REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO. 225 OF 2013

PUT SARAJEVO GEN. ENG. CO.LTD…….....……..…
APPELLANT

VERSUS

ESTHER W. NJERI & JOHNSON MWANGI GUCHA (*Suing as the legal representative of the estate of*

SYLVESTER MUHIA GUCHA (deceased)….....1ST
RESPONDENT

PETER MAINA KIMANI…….....…….....…….2ND
RESPONDENT

WARUI ANNE …….....…….…….……3RD
RESPONDENT

(Being an appeal against the judgement and decree of the Hon. B.M. Ochieng Ag. CM in Murang'a Civil Case No. 151 of 2009 delivered on 4th October 2013).

JUDGMENT

The appellant was sued in the Chief Magistrate's court at Murang'a by the 1st respondent for damages under the **Law Reform Act (cap 26)** and the **Fatal Accidents Act (cap 32)** respectively for the benefit of the estate and the dependants of **Sylvester Muhia Gucha** (Deceased) who died on 31st December 2008 as a result of a road traffic accident involving the appellant's motor vehicle registration number KXV 925 and the 2nd Respondent's vehicle registration number KAL 578E; the respondents (who are described in this appeal as the "1st respondent") initiated the action against the appellant in their capacity as the legal representatives of the estate of the deceased.

The 1st respondent's suit against the appellant was one amongst at least six others instituted in the magistrates' court as a result of the traffic accident aforesaid and so, by a consent recorded in court on 26th July, 2013, parties to the respective claims agreed to consolidate the 1st respondent's suit against the appellant with **Murang'a Chief Magistrates Court Civil Suits Nos. 80, 81, 82, 152,153 and 198 of 2009** for purposes of determining liability. Upon hearing the test suit on liability, the learned trial magistrate apportioned liability at ratio of 70:30 as between the appellant and the 2nd respondent respectively.

Besides apportionment of liability, the learned magistrate awarded the 1st respondent a total sum of

Kshs. 1,390,500/= made up of special damages, damages for loss of expectation of life and loss of dependency; this sum was subject to 30% contribution.

If I can summarise the eleven grounds upon which this appeal is founded, the appellant impugns the apportionment of liability and the award on damages on the grounds that the apportionment was against the weight of evidence presented in court and the award of damages under the **Law Reform Act** and the **Fatal Accidents Act** amounted to double awards over the same claim and were, in any event, excessive in the circumstances.

As this is the first appeal, I am alive to the responsibility of this Court to analyse and evaluate the evidence on record afresh and reach its own conclusions bearing in mind that it neither saw nor heard the witnesses testify (see **Selle v Associated Motor Boat Co. [1968] EA 123**). In **Kiruga v Kiruga & Another [1988] KLR 348**, the Court of Appeal observed that:-

> ***"An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand but this is a jurisdiction which should be exercised with caution."***

At the hearing of the suit against the appellant, the 1st respondent called three witnesses to support her case; **Sgt Roseline Githaiga (PW1)** testified that she was, at the material time, a police officer stationed at Makuyu police station. She said that indeed there was a road traffic accident on 31st December, 2008 along Kariti-Kabati Road involving motor vehicles registration number KAL 578E (Toyota saloon) and KXU 925 (Volvo lorry) as a result of which several people died while others were seriously injured; amongst those who perished in the accident were James Kamau Waweru, James Irungu Thiong'o, Sylvester Muhia Gichua and Joseph Njuguna Muhia while those who sustained injuries were named as Benson Ngugi Wangoi, Morris Wanjiru Nguchu, Esther Njoki Ngugi and Samuel M. Macharia. The witness told the court that she was not the officer who investigated the accident but confirmed to court that the accident did occur.

