



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

Civil Case 33 of 2006

JULIUS MAINA MUTHONI.....PLAINTIFF

VERSUS

ALFRED KINYANJUI WAINAINA1ST DEFNDANT

JOHN NJENGA KAMAU 2ND DEFENDANT

JUDGMENT

1: Procedure

1. The main subject of this case is Running Down. Musinga – J heard the evidence of one witness then adjourned for a witness from Londiani. He then left this station on the 10th November, 2008, the parties appeared before this court and asked that this said case be compromised on liability. This was agreed at 100% against the defendant as the deceased was a passenger.
2. The issue before the court remained was that of quantum.
3. Under **Order 17 r 10** upon where the trial judge has been transferred out then the case may proceed from where it left off.
4. This case proceeded from where it left off. The advocate's parties stated that they would not submit and would leave the matter to the court.

II: Background of case

5. Virginia Muthoni Kigotho (*now deceased*) a female adult aged 54 years old was on the fateful day of 25th August, 2005 lawfully traveling in motor vehicle registration KAP 812 J Toyota Matatu (*a public service vehicle Omnibus*) when along the Kericho-Nakuru road was so negligently driven that it collided with motor vehicle registration KAB 011Q a Peugeot Station Wagon.
6. The said Virginia Muthoni Kigotho sustained fatal injuries. Her son sued the two defendants herein as the registered owner and driver respectively.

III: Liability

7. As stated earlier this was conceded at 100% jointly and severally against the defendant.

IV: Quantum

i) Pain suffering and loss of amenities.

8. There was no evidence deduced at what point the deceased died. The police abstract described her injuries as fatal. I make no award under this claim for lack of evidence.

ii. Loss of expectation of life

9. I would award a normal award of Kshs. 70,000/=.

iii. Law Reform Claim

10. The deceased was aged 54 years old, she had been involved as a farmer/cum business woman and is said to have supplied bags of beans to an Education Institution. It is noted that no monetary sum was attached to this. The best I could do to is have it on the main wage expected to be earned in Kenya per month which I do at kshs. 3,000/= per month.

If she was in formal employment she would have retired at the age of 55 years old. She therefore had one (1) year before retirement. She would have, as a business lady worked for a longer period but there is no indication as to this. There was evidence of her doing a Counseling Course with the Red Cross.

ii. The computation of this would be Kshs. 3,000/= X 1 X 12 = Kshs. 36,000/=.

iv. Fatal accident act

12. I make no award under this claim. The deceased had four children all were over the age of 22 years at the time of her death. The deceased was also a single mother.

13. Under the Act it provides only dependants are permitted to sue. These are the spouse and mum children who are said to be dependant. I accordingly reject this claim.

V. Damages awarded as below.

14. I enter judgment for the Plaintiff on the proved claim.

vi. In Summary

15.1 Passenger female adult aged 54 years old in 2005

15.2 Injury – Fatal

15.3 Liability 100% against the defendant

15.4 Quantum

General Damages

i) Pain and suffering –NIL

ii) Loss of expectation of life – kshs. 70,000/=

iii) Law Reform – Kshs. 3,000/= X 1X12 = Kshs. 36,000/=

iv) Fatal accident Act claim – none

v) Special damages

a) Police abstract report 100/= - NIL

Not proved.

b) Death Certificate Kshs. 150/= - NIL

Not proved

c) Costs of Coffin Kshs. 8,000/= only 3,200/= proved.

d) Funeral Expenses – NIL

Not pleaded.

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Total **Kshs. 109,000/=**

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16. I award the costs of this suit to the Plaintiff. I award interest on General Damages from the date of this Judgment and interest on Special Damages being Kshs. 3,200/= only from the date of filing suit.

DATED this 11th day of November, 2008 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates - I. Meroka advocate instructed by M/S Khan & Katiku advocates for the plaintiff

K. Ochieng advocate instructed by M/S Moronge & Co. advocates for the defendants