



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

Civil Suit 457 of 2000

**PAULINE NYABOKE NYAMORA & ANOTHER (Suing as the legal
rep. of the estate of DISHON OGACHI NYAMORA.....PLAINTIFF**

VERSUS

NAOMI WAIRIMU KURIA.....DEFENDANT

JUDGMENT

The plaintiffs are the widows and administratrixes of the estate of DICKSON OGACHI NYAMORA (the deceased). They claim that on or about 14th November 1999, while the deceased was traveling as a fare paying passenger in the defendant's matatu registration Number KAG 878 V along Nakuru/Kericho road, the defendant's driver, servant and/or agent so negligently drove and/or managed the said vehicle that it veered off the road and rolled. The deceased suffered serious injuries from which he died on the way to hospital. They therefore claim both general and special damages for the estate of the deceased under the **Law Reform Act** and for loss of dependency under the **Fatal Accidents Act**.

In her defence the defendant denied not only the ownership of the accident vehicle but also the occurrence of the accident itself. In the alternative the defendant averred that if the accident occurred at all, then the same was caused by the negligence of the driver of a stationary vehicle who abandoned it unlit in the middle of the road.

At the hearing the plaintiffs testified and called two witnesses after which their counsel filed written submissions. The defendant on the other hand neither called any evidence nor did her counsel file submissions.

In her testimony, the first plaintiff said prior to his death, besides working for the Ministry of Finance as a senior auditor earning a salary of Kshs.13,770/=, the deceased also did some private audit work. He used to give her Kshs.12,000/= every month. As a result of his death, she has with her three children suffered loss and damage. She produced the deceased's pay slip, a certificate of search showing that the defendant was, at the material time, the registered owner of the accident vehicle as well as receipts in support of special damages.

Apart from claiming that the deceased used to give her Kshs.20,000/= every month, the second plaintiff corroborated the evidence of the first plaintiff. Perminus Munyonjo, PW3, witnessed the accident. He testified that at the material time, as he was riding on a bicycle along the same road, he saw the defendant's vehicle overtake a stationary lorry from the left hand side. As the defendant's driver tried to bring the vehicle to the road, because of the high speed at which it was being driven, it zig zagged and rolled. Many people were injured and the vehicle was extensively damaged. PC Benson Maina of Londiani Police Station confirmed that the accident indeed occurred and was reported to his station.

I have considered this evidence. From the uncontroverted testimony of PW3 and PW4, I am satisfied that the Defendant's vehicle in which the deceased was traveling as a passenger, at the material time, was involved in the pleaded accident whereat the deceased suffered fatal injuries. In the circumstances, I hold the defendant 100% liable.

On the quantum of damages, I find the special damages of Kshs.5,100/= proved by the receipts produced by PW1. I agree with the plaintiffs' counsel that at the age of 39 years, the deceased died at the prime of his life. As he died on the way to hospital I find that he must have suffered pain. In the circumstances I award Kshs.100,000/= and Kshs.25,000/= for loss of expectation of life and pain and suffering respectively.

The plaintiffs' claim that besides his employment the deceased used to do private audit work is not supported by any document. Besides that the plaintiffs did not say how much the deceased used to earn from that work. In the circumstances, I dismiss the claim that the deceased used to earn any other income in addition to his salary.

As I have stated, the deceased was a civil servant aged 39 years old at the time of his death. As he would have retired at the age of 60 years, he had about 21 years to work. But he would also have died of some other cause or for some reason he could have ceased to work. Taking these imponderables of life into account, I find that a multiplier of 15 is reasonable in this case.

The deceased must have been spending two thirds of his salary of Kshs.13,770/= on his family. At the said multiplier of 15, the loss of dependency works to Kshs.1,652,400/=. I therefore award the plaintiffs a sum of Kshs.1,782,500/= made out as follows:-

Loss of expectation of life.....	Kshs. 100,000.00
Pain and suffering.....	Kshs. 25,000.00
Loss of dependency.....	Kshs.1,652,400.00
Special damages.....	<u>Kshs. 5,100.00</u>
Total.....	<u>Kshs.1,782,500.00</u>

The plaintiffs shall also have the costs of this suit and interest on the award at court rates.

DATED and delivered this 21st day of January, 2010.

D.K. MARAGA
JUDGE.