Samuel Mwangi Macharia (PW2) was one of the passengers involved in the traffic accident and at the material time he was travelling in motor vehicle registration number KAL 578 E heading to Nairobi. He said that on reaching Gitagwaere, he saw an oncoming lorry registration number KXV 925 negotiating a corner at a high speed. He said that the lorry veered to their side of the road and collided head on with the vehicle in which they were travelling and, as a result of that collision, their vehicle landed in a coffee plantation. He testified that some passengers died on the spot while others were injured; he blamed the lorry driver for the accident for failing to keep to his lane.

Esther Wambui Muhia the 1st respondent herein testified that her husband had travelled in motor vehicle registration number KAL 578E and that he was involved in the fatal accident; however, she said that she did not witness the accident. She produced copies of her husband's death certificate, the grant of letters of administration of his estate ad- litem, Copy of records in respect of ownership of motor vehicle registration number **KXV 925** and a receipt for payments of those exhibits. She stated that the deceased was a 29 year old teetotaller and that he was a businessman earning about Kshs. 60,000 per month. She testified that they had been married for 5 years and had two children aged 4 and 2 respectively.

Mohamed Noor Hussein (DW1) testified on behalf of the appellant and told the court that he was the driver of the ill-fated lorry registration number KXV 925 and that on 31st December, 2008 he was heading to Kabati from Mukuyu carrying 14 tonnes of murram. He said that somewhere at a corner, at a place called Karodhiage, he noticed an oncoming saloon car on his side of the road. He said that he tried to hoot and flash lights to warn its driver in vain and that he moved to the car's side of the road to avoid a head on collision but its driver moved back to its lane causing the two motor vehicles to collide head on. He testified that he wasn't injured at all as a he was wearing a safety belt but four people from the saloon car suffered fatal injuries while four others were injured. He testified that he

assisted the injured and also recorded a statement with the police; he was not charged for any traffic offence as a result of the accident but was issued with a notice of intention to prosecute.

Samuel Ndega (DW2) testified that he was a private investigator appointed by Occidental Insurance Company to investigate the accident. His investigations revealed that the accident occurred on 31st December, 2008 and that it involved motor vehicles registration numbers KAL 578 car and KXV 925. According to his investigations, the lorry driver was to blame. He said that the saloon car had eight occupants and that the lorry had one occupant. His investigation report and photographs of the two vehicles were produced and admitted in evidence as exhibits.

As noted earlier, after considering the foregoing evidence, the learned trial magistrate apportioned liability at the ratio of 70:30 between the driver of the lorry and that of the saloon car; he did not attribute any liability on the passengers in the saloon car. In the learned magistrate's view, the lorry veered of its lane and collided head on with the saloon car. His analysis of the photographs taken at the scene by the second appellant's witness was that the lorry skidded and hit the right side of the saloon car and thus confirming that the lorry left its lane and veered into the saloon car's lane.

On quantum, the learned magistrate found as follows:-

a. Special damages	Kshs.	500
b. Loss of expectation of life	Kshs.	100,000
c. Pain and suffering-	Kshs.	10,000
d. Loss of dependency-	Kshs.	1,280,000
	Kshs.	1, 390,500

In reaching a multiplier for loss of dependency, the learned trial magistrate found that the Plaintiff had not proved the deceased's earning and that the deceased was 29 years old and would have continued to live a healthy and productive life for 20 more years. He also found that the deceased used 2/3 of his income on his family and applied the minimum wage amount of Kshs. 8,000/=.

In its written submissions, the appellant through its counsel submitted that the judgement on liability left a lot to be desired as it was the evidence of only one of the 1st respondent's witnesses that touched on the appellant's liability. Counsel further stated that the appellant in his amended plaint blamed both the 1st and 3rd defendants equally. In her view, the learned trial magistrate ought to have noted that the 1st respondent had sued three defendants and thus ought to have held all the three defendants liable for the accident. The appellant further faulted the fact that the driver of motor vehicle registration number KAL 578E never attended court to testify.

