



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

**CIVIL CASE NO. 576 OF 2007**

**RUTH WANGECHI GICHUHI.....PLAINTIFF**

**V E R S U S**

**ANDREW MANGENI LUANDE.....DEFENDANT**

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

This suit concerns the estate of the late **George Njoroge Kinyoro** (hereinafter called the **Deceased**) who **died on 22<sup>nd</sup> September, 2006** following a road accident along University Way, Nairobi. The accident occurred when motor vehicle registration number **KAW 345 C** apparently lost control and found the Deceased, a pedestrian, walking or standing beside the road, hit him and inflicted serious injuries from which he later died.

**Judgment on liability** was **entered by consent on 23<sup>rd</sup> June, 2010** at the **ratio of 50% : 50%**.

I heard the case on liability on 4<sup>th</sup> May, 2011. Only the Plaintiff testified. I have considered that testimony. I have also considered the written submissions of the learned counsels appearing, including the cases cited.

General damages are claimed under both the **Law Reform Act, Cap. 26** and the **Fatal Accidents Act, Cap 32**. The suit is brought for the benefit of the Plaintiff who was the Deceased's mother. It is brought by her as the administrator of the Deceased's estate.

**Under the Law Reform Act**

**(a) Pain and suffering**

The Deceased died in hospital on the day of the accident while undergoing treatment. He therefore underwent several hours of pain and suffering. I will award damages of KShs. 25,000/00 under this head.

## **(b) Loss of Expectation of Life**

The Deceased had just begun his adult life, full of expectations, when he died. He had everything to look forward to, including a fulfilling career, once he finished his studies.

The conventional figure under this head has been KShs. 100,000/00 for a long time. It is time it was revised upwards to take into account inflation and the diminishing purchasing power of the Kenya Shilling. I will award KShs. 150,000/00 under this head.

## **Under the Fatal Accidents Act**

### **(a) Lost Years**

As already observed, the Deceased was at the time of his death a student of pharmacy at the University of Nairobi. He had completed his second year and had just embarked on his third year. He was aged 22 years. In another three years, everything being equal, he would have completed his studies and then started his career.

Although he did not have an income at the time of death, it is common ground that he would soon have become an income-earner and that damages for lost years are payable.

The entry point for a pharmacist in the **Public Service** (Ministry of Medical Services) was **pharmacist intern** at a minimum basic salary of KShs. 30,472/00 rising to a maximum of KShs. 35,275/00 plus a non-practice allowance of KShs. 12,000/00 per month. After internship the **pharmacist** would start at a basic salary of KShs. 35,275/00 rising to a maximum of KShs. 42,877/00 and a non-practice allowance of KShs. 19,000/00 per month.

Upward mobility would be through various job groups and designations to the highest, **Chief Pharmacist**, with a minimum basic salary of KShs. 100,620/00 rising to a maximum of KShs. 127,980/00 with a non-practice allowance of KShs. 60,000/00 per month and a commuter allowance of KShs 20,000/00.

Ofcourse not every pharmacist in the public service would rise to occupy the office of Chief Pharmacist, nor indeed the other senior positions. But it is reasonable to expect that everything being equal, the Deceased would have risen in due course to occupy at least one of the middle-level positions.

I accept as useful guidelines and indicators given in **Exhibits P8** and **P9** of the Deceased's probable earnings had he lived. Doing the best that I can in the circumstances, and giving allowance for taxes on the income that the Deceased would have had to pay, I will award a multiplicand of KShs. 65,000/00 per month.

Let us now consider the multiplier. The Deceased would have started working at about the age of 26 years. If he chose to work in the public service, he would have retired at the current retirement age of 60 years or at some other age that may be current in his time. Of course he was to go into private practice or in the private sector he would probably have been able to work longer.

But I must factor in the vagaries and uncertainties of life. There is never any guarantee that anyone will live to a certain age. We are all mortals, and our mortality is not in our hands. Considering all these, and doing the best that I can, I will award a multiplier of 30 years.

Let me now consider the degree of probable dependency. It is reasonable to expect that the Deceased would have married and have children. Even if he remained a bachelor for life, he would certainly have spent much more on himself than on his mother, the Plaintiff. It is unlikely that he would have spent more than a one-third of his income on his mother. I will therefore award a dependency of one-third.

The arithmetic works out as follows:-

**KShs. 65,000/00 X 12 X 30 X 1/3 = KShs. 7,800,000/00**

I will thus award KShs 7,800,000/00 for lost years.

**(b) Special Damages**

KShs. 17,400 was specifically pleaded and particularly proved. I will award the same. In summary, I will award the Plaintiff the following sums:-

**General damages**

(i) For pain and suffering.....KShs 25,000/00

(ii) Loss of expectation of life.....150,000/00

(iii) Lost years.....7,800,000/00

Total.....KShs 7,975,000/00

Less: 50% contributory negligence....KShs. 3,987,500/00

**Amount awarded.....KShs.3,987,500/00**

**Special damages.....KShs. 17,400/00**

Less: 50% contributory negligence.....KShs. 8,700/000

**Amount awarded.....KShs. 8,700/00**

I will enter judgment for the Plaintiff for the above sums. There will be interest on the general damages at court rates from the date of judgment until payment in full. As for special damages, interest at court rates shall run from the date of filing suit until payment in full.

The Plaintiff shall have half her costs of this suit plus interest thereon at court rates from the date of filing suit until payment in full. Those shall be the orders of the court.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY, 2011**

**H.P.G. WAWERU  
JUDGE**