



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Suit 451 of 2000**

**HANNAH NJERI MWANGI.....PLAINTIFF**

**VERSUS**

**MAYANJA ABDU.....1<sup>ST</sup> DEFENDANT**

**A.K. TRANSPORTERS.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

The plaintiff is the widow of Paul Mwangi Gathitu who died on 15<sup>th</sup> October, 1991 in a collision involving a motor vehicle registration No.KAH 098U (which he was driving) and motor vehicle registration No.UPR 495/424 UDE Mercedes Benz owned by the 2<sup>nd</sup> Defendant and being driven by the 1<sup>st</sup> Defendant. She filed this suit in her capacity as the administratrix of the estate of the deceased on her own behalf and that of dependants of the deceased and the beneficiaries of his Estate.

In her plaint dated 23<sup>rd</sup> October, 2000 and filed on 23<sup>rd</sup> October, 2000, the plaintiff claims General Damages under both the Fatal Accidents Act (Cap 32) and the Law Reform Act (Cap 26) of the Laws of Kenya. Special damages are all claimed together with interest. The Plaintiff lists the dependants of the deceased as the Plaintiff and four minor children of the marriage, Hellen Waithera Mwangi, Naomi Wangui Mwangi, George Kinuthia Mwangi and Rahab Muthoni Mwangi.

After more than eight years since the filing of the suit, a judgment on liability was entered by consent and contributory negligence apportioned at the ratio of  $\frac{60}{40}$ . Special damages were agreed at Kshs.30,658 on the basis of 3 receipts produced as exhibits by consent. A basic salary of Kshs.7,000/= per month was also agreed for the purposes of computing the general damages payable. Additionally the following documents were admitted by consent:

- 1) A death certificate dated 22<sup>nd</sup> June, 2000 showing the age of the deceased as 32 years (Ex.1).
- 2) A Limited Grant of letters of Administration intestate issued to the plaintiff on 11<sup>th</sup> October, 2000 (Ex.2).
- 3) A police abstract dated 6<sup>th</sup> November, 1997 "Ex.3".
- 4) The minor children's Baptismal certificates dated 31<sup>st</sup> December, 1995, 16<sup>th</sup> August, 1992 and 16<sup>th</sup> August, 1992 respectively [ex.4 (a) (b) and (c)].

At the request of counsel for both parties, written submissions were filed herein together with authorities relied upon by either side in support of their proposals for settlement. The submissions, authorities cited, and the documents filed herein have been carefully considered and evaluated.

Counsel for the plaintiff proposes a sum of Kshs.25,000/= for pain and suffering while at the same time stating that Kshs.20,000/= would be adequate. The Defendants argue that since the deceased died instantaneously the award under this head should be shs.10,000/=. For lost years, the plaintiff's advocate proposes a multiplier of 38 years while the Defendants' counsel proposes one of 12 years and a multiplicand of  $\frac{2}{3}$ . Submitting that the deceased would probably

have continued working as a driver until the age of 70 years but that, considering the imponderables and contingencies of life, the proposed multiplier of 38 years could be reduced to 30 and general damages for lost years calculated accordingly.

The Defendants have offered to pay Kshs.80,000/= for loss of expectation of life and I see no reason why the same should not be awarded. The plaintiff asks that she be awarded Kshs.150,000/= for loss of consortium. She lost a husband of 32 years and all facts suggest that she was widowed young. I am persuaded that damages under this head are payable. There being no objection in regard to the proposed figure I will award the same as is, being of the view that the same is appropriate. The Defendants argue that damages under the Fatal Accidents Act have adequately covered and taken care of any claim under the Law Reform Act. By not submitting on the same a presumption is hereby made that the plaintiff is not pursuing any separate award under that head.

After due consideration of the proposals made herein and in light of the authorities cited by each side, I am of the view that the multiplier of 38 or 30 years proposed by the plaintiff's advocate is unsupportable. In my considered view a multiplier of 23 years is more appropriate, considering that the average life expectancy in Kenya is 47 years and normal retirement age 55 years. As regards pain and suffering, I consider an award of Kshs.20,000/= to be appropriate.

Applying the said multiplier of 23 years, damages for lost years work out as follows:

$$\text{Shs.7,000} \times 12 \times 23 \times \frac{2}{3} = \text{Kshs.1,288,000}$$

Consequently the final award is as follows:

Lost years	Kshs.1,288,000.00
Loss of Consortium	Kshs. 150,000.00
Loss of Expectation of life	Kshs. 80,000.00
Damages for pain and suffering	Kshs. <u>20,000.00</u>
<b>Kshs.1,538,000.00</b>	
Less 40%	Kshs. 922,800.00
Add Special damages	Kshs. <u>30,658.00</u>
	<b>Kshs. <u>953,458.00</u></b>

Accordingly, I now enter judgment for the Plaintiff against the Defendants jointly and severally in the sum of Kshs.953,458.00 with interest at court rates from 11<sup>th</sup> November, 2008 until payment in full. The plaintiff will have costs of the suit with interest at court rates.

The plaintiff having listed four children of the deceased but only three having been represented in the submissions filed herein, without an explanation being offered to the court as to the discrepancy, the plaintiff will have to file an appropriate application for apportionment and investment of the award herein made.

DATED, SIGNED and DELIVERED at Nakuru this 19<sup>th</sup> February, 2009.

**M. G. MUGO**

**JUDGE**