The appellants also faulted the trial court for failing to address itself to the effect of the notice of claim against his co-defendants and also faulted the learned trial magistrate for relying on the evidence of the second defence witness which showed the lorry's skid marks when the same witness could not show the court where the skid marks of the saloon car were. She concluded by urging the court to find the 1st Defendant 100% liable for the accident.

On quantum, it was submitted on behalf of the appellant that the award under the head of pain and suffering was unnecessary and that of Kshs. 100, 000/= for loss of expectation of life was excessive since the deceased was 29 years old. She also submitted that much as the trial court opted to award Kshs. 8,000/= for loss of earning, there was no evidence that the deceased earned any regular income or that he was employed. The appellant, relying on the Court of Appeals' decisions in **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini versus A.M. Lubia & Olive Lubia (1982-88) 1KLR 727** and **Civil Appeal No. 49 of 2000**, **Asal versus Muge & Another (2001) KLR 202** submitted that the learned trial magistrate erred in awarding damages both under the **Law Reform Act** and under the **Fatal Accidents Act.**

In opposing the appeal, counsel for the 1st respondent submitted that the first respondent's witness was a police officer from Makuyu police station and that though he did not investigate the case, it was not mandatory that the investigations officer ought to have testified. He also stated that, in any event, there was an eye witness who witnessed the accident and testified on how it occurred. He further stated that the lorry driver, in his evidence, conceded that the accident did indeed occur and that it is the lorry that swerved from its lane on to the car's lane where both vehicles collided head on. Counsel impugned the testimony of the second defence witness and said that no toxicology report was produced to prove that the occupants of the saloon car were intoxicated. He said that the witness visited the scene three days after the accident and only interviewed the driver of his client and thus there was a likelihood of bias. He said that the court apportioned liability based on the evidence on record in totality and not on the evidence of a single particular witness. On quantum, counsel submitted that the amount awarded was fair and that in the absence of proof of earning, the court correctly applied a sum of Kshs. 8, 000/=. He urged the court to dismiss the appeal with costs to the Respondent.

I have considered the submissions by both counsel and, in my view, I find the following to be the issues for determination:-

1. Whether the learned trial magistrate correctly apportioned liability.
2. Whether amount awarded in quantum was excessive in the circumstances.
3. Whether the amount paid under Law Reform Act should be deducted from the award under Fatal Accidents Act.

In the submissions made in its behalf, the appellant asked the court to relieve it of liability for the accident. It was contended that the court should draw an adverse inference as a result of the failure to call the driver of motor vehicle registration number KAL 578E; the court was also asked to note that of all the 1st respondent's witnesses, it is only one witness' testimony that touched on the appellant's liability.

From the evidence available, the vehicles collided on the left side of the road and it was the lorry that veered off its course and collided with the saloon car on its side of the road. The lorry driver himself testified that he swerved to the saloon car's side to avoid a head on collision and that the collision occurred when the car drove back to its lane. The car's driver died on the spot and thus the submission that he ought to have testified is out of question; failure to call him cannot invite the court to draw an adverse inference in such circumstances.

There is nothing to suggest that the learned magistrate misdirected himself on the evidence on the manner the accident happened; the collision of the two vehicles occurred on the left lane of the road. Based on the evidence before him, the learned magistrate concluded, quite correctly in my view, that it was the lorry driver who veered from his lane into the left lane on which the oncoming saloon car was travelling and thus caused the accident. Having come to this conclusion, there was no case for contributory negligence and the driver of the lorry should have been held solely responsible for the accident. It was wrong for the learned magistrate to have apportioned liability to the driver of the saloon car. I note, however, that the 1st respondent not only did not file a cross-appeal to challenge this finding but he also asked this Court not to disturb the learned magistrate's findings on liability; I will, accordingly, not interfere with the learned magistrate's finding on liability.

