



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

**Civil Case 41 of 1998**

**PATRICK JACOB OUMA.....PLAINTIFF**

**VERSUS**

**TAWFIQ BUS SERVICES (COMPANY) LTD.....DEFENDANT**

**JUDGMENT**

On 13<sup>th</sup> October 1996, the deceased Celestine Nekesa Omboko was travelling as a fare paying passenger in the Defendant's bus KAE 904R when at Bachuma along Mombasa – Voi road the said vehicle was involved in an accident in which the deceased received fatal injuries. Her husband Patrick Jacob Ouma the plaintiff (PW 1) was informed of the accident and travelled to the accident site. Post mortem was performed at Voi and the deceased's body released to PW 1 who took it to Pandya Hospital where the body was preserved as funeral arrangements were made. Later, the body was transported to Busia where the deceased was buried.

The plaintiff instructed an advocate to obtain letters of Administration to the deceased's estate and instituted this suit seeking compensation for the wrongful death of the deceased both under the Law Reform Act and under the Fatal Accidents Act. The defendant entered appearance and filed defence. On 6<sup>th</sup> September 2007, by consent liability was apportioned on a 50/50 basis and I took the plaintiff's evidence on quantum on 21<sup>st</sup> February 2008.

In his testimony PW 1 stated that he is a Primary School Teacher and the deceased was his wife. She too was a Primary School Teacher at Silver Sands Primary School at Malindi and at the time of her death was earning Kshs. 7,500/= per month. He produced a letter from the school to confirm that fact. The deceased according to PW 1 was survived by, besides him, children Vincent Namunje born on 29<sup>th</sup> May 1984 and Anita Namatsi born on 24<sup>th</sup> April 1986. He produced birth certificates in proof thereof. PW 1 further testified that the deceased assisted him to raise the said children which assistance he had lost by her death.

The plaintiff further testified that he incurred the following funeral expenses: (a) Transportation costs of Kshs. 43,000.00 (b) Announcement charges of Kshs. 3,600.00, (c) Mortuary charges of Kshs. 12,400.00 and (d) cost of a coffin of Kshs. 6,500.00. PW 1 produced receipts as evidence of the said expenses.

In addition to those expenses, PW 1 produced a receipt of 100/= for obtaining a police abstract of the accident. He also claimed to have paid his advocate Kshs. 10,000/= as fees for obtaining Letters of Administration. He however had no receipt to confirm that payment.

In the premises, the plaintiff claimed both special and general damages plus costs.

The defendant did not offer any evidence. On the basis of evidence adduced by the plaintiff, I can now assess the damages under the various heads claimed by the plaintiff.

Under the Law Reform Act:

(a) **Pain and Suffering:**

The plaintiff did not adduce evidence as to whether the deceased died instantly or some time after the accident. However, even if the death was instantaneous no doubt before her death the deceased suffered some pain. I award the plaintiff Kshs. 10,000.00.

(b) **Loss of expectation of Life:**

Under this head I award a conventional sum of Kshs. 100,000.00.

(c) **Lost Years:**

The deceased was 26 years and it is reasonable that an award for loss of dependency under the Fatal Accidents Act be made rather than that of lost years. I will therefore make no award under this head.

(d) **Loss of Dependency:**

I make this award under the Fatal Accidents Act. The deceased was 26 years when she died. She was a primary school teacher. I accept the plaintiff's evidence that the deceased was at that time earning Kshs. 7,500/= per month. The letter from the deceased's employer at the time of her death in my view sufficiently confirms that fact. There is nothing special about a pay slip as submitted by counsel for the defendant. I also accept the plaintiff's evidence that the deceased assisted in looking after her children. The deceased was a young woman and in my view would customarily spend slightly more on herself than would an elderly woman. I would therefore take a dependence ratio of 2/3. The deceased would have had 29 years working period before her retirement at the age of 55 years. However, taking into consideration life's imponderables I consider a multiplier of 20 years as reasonable. The amount lost by the plaintiff is therefore  $5000 \times 12 \times 20 =$  Kshs. 1,200,000.00. Taking into account the amount awarded under the Law Reform Act this sum is reduced to Kshs. 1,100,000.00.

With regard to special damages, I consider the following to have been strictly proved:

- |                           |                       |
|---------------------------|-----------------------|
| 1) Transportation charges | Kshs. 43,000.00       |
| 2) Announcement charges   | Kshs. 3,600.00        |
| 3) Mortuary charges       | Kshs. 12,400.00       |
| 4) Amount for coffin      | <u>Kshs. 6,500.00</u> |

**Kshs. 65,500.00**

However, the plaintiff claimed Kshs. 57,150.00. I cannot give him more than he claimed. Special Damages must be specifically pleaded and strictly proved.

The defendant in his submission made heavy weather of the plaintiff's failure to serve a notice of demand before action and because of that failure prayed that there be no order as to costs. As counsel for the defendant appreciated, the issue of costs is the sole discretion of the court. I am afraid that issue was not put to the plaintiff in cross-examination. In any event even if the issue had been raised, I do not think that failure to serve a demand notice before action perse would deny a plaintiff his costs of the suit

particularly where admission of liability is not contained in the defendant's first response to the plaintiff's claim. In this case, the delivered defence contained no admission and it can be seen that the matter in the end has been resolved by a hearing. Costs will therefore follow the event.

In the end I enter judgment for the plaintiff against the defendant as hereunder:-

1. Loss of dependency                      Kshs. 1,100,000.00

2. Special damages                      Kshs. 57,150.00

Kshs. 1,157,150.00

3. Less 50% contribution              Kshs. 578,575.00

**Kshs. 578,575.00**

I award costs of the suit to the plaintiff. Interest on Special Damages shall accrue at court rates from the date of filing the suit whilst interest on general damages shall accrue at the same rate from the date of this judgment. Interest on costs shall be applied from the date of taxation or agreement on the same.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 10<sup>TH</sup> DAY OF APRIL 2008.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of Adhock for Ndegwa for the defendant and Weloba for the plaintiff.

**JUDGE**

**10<sup>TH</sup> APRIL 2008**