



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

**CIVIL DIVISION**

**CIVIL CASE NO. 238 OF 2010**

**JANE THANJI WACHIRA**

(Suing on her own behalf and

on behalf of the estate of

**LENNY MARIO WACHIRA, Deceased) ..... PLAINTIFF**

**VERSUS**

**1. TOYOTA EAST AFRICA LTD  
2. KENYA COMMERCIAL BANK LTD  
3. HARUN KIMARU..... DEFENDANTS**

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

1. The Plaintiff's claim in this suit is for damages in negligence on account of the death of one **LENNY MARIO WACHIRA** (herein-after called the **Deceased**). The Deceased died on 16<sup>th</sup> May 2009 following a road accident along the Sagana-Kenol road involving motor vehicles registration numbers **KAX 727C**, Toyota saloon and **KAY 638G**, Toyota matatu. The Deceased was a passenger in the first motor vehicle.

2. The Plaintiff was the mother of the Deceased. She brought this suit on her own behalf as a dependant of the Deceased and on behalf of his estate. Damages are claimed under the **Law Reform Act, Cap 26** and the **Fatal Accidents Act, Cap 32**. It is pleaded that the 1<sup>st</sup> Defendant was the registered owner of motor vehicle registration **KAX 727C** and that the 2<sup>nd</sup> Defendant was the insured and equitable owner in possession of the said motor vehicle. It is further pleaded that the 3<sup>rd</sup> Defendant was the registered owner of motor vehicle **KAY 638G**.

3. On 26<sup>th</sup> January 2012 a consent judgment on liability and certain damages was entered as follows –

**“ORDER: BY CONSENT -**

i. Judgment be and is hereby entered for the Plaintiff against the Defendants on liability at the ratio of 70%/30%.

ii. Damages under the Law Reform Act are agreed as follows –

(a) Pain and suffering ..... KShs 20,000/00

(b) Loss of expectation of life ..... 100,000/00

iii. Special damages are agreed at KShs 1, 700/00.

iv. The above figures are subject to the agreed contributory negligence.

v. Court to determine damages under the Fatal Accidents Act.

vi. Hearing on the outstanding issue on 19/3/2012.

vii. Costs in the cause.”

4. In this judgment therefore the court will determine only damages under the Fatal Accidents Act.

5. Only the Plaintiff testified. The Defendants did not lead or call evidence. I have considered the Plaintiff’s testimony. I have also considered the written submissions filed on behalf of the parties. The Plaintiff’s submissions were filed on 23<sup>rd</sup> March 2012 while those of the Defendants were filed on 26<sup>th</sup> March 2012.

6. At the time of his death the Deceased was aged 24 years. He was working with Kenya Commercial Bank, Naro Moru. He had been employed there immediately after University. His net pay after taxation was **KShs 16,764/35 per month**. He was a graduate of the University of Nairobi with a Bachelor of Commerce degree. He was not married and he lived alone. He did not have any children he might have been supporting. His sole dependant was his mother who he was financially supporting, particularly in repaying loans that she had taken to educate him.

7. What came out in cross-examination was that the Deceased appeared to live quite frugally. He lived in a single rented room in Naro Moro town paying a rent of only KShs 2,500/00 per month plus KShs 500/00 for water and electricity. Apparently he had worked for only two months when he met his untimely death. In those two months he paid KShs 17,000/00 towards his mother’s loans.

8. I will in these circumstances award a **multiplicand of KShs 16,764/35** and a **dependency ratio of one-half**.

9. As for the multiplier, I will take into account that the Public Service mandatory retirement age of 60 years did not necessarily apply in the private sector where the Deceased worked. But I have to take into account the vagaries and vicissitudes of life. Doing the best that I can, after looking at the cases cited, I will award a **multiplier of 28 years**.

10. Damages under the Fatal Accidents Act thus work out at **KShs 2, 816, 410/80** made up as follows -

$$\text{KShs } 16,764/35 \times 12 \times 28 \times \frac{1}{2} = \text{KShs } 2,816,410/80.$$

11. In summary, there will be judgment for the Plaintiff as follows (all figures being less 30% contributory negligence) –

(i) Pain and suffering .....KShs 14,000/00

(ii) Loss of Expectation of life .....70,000/00

(iii) Under the Fatal Accidents Act.....1,971,487/60

(iv) Special damages .....1,190/00

12. The general damages will carry interest at court rates from the date of judgment and the special damages from the date of suit.

13. The Plaintiff will have costs of the suit less 30% contributory negligence.

14. Those will be the orders of the court.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS**

**14<sup>TH</sup> DAY OF JUNE 2013**

**H. P. G. WAWERU**

**JUDGE**