On quantum, the general principle applicable in considering an award of damages at this stage is that while the assessment of damages is within the discretion of the trial judge, the appellate court will only interfere where trial judge, in assessing damages, either took into account an irrelevant factor or left out a relevant factor or that the award was too high or too low as to amount to an erroneous estimate or that the assessment is based on no evidence. The Court of Appeal in **Bashir Ahmed Butt v Uwais Ahmed Khan [1982-88] KAR 5** said of the discretion of the trial court in assessing damages in the following terms:-

"An appellate Court will not disturb an award of damages unless it is so inordinately high

or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low."

The appellants argue that the learned magistrate in awarding the damages applied wrong principles which resulted in damages that were excessive as to amount to an erroneous estimate of the loss. On the other hand, the respondent's counsel stated that the learned magistrate assessed the damages properly and there are no grounds to interfere with awards as made by the learned magistrate.

It is clear from the evidence that the deceased, Sylvester Muhia Gucha, was aged 29 at the time of his demise and that he enjoyed good health and a happy life. It was claimed that, as a businessman, he was earning about Kshs. 60,000/= per month; with these earnings he supported his family comprising a wife, two children and a brother. The learned magistrate found that although there was no proof that he was earning **Kshs. 60,000/-** per month, he adopted the sum of **Kshs 8,000/-** as the multiplicand. He applied a multiplier of 20 and a dependency ratio of **2/3** bringing the figure to **Kshs. 1,280,000/-** The claimant was awarded **Kshs. 10,000/-** for pain and suffering, **Kshs.100, 000/-** for loss of expectation of life bringing the total award to **Kshs.** 1**, 390,500/=**

The plaintiff founded his claims on the **Law Reform Act** and the **Fatal Accidents Act**. The manner of assessment of damages under the Fatal Accidents **Act** was **succinctly put in Beatrice Wangui Thairu v Hon. Ezekiel Barngetuny & Another Nairobi HCCC No. 1638 of 1988 (UR)** where Ringera J(as he then was) stated as follows:-

"**The principles applicable to an assessment of damages under the Fatal Accidents Act are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature."**

The learned magistrate used the multiplier approach to assess damages in favour of the 1st respondent; there was, however, no documentary evidence produced to support the earnings. The plaintiff did not provide any basis for the amount which was proposed as the deceased's income for example by providing comparative figures of persons in the same business. The amounts proposed were, in my view, speculative at best. This is not to say that the deceased, never earned and could not earn any income in future but for the accident. In **Jacob Ayiga Maruja & Another v Simeon Obayo, Civil Appeal No. 167 of 2002 [2005] eKLR** the Court of Appeal observed that:-

"We do not subscribe to the view that the only way to prove the profession of a person must be by production of certificates and that the only way of proving earning is equally the production of documents. That kind of stand would do a lot of injustice to very many Kenyans who are even illiterate, keep no records and yet earn their livelihood in various ways. If documentary evidence is available, that is well and good. But we reject any contention that only documentary evidence can prove these things."

Where a person is employed and the salary is not determined, his or her income may be determined by reference to the government wage guidelines issued from time to time. The absence of documentary or other evidence led the magistrate to rely on a sum of Kshs. 8,000/=. The learned magistrate did not give reasons as to why he applied a multiplicand of Kshs. 8,000/=; this constituted an error on the part of the learned magistrate. Since the income could not be ascertained with precision, the court ought to have awarded a global sum. In this respect I would rely on Justice Ringera's reasoning in **Mwanzia v Ngalali Mutua and Kenya Bus Services (Msa) Ltd & Another** which was quoted with approval in

Albert Odawa v Gichimu Gichenji NKU HCCA No. 15 of 2003[2007] eKLR where he expressed the following view:-

> "***The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do."***

The same principle was adopted in **Mary Khayesi Awalo & Another v Mwilu Malungu & Another ELD HCCC No. 19 of 1997 [1999] eKLR** where Nambuye J., stated that:-

> "***As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjuncture. It is better to opt for the principle of a lump sum award instead of estimating his income in the absence of proper accounting books****."*

I am persuaded by the reasoning in the foregoing decisions and I do hold that the multiplier approach was wholly inappropriate in light of the paucity of evidence; I would instead award the deceased's estate a global sum of **Kshs. 1,000,000/=** which in my view is reasonable and moderate in the circumstances.

