



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

**CIVIL CASE NO. 258 OF 2010**

**ROSE WANGUI MACHUA**

**LINCOLN MACHUA NJOROGE**

**(The Administrators of the Estate of ABSOLOM MWANGI MACHUA.... PLANTIFF**

**VERSUS**

**JAPHET MBIUKI .....DEFENDANT**

**JUDGMENT**

The plaintiffs are mother and father respectively of Absolom Mwangi Machuah now deceased. They are the legal administrators of his estate and brought this suit against the defendant following a road traffic accident on 3<sup>rd</sup> June, 2007 along Thika – Kenol road. Their late son was a passenger in Motor Vehicle registration No. KAV 287K owned by the defendant.

The plaintiffs had originally sued two defendants but the case against the 2<sup>nd</sup> defendant was withdrawn by consent. Only the two plaintiffs gave evidence in support of the pleadings herein. The 1<sup>st</sup> plaintiff Lincoln Machua Njoroge relied on his statement filed herein and produced a bundle of documents in support of the claim against the defendant. The 2<sup>nd</sup> witness Rose Wangui Machua is the mother of the deceased who also relied on her witness statement filed herein.

The evidence presented before the court is that the deceased was 23 years old at the time of his death. He was a businessman who dealt in buying and selling bananas from Meru to Githurai. He used to earn Kshs. 2,000/= per day. His parents were his dependants and as a result of his death they have lost that support. They brought this suit for damages as set out in the plaint. The evidence of the plaintiffs is uncontroverted.

The accident according to the plaint involved a collision between motor vehicles registration No. KAV 612F and KAV 287K in which the deceased was travelling as a passenger. The learned counsel for the plaintiffs has filed written submissions and cited some authorities. He has classified damages under three main heads these being, pain and suffering, loss of expectation of life and lost years.

The deceased died on the same day of the accident and I agree where death follows immediately after such an accident the sum of Kshs. 10,000/= is payable for pain and suffering. On loss of expectation of life, I am guided by **NAKURU HCCC NO. 339 OF 1998 BETTY NGATIA (ADMINISTRATOR OF THE ESTATE OF GLADYS WAITHERA NGATIA) VS. SAMUEL KINUTHIA THUITA** cited by counsel and many others referred to therein. Under that head I award a sum of Kshs. 150,000/=.

The evidence that the deceased used to earn Kshs. 2,000/= per day has not been supported by any document, but the defendant elected to stay away from these proceedings and therefore the evidence of P.W. 1 to that effect is uncontested. However it is the duty of every citizen to pay tax on whatever earnings he or she received from any business or employment. I shall therefore discount that figure by what should be appropriate taxation which is 30% leaving a balance of Kshs. 1,400/=.

The deceased was unmarried but I have no doubt that he used a substantial amount of his earnings to support his parents. I am assuming that he must have been paying some wages to people who helped him run the business or for storage of his goods. I shall discount that figure by a modest sum of Kshs. 200/= leaving a balance of Kshs. 1,200/= as his net earnings per day.

I am prepared to accept the proposition that he committed 6 days to his business in a week. His estate lost 1,200/= for six days per week which in a month translates to Kshs. 28,800/=.

The deceased died at the age of 23 years and from the submissions filed his parents at the time of the accident were aged 45 years (father) and 42 years (mother) respectively. It is generally accepted that life expectancy in Kenya has improved considerably and it is suggested by counsel that 25 years loss of dependency is reasonable. However I am mindful of the fact that any award made at this stage is accelerated and therefore a lesser multiplier should be applied. I consider the figure of 20 years to be a reasonable multiplier in the circumstances. Damages for lost years therefore would amount to Ksh.  $28,800 \times 12 \times 20 = 6,912,000/=$ .

It is reasonable to conclude that he used half of his net earnings to support his parents. This sum shall therefore be reduced by half leaving a balance Kshs. 3, 456,000/=.

It is standard that the award made under the Law Reform Act is deductible from the award made under the Fatal Accidents Act and therefore making provision for the said sum, leaves a balance of Kshs. 3,276,000/=. This is the sum due and payable to the plaintiffs as a result of the death of their deceased son as general damages. Proved special damages going by the documents produced amount to 72,950/=.

In the end there shall be judgment for the plaintiffs against the defendant in the sum of Kshs. 3,296,000/= general damages plus Kshs. 72,950/= special damages. Special damages attract interest from the date of filing the suit until payment in full, while general damages attract interest from the date of judgment. The plaintiffs shall also have the cost of the suit.

***Dated, signed and delivered at Nairobi this 21<sup>st</sup> of April, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**