



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

Civil Case 91 of 2001

**ALLAN MUNDIA KAHINYA (*Suing as the personal representative of the
Estate of JOHN N MUNDIA & ANNA*)**

FRANCIS MUTISYA – (DECEASED)

..... **PLAINTIFF**

VERSUS

ATHI RIVER MINING CO. LTD. DEFENDANT

JUDGMENT

1. Parties herein on 20/3/2007 recorded a consent order that judgment on liability would be entered in favour of the Plaintiff and against the Defendant at 80%:20%. This judgment is limited to determining the sum awardable to the Plaintiff in damages.
2. The deceased persons herein, John Mundia and Anna Francis Mutisya were said to have been married and living in Mombasa before the date of their demise. They had one child, Keziah Njambi Njoroge who also died in the accident. The Plaintiff, PW2, Allan Mundia Kahinya stated that John was 30 years while Anna was 19 years old. He produced receipts showing that in burying all the three named persons he spent Kshs,184,000/= **(P. Exh. 4 (a) (b) (c) and (d))**. Further, that John was working with Jofam Clearing and Forwarding and PW4, John Muhia Ndugire produced a letter of appointment showing that John was a Port Manager earning Kshs.25,000/= a month (P. Exh.6).
3. It was also the evidence of PW2 that Anna was employed in a beauty salon and was earning Kshs.8,000/= but produced no evidence of that fact. PW2 added that he was a retired teacher with high blood pressure and that his wife was asthmatic and diabetic and that they depended on the deceased persons for their daily needs. Further, that he had no land of his own and was totally dependent on his deceased son and wife for his sustenance.
4. I have taken into account the submissions made and it is my view that in determining the fairest and reasonable award to be made, one must take into note the unique circumstances of each case, necessary factors to be considered and the amount of money to be awarded in the end. In this case and noting the

submissions made and aware of the cited decisions of **Benjamin Nzomo vs Benjamin Mutunga H.C.C.C 4742/1987** and **Margaret Kahiga vs Kenya Bus Service & Another H.C.C.C 5406/1970** as relates to multiplier and multiplicand, in this case, there is no doubt that special damages of Kshs.184,000/= are awardable to the Plaintiff. That sum was strictly proved and the expenses incurred were not challenged.

5. John was 30 years old and there is also no challenge to the evidence tendered that although only a Form IV graduate he was motivated and a multiplier of 25 years taking into account the statutory retirement age at the time cannot be unreasonably.

6. I however agree with the advocate for the Defendant that even if John and his wife were taking care of their ailing parents, the dependency could not have been total but only 1/3. The Plaintiff was a retired teacher and certainly had a pension take care of himself. Further, from the Kshs.25,000/= that John earned and taking account his needs and those of his wife and child reasonably only about Kshs.6,000/= was available for his parents. That being the case, under the heading loss of dependency I would award the following sum:

Kshs.6,000 x 12 x 25 x 1/3 = **600,000/=**.

7. As regards Anna, only Kshs.2,000/= would have been available at the most for her parents' upkeep and since she was 19 years old, I would adopt a multiplier of 36 years and award the following sum:

Kshs. 2,000 x 12 x 36 x 1/3 = **288,000**.

8. For both I would also agree that a sum of Kshs.100,000/= each for loss of expectation of life and Kshs.10,000/=.

9. I have taken the above approach and persuaded by the reasoning of Ringera J in **Grace Muthini vs Kenya Bus Service & Another** where the learned Judge stated as follows:

“The Court must find out as a fact what the annual loss of a dependency is. In doing, it must bear in mind that the relevant income of the Deceased is not gross earnings but the net earnings. There is no conventional fraction to be applied. Each case must depend on its facts, when a Court adopts any fraction, that loss must be taken as finding of fact in the particular case. The annual loss of dependency must be multiplied by a figure representing a reasonable number of years purchase. In considering that reasonable figure, commonly known as the multiplier, regard must be had to the personal circumstances of both the deceased and the dependants such as the Deceased's age, his expectation of working years, the ages of the dependant's and length of the dependant's expectation of dependency”

10. In the end and trying to be as reasonable as I can, the final judgment in this matter is as follows;

In John Mundia's Case;

Loss of Dependency _ Kshs.600,000/=

Loss of Expectation of Life - Kshs.100,000/=

Pain and Suffering - Kshs. 10,000/=

Kshs. - Kshs.710,000/=

Less Damages under

Law Reform Act - Kshs.100,000/=

Kshs. - Kshs.610,000/=

Less 20% - Kshs.122,000/=

Add Special Damages - Kshs. 57,000/=

Kshs. - Kshs.545,000/=

In Ann Mutisya Case:

Loss of Dependency - Kshs.288,000/=

Loss of Expectation of Life - Kshs.100,000/=

Pain and Suffering - Kshs. 10,000/=

Kshs. - Kshs.398,000/=

Less Damages under

Law Reform Act - Kshs.100,000/=

Kshs. - **Kshs.298,000/=**

Less 20% - Kshs. 59,600/=

Kshs. - Kshs.238,400/=

Add Special Damages - Kshs. 52,000/=

Total - Kshs.290,400/=

11. I am unable to award any sum in respect of the 1 year old child for reasons that the Plaintiff has already benefited from his son and daughter-in-law's death and in the unique circumstances of this case, token general damages of Kshs.50,000/= should be awarded in any and I will also grant special damages of Kshs.15,000/= making in total Kshs.65,000/=.

12. In the end judgment is entered in favour of the Plaintiff in the global sums of Kshs. 900,000/= plus costs and interest.

1 Orders accordingly.

Dated and delivered at Machakos this **16th** day of **July** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Oyugi h/b for Mr Wandabwa for Plaintiffs**

Mr Masika for Defendant

ISAAC LENAOLA

JUDGE