The appellant also contended that the learned trial magistrate erroneously awarded damages under both under the **Law Reform Act** and the **Fatal Accidents Act** arguing that this amounted to double awards as the same person was going to benefit. The appellant must have been referring to what the Court of Appeal said in **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini versus A.M. Lubia & Olive Lubia (ibid)** where it was held, *inter alia*, that where the *net benefit will be inherited by the same dependants under the Law Reform Act, that must be taken into account in the damages awarded under the Fatal Accidents Act because the loss suffered under the latter Act must be offset by the gain from the estate under the former Act.*

This position in law was also referred to in **Asal versus Muge & Another (2001)KLR 202** where the same Court sitting at Kisumu cited its earlier decision in **Maina Kaniaru & Another versus Josephat Muriuki Wangondu, Civil Appeal No. 14 of 1989** (unreported) where it said:-

> ***The rights conferred by section 2(5) of the Law Reform Act (Cap 26, Laws of Kenya) for the benefit of the estates of the deceased persons are stated to be "in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act." This does not mean that damages can be recovered twice over but that if damages recovered under the Law Reform devolve on the dependants the same must be taken into account in reduction of the damages under the Fatal Accidents Act…"***

My understanding of the Court of Appeal's reasoning and which, no doubt, is consistent with legal position, is that, in fatal accidents, damages are recoverable under the distinct heads of the **Law Reform Act** (under **section 2(1)(5)** thereof) and the **Fatal Accidents Act** (under **section 4(1)** thereof). It is appropriate to reproduce these provisions here to appreciate their import as far as awards under these heads are concerned:- S**ection 2(1) (5)** of the **Law Reform Act** provides as follows:-

> ***2.(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:***
>
> ***Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on***

the ground of adultery.

(2)…

(3)…

(4)…

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by the Fatal Accidents Act or the carriage by Air Act, 1932, of the United Kingdom, and so much of this Part as relates to causes of action against the estates of the deceased's persons shall apply in relation to causes under those Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).(underlining mine).

The Law Reform Act is clear, and there is no ambiguity, that any cause of action for the benefit of the deceased's estate and thus any award that may ensue therefrom is not in substitution of or an alternative to the right that accrues to the deceased's dependants under the **Fatal Accidents Act.**

The **Fatal Accidents Act** itself makes it clear as to who should benefit from any action taken under it; **section 4(1)** thereof states:-

4.(1) Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and shall, subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased; and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those persons in such shares as the court, by its judgment, shall find and direct:

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint and every such action shall be commenced within three years after the death of the deceased person.

(2) In assessing damages, under the provisions of subsection (1), the court shall not take into account-

(a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after passing of this Act;

(b) any widow's or orphans pension or allowance payable or any sum payable under any contributory pension or other scheme declared by the Minister, by notice published in the Gazette, to be a scheme for the purpose of this paragraph.

That an action is maintainable under the **Fatal Accidents Act** for the benefit a deceased person's wife, husband, parent or child is beyond dispute; where such an action is viable, the trial court has the discretion, as is always, to determine the amount of damages payable; in exercising this discretion, the Act under **subsection (2)** provides a guide of what ought not to be considered in assessment of damages under this head. The Act does not, however, provide any general or specific guideline of what should to be considered; I suppose this omission is deliberate mainly to leave it to the trial court with sufficient latitude within which it can exercise its discretion in assessing the damages considering the peculiarity of the cases that come before it.

It is upon this understanding that while an award under this head may be "reduced" as was suggested

by the **Court of Appeal** in **Maina Kaniaru & Another versus Josephat Muriuki Wangondu (ibid)** because an award has been made under the **Law Reform Act** it cannot be done away with altogether. The fact that those who are likely to benefit from the deceased's estate are the same persons who will benefit from any claim under the **Fatal Accidents Act** is only factor to be considered in the extent of damages to be made; it is not a reason to reject a claim for an award under this head.

