



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 420 of 2006

FRANCIS KITONGA MUTUNGAPLAINTIFF

V E R S U S

JOSEPH GIKUNJUDEFENDANT

J U D G M E N T

The Plaintiff is the father of the late **Catherine Mutiki Kitonga** (hereinafter called the **Deceased**). The Deceased died in road accident on 6th September, 2005 which occurred on Ngara Ring Road, Nairobi involving her (a pedestrian) and motor vehicle registration number KAS 893Y, owned by the Defendant and driven by his servant or agent.

The Plaintiff is the administrator of the estate of the Deceased (Exhibit P1). He has brought this suit on behalf of the estate of the Deceased under the **Law Reform Act, Cap. 26**. He has also sued on behalf of the Deceased's mother, **NDUNYU KITONGA**, and on his own behalf under the **Fatal Accidents Act, Cap. 32**.

On 13th November, 2008 judgment on liability was entered by consent for the Plaintiff at 70%. The Deceased was to bear 30% contributory negligence. Only the Plaintiff testified in respect to assessment of damages. The Defendant did not offer any evidence. I have considered the testimony of the Plaintiff and also the written submissions filed by the parties. No authorities were cited. Damages are recoverable under the Law Reform Act and the Fatal Accidents Act aforesaid.

LAW REFORM ACT

Under this Act there will be damages for pain and suffering and also for loss of expectation of life.

Pain and Suffering:

The Deceased's death certificate (Exhibit P2) shows that she died of bleeding. So, she could not have died instantly as suggested in the Defendant's submissions. I will award the conventional sum of KShs. 10,000/00 under this head.

Loss of Expectation of Life:

The Deceased was aged 25 years at the time of her death. She was not yet married and did not have children. She had many more years of life to look forward to. I will award under this head the conventional sum of KShs. 100,000/00.

FATAL ACCIDENTS ACT

The Deceased was in permanent employment at the time of her death. It was not temporary or casual employment as suggested in the Defendant's submissions, notwithstanding that the factory where she worked had closed at the particular time for maintenance.

She died on 6th September, 2005. All her documents and her household goods were stolen from her house after her death. She was living alone. Her father was, however, able to get her payslip for the month of February, 2004 which she had apparently left home on a visit. This is Exhibit P3. It shows that for that month she had a net monthly pay of KShs. 5,390/00 after deductions. These deductions included a salary advance of KShs. 1,000/00. Her net pay for February, 2004 was therefore KShs. 6,390/00.

The Plaintiff has claimed a dependency of two thirds of the Deceased's monthly income. I do not accept this. It was unlikely that the Deceased, who was a young woman living alone in Nairobi, would spend most of her modest income on her parents. She was not the only child; she had siblings with income and upon whom the parents also relied for support. The parents themselves were growing their own food. In the circumstances, I determine the dependency at one half of the Deceased's income.

Regarding the multiplier, I note the age of the Deceased at the time of death. Whereas the retirement age from public employment was 55 years at the time, I must factor in the uncertainties and vagaries of life, including the high prevalence of HIV/AIDS among young people. I will therefore award a multiplier of 20 years.

The arithmetic will work out as follows:-

$$\text{KShs. } 6,390 \times \frac{1}{2} \times 12 \times 20 = \text{KShs. } 766,800/00.$$

I will thus award damages under the Fatal Accidents Act in the sum of KShs. 766,800/00.

In summary general damages are awarded as follows:-

(i) Under the Law Reform Act..... KShs. 110,000/00

(ii) Under the Fatal Accidents Act..... KShs. 766,800/00

KShs. 876,800/00

Less 30% contributory negligence KShs. 263,040/00

KShs. 613,760/00

There will thus be judgment for the Plaintiff for general damages in the sum of KShs. 613,760/00. This sum will attract interest at court rates from the date of judgment until payment in full. The Plaintiff will also have costs of the suit (reduced by 30%) plus interest thereon at court rates from the date of suit until payment in full.

I will apportion the damages under the Fatal Accidents Act (KShs. 536,760) as follows:

Plaintiff.....KShs. 436,760/00

Ndunyu Kitonga..... KShs. 100,000/00

No portion of the share of Ndunyu Kitonga should be utilised to pay Advocate's costs.

DATED, SIGNED AND PRONCED IN OPEN COURT

THIS 19TH DAY OF JUNE 2009

H. P. G. WAWERU

J U D G E