



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 223 of 2000

JOHN MUHANDA MUYA.....1ST PLAINTIFF
FAITH WANJIRU MUYA.....2ND PLAINTIFF

VERSUS

STANLEY K. KURIA.....1ST DEFENDANT
MONICA WAITHERA MUGOTO.....2ND DEFENDANT

JUDGMENT

The plaintiffs are father and widow respectively of the late Simon Muya Muhanda (the deceased). They bring this suit under the **Law Reform Act Chapter 26** of the **Laws of Kenya** and the **Fatal Accident Act Chapter 32** of the **Laws of Kenya** for the benefit of the deceased estate and the dependants of the deceased respectively.

On or about 30th September 1999 the deceased was a passenger in motor vehicle No. KAB 150A (KAB) which was being driven by its owner, Stanley K. Kuria, the first defendant along Naivasha/Nairobi road. At a spot near Oasis Academy along that road, it collided with motor vehicle No. KAK 748X (KAK) which was also being driven by its owner, the late Peter Kihanda Kuria.

Neither of the plaintiffs witnessed the accident. They rely on the doctrine of *res ipsa loquitur* and the damage to the front of both vehicles and attribute the cause of the accident to the negligence of the drivers of both the vehicles.

The only eye witness to the accident was the first defendant, the driver of KAB. He testified that the driver of KAK left his side of the road and swerved to his (the 1st defendant's) lane and the two vehicles collided. He said he was climbing a gentle hill at that spot and could therefore not have been driving at high speed as alleged in the plaint. While supporting that contention, his advocates submitted that in the circumstances, with the 40 bags of potatoes he was carrying there is not much he could have done to avoid the accident. They urged me to find the driver of KAK, who was driving downhill in high speed 100% liable.

The police file relating to this accident was not produced. PW3 said it was misplaced. So we do not have any independent evidence to prove the point of impact or to show KAK left its lane and went to that of KAB as the latter's driver alleged. The accident was, however, investigated at the instance of the insurers of KAB. The Investigation Report **Ex. D1** has photographs of both vehicles. The extensive damage is to the cabins of both vehicles suggesting a head on collision. If indeed the driver of KAK left his side of the road and went to the lane of KAB, I do not accept the first defendant's contention that there was nothing he could do to avoid the accident. In the circumstances I find the first defendant 40% and the second defendant 60% liable.

On quantum, though the 31 years old deceased was self employed, I do not accept counsel for the plaintiffs' recommendation of a multiplier of 30 years. He could have died of other causes. He could also have been prevented from earning any income by other reasons. Taking into account the imponderables of life I find a multiplier of 20 years reasonable.

It is not in dispute that the deceased was 31 years old at the time of his death and he was married with two very young children. Both his father and widow said he was a farmer and a businessman. At the time of his death he was transporting potatoes from his father's farm in Nyandarua for sale in

Nairobi. I accept his widow's testimony that he also kept dairy cows and that he earned a total of Kshs.15,000/- per month from his economic activities.

With a multiplier of 20 years, the loss of dependency works to Kshs.2,400,000/= $(15,000 \times 12 \times 20 \times \frac{2}{3})$.

The plaintiffs produced receipts to support the claim of Kshs.26,700/- as funeral expenses. I find that sum proved and I award it. In the upshot I enter judgment for the plaintiffs against the defendants the said proportions in the sum of Kshs2,546,700/= made out as follows:-

1. Pain and suffering	=	Kshs.20,000.00
2. Loss of expectation of life	=	Kshs.100,000.00
3. Loss of dependency	=	Kshs.2,400,000.00
4. Special damages	=	<u>Kshs.26,700.00</u>
TOTAL	=	<u>Kshs.2,546,700.00</u>

The plaintiffs shall also have the costs of this case and interest on both the said award and costs to be shared by the defendants along with the decretal sum in the above proportions.

DATED and DELIVERED this 17th day of June, 2010.

D. K. MARAGA
JUDGE.