



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL NO. 44 OF 2011

NYAMU KARUNJIAPPELLANT

VERSUS

GATHERE KIBUI1ST RESPONDENT

JOEL KARIMI KANGANGI2ND RESPONDENT

JUDGMENT

On 13th April, 2011, **Hon. S.M. Muketi**, the then learned Chief Magistrate (*now deceased*) issued an order striking out **Nyeri C.M.C.C.C. No. 650 of 2007. Nyamu Karunji**, the Appellant herein, was dissatisfied with the order hence he preferred this Appeal. On appeal, the Appellant put forward the following grounds on his Memorandum of Appeal:

1. **That the learned trial magistrate erred in law and in fact in striking out the appellant's entire suit because he filed the same without first obtaining letters of administration over the Estate of his son killed in the road traffic accident in issue whilst the taking out of letters of administration is not a mandatory requirement under the Fatal Accidents Act (CAP 32) since the claim was not brought on behalf and /or for the benefit of the deceased's estate but for the benefit of and/or for compensating the dependants/family of the deceased as stated clearly in the preamble to the said Act.**
2. **That the learned trial magistrate erred in law and in fact in disregarding the Written Submissions filed by the Appellant on a the issue of grant of letters of administration and thus misdirected herself in not distinguishing the position under the Law Reform Act (CAP 26) where an administrator is not entitled to bring an action before taking out the letters from the position under the Fatal Accidents Act (CAP 32) where it is not a prerequisite.**
3. **That the learned trial magistrate erred in law and in fact by failing to find the Appellant's claim under the Fatal Accidents Act (CAP 32) merited, competent, valid and sustainable as submitted and hence to award due damages and costs.**
4. **That the learned trial magistrate erred in law and in fact in not quoting that sum she could have awarded were the Appellant successful in the suit.**

The history of this appeal began on 6th July, 1993 when one Robert Kinyua Nyamu (*deceased*) was

involved in a road traffic accident involving motor vehicle registration **No. KJW 496, Mazda**. The deceased is said to have been a fare paying passenger in the aforesaid motor vehicle when the same had an accident while plying Murang'a -Kangema road and fatally injuring the deceased. The motor vehicle is said to have been driven by **Joel Karimi Kangangi** (*2nd Respondent*) and registered in the name of **Gathere Kibui** (*1st Respondent*). Nyamu Karunji, the Appellant herein, in his capacity as the father of the deceased filed a compensatory suit i.e. **Nyeri H.C.C.C. No. 181 of 1996** which suit was later transferred to the Chief Magistrate's Nyeri and became **Nyeri C.M.C.C.C. No. 650 of 2007** against the 1st and 2nd Respondents herein. The Respondents filed their defences denying the Appellant's claim.

When the suit came up for hearing before the then learned Chief Magistrate, the Respondent argued a Preliminary point of law in which they claimed that Nyamu Karunji had no *locus standi* to file the suit having failed to obtain letters of administration in respect of the Estate of Robert Kinyua Nyamu, deceased. After receiving submissions from both sides, the learned Chief Magistrate upheld the preliminary objection and struck out the suit.

On appeal, this court has been asked to determine whether the learned Chief Magistrate was right to make the decision. The Appellant has urged this court to find that the learned Chief Magistrate fell into error when she ordered the suit to be struck out while the same was properly before the court. It is said since the Appellant's suit sought for damages under both the **Law Reform Act** and the **Fatal Accidents Act**, the suit should not have been struck out. It is argued that, it is a requirement that when one is suing for the benefit of the deceased's Estate, a party must obtain letters of administration before filing a suit under the **Law Reform Act**. On the other hand, it is also argued that when one files a suit for the benefit of the dependants of a deceased person it is not mandatory for one to obtain letters of administration prior to the filing of a suit under the **Fatal Accidents Act**.

It is not in dispute that the Appellant herein filed the suit before obtaining letters of administration in respect of the Estate of Robert Kinyua Nyamu, deceased. With respect, I am unable to fault the learned Chief Magistrate. She correctly applied the principle enunciated in the **Truistic Union International -vs- Mrs Jane Mbuyu & Another** where it was stated that it is a requirement for a party to take out letters of administration before filing an action in respect of the Estate of a deceased person. For the above reason, this appeal lacks merit. It is dismissed with no order as to costs.

Dated, signed, and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Mr. Ombongi holding brief for

Gori for Appellant

Muguku holding brief for Mukuha for Respondents