reason why the 2<sup>nd</sup> defendant has not filed submissions. I think it is only fair to give the 2<sup>nd</sup> defendant a chance to file submissions on quantum.

5. In the unique circumstances of this case and on the basis of the submissions filed so far, I am convinced that this is a case where this court should step in and grant learned counsels an opportunity to make oral highlights on the submissions before this court can retire to write its judgment. Consequently the 2<sup>nd</sup> defendant's advocate is given 15 days from the date hereof to file and serve submissions. The suit is stood over to 12/6/2017 for oral highlights.

**Dated, Signed and Delivered in open court this 25<sup>th</sup> day of May, 2017.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant