



**REPUBLIC OF KENYA**  
**HIGH COURT AT KISII**  
**CIVIL CASE 124 OF 2005**

**HANIEL MUGO MURIUKI (suing as administrator**  
**of the Estate of DAMARIS WANJIRU MURIUKI .....APPELLANT**

**VERSUS**

**MORRIS MAINA NJARAMBA.....RESPONDENT**

**R U L I N G**

1. Haniel Mugo Muriuki, hereinafter referred to as the plaintiff, is the administrator of the estate of Damaris Wanjiru Muriuki, hereinafter referred to as the deceased. He has brought this action for the benefit of the deceased's dependants under the Fatal Accident Act and the deceased estate under the Law Reform Act Cap.26. The defendant is Morris Maina Njaramba, who was at the material time the owner of motor vehicle registration No. KAP 276H, hereinafter referred to as the vehicle. The deceased died on 1<sup>st</sup> December, 2002 as a result of fatal injuries sustained in an accident involving the said vehicle. The plaintiff claimed that the accident was caused by the negligence of the defendant.
2. The defendant who was served by way of substituted service in the Daily Nation Newspaper, neither entered appearance nor filed a defence. Interlocutory judgment was therefore entered in favour of plaintiff on 10<sup>th</sup> April, 2008. Subsequently the suit came before me for assessment of damages. Three witnesses testified before me. These were: Theresia Wagwama Muriuki, the mother to the deceased, PC Charles Karumba, an officer attached to divisional traffic office Kilimani, and the plaintiff.
3. Briefly their evidence was that the deceased who was born in 1978, was at the material time a fifth year medical student at the University of Nairobi. On the 2<sup>nd</sup> of December, 2002 the deceased's mother received a call from the Principal of the Medical School at the University of Nairobi. She contacted the plaintiff and together they proceeded to the Medical Training School, where they talked to the Principal. As a result of the information they received, they proceeded to Chiromo Mortuary where they identified the body of their daughter.
4. PC Charles Karumba produced an occurrence book from divisional traffic Kilimani which reflected OB entry No.7 of 1<sup>st</sup> December, 2002 concerning a fatal road traffic accident involving motor vehicle registration No. KAP 276H, a Nissan matatu and a female pedestrian identified by name as the deceased. The accident was reported by the defendant who claimed that the driver of the vehicle had disappeared after the accident. The police visited the scene and took the body of the deceased to the City Mortuary. The defendant was subsequently charged and convicted for failing to keep proper records of details of his driver. A police abstract report of the accident was also produced in evidence.

5. A death certificate was produced confirming that the deceased died as a result of head, spinal and chest injuries due to motor vehicle accident. Also produced were a bundle of documents including the deceased's academic transcripts for 1st year to 4<sup>th</sup> year from the University of Nairobi, a letter of recommendation from the Head of Department, of the deceased's former school, Alliance Girls High School, and a funeral programme for the deceased's burial. During the funeral, a total of Kshs.40,000/= was incurred although the plaintiff was unable to produce any receipts. The plaintiff testified that the deceased had expressed an intention to specialize in surgery. As a result of the accident, the deceased's ambition was cut short and her estate and dependants have suffered loss.
6. In his written submission, counsel for the plaintiff urged the Court to award a sum of Kshs.50,000/= for pain and suffering, Kshs.200,000/= for loss of expectation of life, and Kshs.80,000/= for funeral expenses. With regard to lost years, counsel relied on the case of ***S.F. Muka vs. Vibhram Lalji & Another*** for the proposition that although the deceased was still a student the estate was entitled to claim damages for lost years. Counsel submitted that the deceased would have qualified as a doctor and joined the government service at an entry salary of Kshs.60,000/=. Counsel urged the Court to adopt a multiplier of 18 maintaining that the deceased was of good health and would probably have worked until the retirement age of 55. Counsel therefore urged the Court to award a sum of Kshs.4,320,000/= as general damages.
7. The issue of liability has already been determined through the entry of interlocutory judgment and my mandate at this stage is assessment of damages. According to the evidence of PC Charles Karumba who produced the occurrence book, the deceased died at the scene of the accident and the body was transferred from the scene of the accident to the City Mortuary. There is therefore no evidence in support of the claim for damages for pain and suffering. Consequently, I will award none. A sum of Kshs.80,000/= was proposed as damages for funeral expenses. However, in his plaint, the plaintiff claimed Kshs.30,000/=. Although no receipts were produced in proof of this claim, interlocutory judgment having been entered, there is already a judgment for the specified sum of Kshs.30,000/=. The proposal for an award of Kshs.80,000/= as funeral expenses is therefore misconceived.
8. As regards the claim for loss of expectation of life, the deceased was 24 years of age and was of good health. Although a sum of Kshs.200,000/= was proposed under this head, in the case of ***Loise Warui Mwangi & Another Vs. Joseph Wambue Kamau [2006] eKLR*** which was relied upon, only a sum of Kshs.100,000/= was awarded to the deceased who was 35 years of age. In my view there would be no justification for awarding the sum of Kshs.200,000/= in this case. Therefore I will consider a sum of Kshs.120,000/= as appropriate for loss of life expectation.
9. As regards the claim for lost years, it is now an accepted principle that the estate of the deceased is entitled to damages for lost years, for the income that would have been earned by the deceased, less the living expenses, assuming she had lived and worked for the period she would have been expected to be in employment. The deceased having been a fifth year medical student, there is no doubt that had her life not been cut short, she would have qualified as a doctor. Although it was submitted that her entry salary as a doctor would have been Kshs.60,000/=: no evidence was adduced before this Court to confirm the salary scale for doctors in the civil service or private sector.
10. A doctor is a professional graduate who can be compared with a professional graduate magistrate. I take judicial notice of the fact that the entry level for a magistrate employed after working for a period of 3 years is a sum of Kshs.35,000/=. Using this as a guide, I would assess the deceased's entry point as a doctor straight from college at a consolidated figure of Kshs.40,000/= inclusive of house allowance. After tax the net monthly income would come down to about a sum of Kshs.27,000/=. The deceased having been 24 years old, with the current retirement age in the civil service of 60 years, and taking into account the uncertainties of life, a multiplier of 25 would be appropriate. It is reasonable to assume that the deceased would have used about 2/3 on herself as living expenses thereby leaving only 1/3 for the dependants. Accordingly, the damages for lost years would work out as follows:

$27,000 \times 12 \times 25 \times 1/3 = 2,700,000/=$ . Although the income is accelerated, I do not find it appropriate to discount it as the element of acceleration of the income, balances out with the element of the deceased's

income appreciating with time, or the deceased progressing to a better paying job a factor which has not been taken into account.

11. The upshot of the above is that I give judgment in favour of the plaintiff as against the defendant in the sum of:

Kshs.30,000/= as special damages for funeral expenses

Kshs.120,000/= as general damages for loss of life expectation

Kshs.2,700,000/= for lost years

I award the plaintiff costs of the suit, and interest on the judgment sum at Court rate from the date of this judgment. Those shall be the orders of this Court.

**Dated and delivered this 25<sup>th</sup> day of September, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Chiragu holding brief for Odera for the appellant

No appearance for the respondent

Eric, court clerk