



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MERU Civil Case 15 of 2000**

EPHANUEL GITONGA KANAMPIO .....1<sup>ST</sup> PLAINTIFF

GRACE KARIMI GITONGA .....2<sup>ND</sup> PLAINTIFF

VERSUS

JULIUS MUKUBO.....1<sup>ST</sup> DEFENDANT

GEOFFREY K. KIRUNYU.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

The plaintiff in this case sued the defendants on behalf of the estate of Grace Karimi Gitonga, deceased. The plaintiff sought judgment for special and general damages in respect of the accident caused by the 1<sup>st</sup> defendant who was an employee or agent to the 2<sup>nd</sup> defendant. The plaintiff pleaded by vicarious liability. The said Grace died in that accident. When the case was fixed for hearing on 30<sup>th</sup> September 2009, the defendants did not attend court even though that date was fixed by consent. The plaintiff had submitted his evidence on a date prior to that. The court therefore found that the defence had no evidence to offer against the plaintiff's claim. The plaintiff's evidence before court remains unchallenged. The plaintiff stated that on 25<sup>th</sup> October 1999 he was in the company of his late wife, Grace as they traveled in the 2<sup>nd</sup> defendant's motor vehicle to Nairobi. Both the plaintiff and his deceased wife were teachers by profession. The plaintiff stated that the vehicle before the accident occurred was moving uphill then swerved to the right before overturning. Grace died at the scene of the accident. The plaintiff produced receipt to support his claim for special damages. I however note that the receipt produced for mortuary fees was higher than what was claimed in the plaint. The plaint was not amended and the court can only entertain the claim that is pleaded. On the issue of liability, I find that the plaintiff proved his case as against the defendants. As stated before, the plaintiff pleaded that the 1<sup>st</sup> defendant was either a servant or agent of the 2<sup>nd</sup> defendant. On quantum, the deceased was employed by T.S.C. as a P1 teacher. She was earning a gross of Kshs. 5,815/= per month. After deductions, she was receiving Kshs 5,473/=. The amount the court will consider to determine the damages to be paid to the deceased estate under the Fatal Accident Act will be Kshs. 5,000/=. The deceased was a married woman, married to the plaintiff. They were blessed with one son, four years old. There was no evidence adduced by the plaintiff relating to the financial support the deceased gave to her parents and siblings. Their dependency therefore is not proved. Although clearly the Fatal Accident Act does not allow a claim by siblings for dependency, if such proof had been made before me I would have been guided by the case of **Sheikh Mushtaq Hassan Vrs. Nathan Mwangi Kamau Transporters & Others [1982 – 88] 1KAR 946** where it was held:-

*“..... in the context of Kenya, and that is the relevant context, parents of a deceased young man who would have been preparing himself for a career with a view to looking after his parents in their old age suffer real economic loss. The financial assistance relative to the ability of the deceased which is normally expected and readily available is obliterated by the death. The costs of bringing up the deceased and the expenses of his/her education is lost, never to be redeemed. All the benefits that would accrue to the parents, and where it applies, to younger brothers and sisters of the deceased as the deceased matured physically and materially are extinguished. Now, almost all assistance of this kind would in the conditions of Kenya be almost wholly economic and substance. So much so that the loss caused by the death could never be adequately compensated in monetary terms.”*

I will therefore apply the dependency ratio of 2/3. Deceased was 27 years old and taking into account the

vicissitudes of life, and bearing in mind that the average standard of living in Kenya is going down, I will take a multiplier of 20 years. I compute the claim for lost years as follows:-  $5000 \times 12 \times 20 \times 2/3 =$  Kshs. 800,000/=. I will award the plaintiff Kshs. 10,000/= for pain and suffering and Kshs. 80,000/= for loss of expectation of life. The plaintiff by producing receipts proved the special damage claim. The plaintiff's claim is also proved against the 2<sup>nd</sup> defendant for vicarious liability of the 1<sup>st</sup> defendant. Accordingly, there shall be judgment for the plaintiff as against the 2<sup>nd</sup> defendant as follows:-

**a. General damages for**

*pain and suffering* - Kshs. 10,000/=

**b. Loss of expectation of life** - Kshs. 80,000/=

**c. Lost years** - Kshs. 800,000/=

**d. Special damages** - Kshs. 85,550/=

**Total** - Kshs. 975,550/=

In addition, the plaintiff is awarded the costs of this suit as against 2<sup>nd</sup> defendant.

Dated and delivered at Meru this 29<sup>th</sup> day of October 2009.

**MARY KASANGO**

**JUDGE**