



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.109 OF 2013**

**M A M**

**P A O.....APPELLANTS**

**(Both suing as the administrators of personal representatives  
of the estate of F O O)**

**VERSUS**

**LAWRENCE MICHA CONDITY.....RESPONDENT**

**J U D G E M E N T**

(1) On 11/1/2012 at around 7.30 a.m. the deceased was walking along Mumias Bungoma road when the respondent's motor vehicle Reg. No.KAH 318L veered off the road, when it was hit by another vehicle and it hit the deceased causing serious injuries whereby he died while undergoing treatment. The appellant herein being the widow brought the suit on her on behalf and that of the estate.

(2) The appellant did not call any eye witness but she went ahead to establish the fact that the deceased was her husband then working with [particulars withheld]

(3) Kenya was earning a salary of Khs.10,000/=. Between them were 5 children namely:

- i. M O;**
- ii. E A;**
- iii. L A;**
- iv. E A;**
- v. E O.**

(4) All were minors. She further testified that the deceased supported her parents P O O and P A O . The appellant produced the Birth Certificates for the children and the voucher which showed the deceased's salary. The Abstract form as well as the postmortem reports were equally produced.

(5) The respondent denied the accident but during his evidence in chief the respondent stated that indeed an accident occurred but the same was caused by the driver of another motor vehicle, Toyota Caldina. The lower court proceeded to dismiss the case for want of an eye witness to the accident inter

alia.

(6) The appellant has filed this appeal citing several grounds. Substantially, I find that the basic issue to determine is not necessarily whether an accident occurred. The same was duly confirmed by the parties and the same is not disputed. The issue however is who caused the accident. The appellant granted was not at the scene and there was no eye witness called. In my opinion the only credible eye witness to the accident was the respondent who said in his testimony that:

**“on 11/1/12 early morning I was driving from kitale  
at 7.45 a.m. I got an accident near Mumias Sugar Company.  
It involved Toyota Caldina KBH 896D and my Nissan Reg.  
NO.[particulars withheld]. The Caldina was overtaking my vehicle near Nambale.  
it knocked me on my right side. My vehicle lost control.  
I tried to stabilize it. There was a pedestrian walking on the road.  
I turned my vehicle, it spined and faced the direction it came from.  
It knocked the pedestrian. The Caldina did not stop.  
I don't known the owner. The pedestrian was walking on  
the edge of the tarmac. I have never seen the Caldina owner.”**

On cross-examination he said:

**“The pedestrian was knocked by my vehicle on the  
footpath next to the road. I took the pedestrian to Mumias  
hospital. I heard he died in the hospital. I knocked the  
pedestrian as a result of being hit by the Caldina.  
The pedestrian was not at fault. I have not brought the  
Caldina owner to the case.”**

(7) I find the respondent's testimony brutal honesty. There was total admission of the incident and infact laid blame on the Caldina vehicle and not the deceased.

(8) Pursuant to the above finding the question of liability squarely felt on the respondent and I do hold him 100% liable. In any event the respondent chose not to bring 3rd party proceedings against the owner of the Toyota Caldina. He has therefore himself to blame.

(9) On quantum it is not contended that the deceased earned a salary of Kshs.10,000/- as per the voucher. That voucher was produced by consent. The only issue that was not established was the dependency of both the deceased parents. On this score I think the only dependency that ought to be considered are the children and the wife whom I am satisfied that the birth certificates produced as evidence establishes their credentials.

(10) The deceased died at 45 years of age. He died while undergoing treatment. I do therefore

