



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 544 OF 2007

1. MARY WANJA NDUNG’U
2. MARTIN NYAGA KINYANJUI

(Suing as the administrators of the estate of JAMES KINYANJUI NYAGA,
Deceased).....PLAINTIFFS

V E R S U S

SAMUEL KARIU

KAGONE.....DEFENDANT

J U D G M E N T

The Plaintiffs herein claimed damages under the **Law Reform Act, Cap 26** and the **Fatal Accidents Act, Cap 32** on account of the death of one **James Kinyanjui Nyaga** (hereafter called the “**Deceased**”). They are the administrators of the estate of the Deceased (**Exhibit P1**).

The Deceased died on 24th July, 2004 along Karen Road, Nairobi when the motor vehicle he was driving, registration number KAN 001P, collided with motor vehicle registration number KAK 352F owned and/or driven by the Defendant.

The Defendant was duly served with summons to enter appearance and copy of the plaint. He neither entered appearance nor filed defence. Upon request by the Plaintiffs, interlocutory judgment was entered on 1st April, 2008.

I heard this case on 2nd June, 2011 for assessment of damages. Only the 1st Plaintiff testified. She is the Deceased’s widow. The 2nd Defendant is her son with the Deceased.

The Deceased was survived by the 1st Plaintiff and three children, namely the 2nd Plaintiff, **Mercy Wanjiku** and **Evanson Ndung'u**. All the children are now adults.

At the time of death the Deceased was working with the City Council of Nairobi as a driver. His payslip for the month of July 2004 (**Exhibit P6**) shows that his basic salary was KShs. 10,625/00 per month. He also had a house allowance of KShs. 5000/00 per month, making a total of KShs. 15,625/00 per month. There were statutory deductions as follows:-

NHIF.....	KShs. 220/00
NSSS.....	200/00
PAYE.....	516/00
Union subscriptions.....	100/00

Total: KShs.....1,036/00

The 1st Plaintiff also produced receipts for funeral expenses (**Exhibit P7**) in the total sum of KShs. 24,900/00.

Under the Law Reform Act

1. For pain and suffering:

I note that the Deceased died at the scene of the accident. It appears therefore that there was no prolonged suffering. I will award KShs. 20,000/00 for pain and suffering.

2. Loss of expectation of life:

I note that the Deceased was aged 50 years at the time of his death. He still had a number of years to live and work, everything being equal. Having attained the age of 50 years, there is no reason to expect that he would not have attained a ripe old age. I will award the conventional sum of KShs. 100,000/00 for loss of expectation of life.

Under the Fatal Accident Act

As already observed, the deceased died aged 50 years. The retirement age at the time of his death for persons employed in the Civil Service, including local authorities, was 55 years. He therefore had only 5 more years to go before retiring. There is nothing to indicate that he was not in good health or that he would in all probability not have reached retirement age. I will therefore award a multiplier of 5 years.

Regarding the multiplicand, we have already seen that the Deceased's net monthly income was KShs. 14,589/00. He had 4 dependants who depended on him fully for support. I accept that he probably expended two-thirds of his monthly income on his family.

Damages under the Fatal Accidents Act will thus work out at the sum of KShs 583,560/00 made up as follows:-

KShs. 14,589/00 x 12 x 2 x 5 = KShs. 583,560/00

I will award the sum of KShs. 583,560/00 under the Fatal Accidents Act.

Special Damages

Funeral expenses in the sum of KShs. 24,900/00 were particularly pleaded and strictly proved. I will award this sum for special damages.

Judgment is therefore hereby entered for the Plaintiff against the Defendant as follows:

General Damages:

1. Under the Law Reform Act.....KShs. 120,000/00
2. Under the Fatal Accidents Act.....KShs. 583,560/00

Special Damages:KShs. 24,900/00

There will be interest at court rates on general damages from the date of judgment until payment in full, and on special damages from the date of filing suit until payment in full. The Plaintiff shall have costs of this suit.

One more thing need to be done, and that is to apportion the damages awarded under the Fatal Accidents Act (KShs. 583,560/00) among the Dependants. I have considered that the three children of the Deceased are now adults. None of them was said to be in school. I will apportion as follows:-

1. Widow: Mary Wanja Ndung'u..... KShs. 433,560/00
2. Martin Nyaga Kinyanjui.....50,000/00
3. Mercy Wanjiku.....50,000/00
4. Evanson Ndung'u.....50,000/00

Those shall be the orders of the court.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF JULY, 2011

H.P.G. WAWERU

JUDGE