In my humble opinion, if the damages under this head have to be reduced, the extent to which they will be reduced will depend on the circumstances of each particular case because, although courts have over the years invariably adopted the figure Kshs 100,000/=, it cannot be said that such a figure is the standard figure which must always be adopted in all cases; neither can it be said to be the starting point from which an award under this head may be reduced on the basis that the beneficiaries are the same persons who will benefit from any award under the **Law Reform Act**. In my humble view, it is simply a figure that offers some guidance on the making of an award under the Fatal Accidents Act; perhaps because it has been adopted in many claims under that Act over the years, it has become customary to make the award at that rate. In **Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini versus A.M. Lubia & Olive Lubia (ibid)** Kneller J.A. (as he then was) described the award as "an unreal arbitrary award". While citing several decisions in England the learned judge said of this award:-

> ***"What has to be valued is the loss of the victims' prospective happiness which Viscount Simmonds in Benham versus Gambling (1941) AC 157 said 'might seem more suitable for discussion in an essay on Aristotelian ethics than in a judgment in a court of law' and because it is an unreal arbitrary award it usually is the current conventional sum…It was £200 in 1941 and £500 in 1968." (See page 730)."***

It is noted, however, that it is in the same Kemfro Africa Ltd case that the judges said that though an award under the Fatal Accidents Act should take into consideration any award made under the Law Reform Act, the arithmetical deduction *'need not be set out as for an examination answer'*. The learned judges proceeded to uphold the distinct awards under the Law Reform Act and the Fatal Accidents Act as assessed by the trial judge; they agreed with him that the claims under the two heads neither overlap nor do they result in the plaintiff being compensated twice in respect of one claim.

In view of the foregoing decision I have come to the conclusion that the award by the learned magistrate of Kshs. 100,000/= under the **Fatal Accidents Act** head was well within the law and there is no basis to disturb it. I did not see any evidence to suggest that the deceased did not have any prospect of a happy life and considering all the circumstances the sum awarded was moderate; it was neither to high nor too low. There is nothing to suggest that in arriving at this figure the learned magistrate acted on some wrong principle of law or the amount awarded was so high as to make it an entirely erroneous estimate of the damage to which the first respondent was entitled.

As for damages for pain and suffering the judges in the **Kemfro Africa Ltd** case (ibid) were clear that such an award could not be sustained where the deceased succumbed to his injuries on the spot. In the leading judgment, Kneller J.A. said at page 730:-

> ***"In England, under the Law Reform Act, it is the deceased's own cause which survives for the benefit of his estate…so the estate should recover the damages the deceased would have recovered but for his death (and the expenses of his funeral). Damages for pain, suffering, loss of amenities and earnings are for the period he survived…so if death is more or less instantaneous the only damages recoverable will be for the deceased's loss expectation of life."***

I need not belabour the point here; it is clear that where death arises instantly, there is no basis for an award for pain and suffering. I would therefore set aside the learned magistrate's award under this head.

In conclusion the appellant's appeal is allowed to the extent the award for loss of dependency is reviewed downwards to **Kshs. 1,000,000/=** while the award on pain and suffering is set aside. Subject

to contribution the final award is therefore as follows:-

Loss of Expectation of Life	Kshs. 100,000
Loss of Dependency	Kshs. 1,000,000
Special Damages	Kshs. 500
Total	Kshs. 1,100,500

Finally, when the court makes an award under the **Fatal Accidents Act** it must, in accordance with **section 4(1)** thereof, apportion the amount awarded to each dependant of the deceased. I therefore direct the 1st respondent to file the appropriate application in the magistrates' court for the court's consideration.

I make no order as to costs.

Dated, signed and delivered at the High Court in Murang'a this 10th day of December, 2014

Ngaah Jairus

JUDGE