



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

**Civil Case 450 of 2007**

**DIANA NZISA MUTOGWA.....PLAINTIFF**

**- VERSUS -**

**ISAAC WAITHAKA NJUGUNA.....1<sup>ST</sup> DEFENDANT**

**GRACE WANJIRU NJUGUNA.....2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

The Plaintiff and the Defendant on the 3<sup>rd</sup> July 2008 recorded a consent judgment on liability whereby they apportioned that liability at the ratio of 80:20 percent in favour of the Plaintiff. I am now called upon to determine the amount due to the Plaintiff in terms of damages.

The Plaintiff in this suit is the widow of the deceased Simon Omurwa Mutogwa and is the Administrator of the Estate of the said deceased. On the 28<sup>th</sup> December 2004 the Deceased was driving motor vehicle Registration Number KAD 085T along Nairobi/Naivasha road when it collided with another motor vehicle Registration Number KQV 543 driven by the 1<sup>st</sup> Defendant and owned by the 2<sup>nd</sup> Defendant causing fatal injuries to the deceased leading to death six hours after the accident.

The Plaintiff claims damages under the Fatal Accidents Act and under the Law Reform Act, special damages.

In considering the quantum therefore, the following case authorities were referred to.

**HCCC No.20 of 1998**

**Josephine Wanjiru Njogu vs Mary Wangari Kungu**

**HCCC No.80 of 1997**

**Mrs. Sarvjit Kuar Rayet vs M. R. Constructions (K) Limited & Another**

**HCCC No. 52 of 1999**

**Francis Mutual Singi vs Kenya Ports Authority**

**HCCC No.301 of 2002**

## **Floice A. Onami vs Kezia Muthoni & 2 Others**

HCCC No.59 of 1997

### **Rahab Wanjiku vs Almas N. Mungai & Another**

For pain and suffering, evidence is that after the accident the deceased was rushed to Kijabe Hospital in a critical condition but did not die until six hours later. The deceased must have suffered a lot of pain leading to that death. In the circumstances, I will award a sum of Kshs.100,000/=.

For loss of life expectancy, I will award another sum of Kshs.100,000/=.

For loss of dependency, the deceased was 48 years at the time of his death. A Civil Servant whose retirement age was 55 and since his salary is to be used as the multiplicand, that is the period the court should use. The parties have no dispute that the deceased's net salary at Kshs.49,386/= be the multiplicand.

At 48 years the deceased still had 7 years in the Civil Service and that is the multiplier I will use – so that the figures become:

$$49,386 \times 7 \times 12 \times 2/3 = 2,765,616/=$$

As for special damages, the plaintiff had difficulties proving the sum of Kshs.30,100/= claimed. However, it is clear that she paid Kshs.5,000/= in her petition for grant of Letters of Administration and Kshs.200/= for the police abstract. Funerals in African context, as the Plaintiff's Counsel correctly submits, are not just an occasion of interment but a social occasion wherein substantial amounts are expended. In the instant case, the prominence of the deceased cannot be gain said. A former District Officer who had risen to the position of Deputy Secretary with the prospect of rising higher up. A sum of Kshs.25,000/= cannot be said to be unreasonable. In fact, it is minimal and I do hereby award that sum.

In summary therefore the awards are as follows: -

- (i) Damages for loss of  
Dependency ..... Kshs.2,765,616/=**
- (ii) Damages for loss of  
Expectation of life.....Kshs. 100,000/=**
- (iii) Damages for pain and  
Suffering ... Kshs. 100,000/=**
- (iv) Special damages ..... Kshs. 30,100/=**
- Total Kshs. 2,995,716/=**

Less 20% and therefore the Defendants jointly and severally to pay the Plaintiff a total sum of Kshs.2,396,573/=.

The Defendants will pay costs of the suit plus interest.

**Dated this 29<sup>th</sup> day of September 2008.**

**J. M. KHAMONI**

JUDGE