



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CIVIL CASE NO.3 OF 2008**

**ELIZABETH MUSONDI AND JUSTIN OKWERO**

*(Suing as the legal Representative of the Estate of*

**IGNATIUS OKETCH OMBARA (Deceased).....**  
**.....PLAINTIFFS**

**VERSUS**

**EASY COACH  
LTD.....1**  
**ST DEFENDANT**

**DUNCAN WACHIRA MUNYUA.....**  
**.....2<sup>ND</sup>DEFENDANT**

**JUDGMENT**

The deceased, Ignatious Oketch Ombara, was a passenger in a motor vehicle Registration No.KAX 066S owned by the 1<sup>st</sup> Defendant. The motor vehicle was at the material time being driven by the 2<sup>nd</sup> Defendant. The motor vehicle was involved in an accident on 9<sup>th</sup> October 2007. The accident occurred along Busia – Kisumu Road. The accident resulted in the deceased sustaining fatal injuries. The Plaintiffs attributed the accident to the negligence of the 2<sup>nd</sup> Defendant. They filed this suit on behalf of the estate of the deceased for compensation under the **Fatal Accidents Act** and the **Law Reform Act**. The Plaintiffs are, respectively, wife and brother of the deceased. The Defendants filed defence to the suit. They denied the Plaintiffs’ claim that they were responsible for the accident. They further denied that they are entitled to compensate the estate of the deceased as a result of the said accident.

However, on 25<sup>th</sup> July 2012 when this matter was listed for mention before this court, the parties to this suit recorded a consent on the following terms:

***“By consent judgment on liability is entered in favour of the plaintiffs against the defendants jointly and severally at 100% in terms of the test suit Busia HCCC No.4 of 2008. Paragraph 7(b)(i) of the plaint is amended to change the amount from Kshs.34,134/- to Kshs.39,236.40”.***

Justin Okwero testified as PW1 while Elizabeth Musondi Nabwire as PW2. They both narrated to the court how the family of the deceased was affected by the death of the deceased. PW1 testified that the deceased was married to PW2 and were blessed with four (4) children. He told the court that after the

death of the deceased, his body was brought by the police to Busia District Hospital mortuary. The deceased was later buried at their home. He testified that the family used Kshs.80,000/- as funeral expenses. They bought a coffin for Kshs.22,000/-. The cost of transporting the body and the clothing of the body of the deceased was Kshs.25,000/-. The mourners were fed with Kshs.35,000/-. He produced the death certificate of the deceased as Plaintiffs' Exhibit No.1. He told the court that the deceased was thirty five (35) years at the time of his death. He produced his birth certificate as Plaintiffs' Exhibit No.2.

PW1 testified that the deceased worked for Kenya Revenue Authority as a Preventive Officer. His letter of appointment was produced as Plaintiffs' Exhibit No.3. He told the court that the deceased earned a gross salary of Kshs.47,334.90. The net salary was Kshs.39,236.40. There were other deductions which reduced the pay to Kshs.34,405.80. The payslip for January 2007 was produced as Plaintiffs' Exhibit No.4. He testified that the deceased was blessed two daughters and two sons. All his children were in school. The first child was born on 19<sup>th</sup> February 1995 and the last child was born on 11<sup>th</sup> December 2004. The children's birth certificates were produced as Plaintiffs' Exhibit No.5. PW1 was issued with a grant of letters of administration ad litem. The same was produced as Plaintiffs' Exhibit No.6. He obtained full grant – Plaintiffs' Exhibit No.7. He also produced the deceased's degree certificate as Plaintiffs' Exhibit No.8. He told the court that the family of the deceased was adversely affected by the death of the deceased. This was because the wife of the deceased was unemployed. The first born child was in secondary school while the last born child was in Standard 2. He told the court that the deceased's father was alive but his mother was dead.

PW2 testified that she was married to the deceased. She was a housewife and relied on the deceased for her entire support and that of the children. She told the court that since the death of the deceased she supported the family by subsistence farming which did not cater for their every need. She urged the court to grant the family compensation.

The Defendants did not adduce any evidence in the case. After the close of both the Plaintiffs' and the Defendants' respective cases, Mr. Otanga for the Plaintiffs and Mr. Otieno for the Defendants made closing submission in regard to what amount should be paid to the family of the deceased as compensation. Prior to making oral submission before court, both counsel had filed written submission in support of their respective opposing positions. This court has considered the evidence adduced by the Plaintiffs in this case. It has also considered the written and oral submission made by counsel for the parties. That the estate of the deceased is entitled to compensation is without a doubt. The issue for determination by this court is the amount for compensation that should be paid to the estate of the deceased. The parties to this suit have agreed by consent that the Defendants will bear 100% liability for the accident that caused the death of the deceased.

From the evidence adduced, this court shall assess the compensation to be paid to the estate of the deceased as follows:

I. Under the **Law Reform Act**.

The estate of the deceased shall be paid Kshs.100,000/- for loss of expectation of life.

II. Under the **Fatal Accidents Act**

The Plaintiffs established that the deceased was 35 years at the time of his death. He was employed by Kenya Revenue Authority as a preventive officer. Kenya Revenue Authority is a parastatal. Its employees retire at the age of 60 years. The deceased was employed on permanent and pensionable terms. The deceased was earning a net salary of Kshs.34,405.80. The Plaintiffs adduced evidence which established to the required standard of proof on a balance of probabilities that the deceased indeed supported his family. His wife is unemployed. She was a housewife. His children are all of schooling age. They are all attending school. This court is of the opinion that the Plaintiffs proved the dependency ratio that ought to be applied by the court to be ?. The family had no other source of income other than the pay that the deceased received from his place of employment. Evidence was adduced which established that the deceased was of good health at the time he met his death. All things being equal, it was expected that the

deceased would have lived to a ripe old age. This does not however exclude the usual vagaries of life. No human being is certain for how long he will live on this earth. It cannot therefore be stated categorically that the deceased would have worked until he reached the retirement age of 60 years. Doing the best that I can in the circumstance of this case, I will apply the multiplicand of fifteen (17) years.

In the circumstances therefore, the estate of the deceased will be paid the following sum as general damages for loss of dependency:

Kshs.34,405.80 (monthly salary) x 17 (years) x 12 (months) x ? (dependency ratio) = Kshs.4,679,188.80.

In their plaint, the Plaintiffs pleaded to be awarded special damages being funeral expenses. They did not specifically plead the amount that they wanted to be compensated. They adduced which was to the effect that they used Kshs.80,000/- to conduct the funeral. This court takes judicial notice of the fact that deceased persons in Western Kenya are buried in coffins. A ceremony is also held to bury the deceased. I will award the Plaintiffs Kshs.50,000/- as funeral expenses.

The upshot of the above reasons is that judgment is entered for the Plaintiffs as against the defendant for the sum of Kshs.4,579,188.80 being the amount awarded for loss of dependency and after deducting the sum of Kshs.100,000/- that was awarded as loss of expectation of life. The Plaintiffs are further awarded the sum of Kshs.50,000/- as special damages being the funeral expenses. The Plaintiffs shall have the cost of the suit. Interest shall be paid from the date of this judgment. The sum awarded shall be apportioned by the court to the widow and the children of the deceased on a date to be fixed by the court. In that regard, the above sum shall be deposited in court by the Defendants. The taxed costs shall however be paid to the Plaintiffs' advocates. It is so ordered.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 25<sup>TH</sup> DAY OF JULY 2013.**

**F. TUIYOT**

**JUDGE**