



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

Civil Case 484 of 2005

STANLEY GATITHI NGWERIINI

(Suing as the legal representative of the estate of

PAUL KINYUA GATITHI, DECEASEDPLAINTIFF

V E R S U S

PAUL KARANJA GITAUDEFENDANT

J U D G M E N T

The Plaintiff herein is the legal representative of the estate of the late **PAUL KINYUA GATITHI** (hereinafter called the Deceased) who died in a road accident on 14th November, 2004 along Jogoo Road, Nairobi. Though not so stated, damages are claimed under the **Law Reform Act, Cap 26** and the **Fatal Accidents Act, Cap 32**.

Special damages of KShs. 110,150/00 are also claimed.

The Deceased was apparently unmarried and without any issue at the time of his death. His dependants named in the plaint are his father (the Plaintiff), his mother and siblings. Four of the siblings were adults at the time of his death. Two of them were and are still minors.

As claimed in the plaint, the Deceased was knocked down by motor vehicle registration number **KAH 594 A** while standing off Jogoo Road. He thereby suffered fatal injuries. It is the Plaintiff's case that the accident was caused by the sole negligence of the driver of the motor vehicle as more particularly set out in paragraph 5 of the plaint. It is also pleaded that the Defendant was the driver as well as the owner of the motor vehicle. Finally, it is pleaded that the Deceased was at the time of his death working as a branch manager with Barclays Bank of Kenya Ltd and earning a salary of KShs. 62,000/00 per month.

The Defendant duly entered appearance and filed defence. He admitted that he was the owner of the accident motor vehicle. He denied the negligence attributed to the driver of the motor vehicle. He also pleaded without prejudice that the accident was caused by the negligence of the Deceased and a third party. Particulars are given in paragraph 6 of the defence.

When the suit came up for hearing on 16th October, 2008 there was no appearance for the Defendant. The court was satisfied that he had been duly served with hearing notice and permitted the Plaintiff to

proceed *ex parte*.

The Plaintiff and one witness, PATRICK GITHAIGA MWANIKI (PW2) testified. In the course of his testimony the Plaintiff produced various documents, including a grant *ad litem* of letters of administration (Exhibit P9), police abstract of the accident (Exhibit P1), the Deceased's death certificate (Exhibit P2), copy of records of the accident motor vehicle from the Commissioner of Motor Vehicles (Exhibit P6) and the Deceased's pay-slip for the month of August, 2004 (Exhibit P8).

I have considered the uncontroverted testimony of the Plaintiff and PW2 and the documents produced. I have also considered the written submissions of the Plaintiff's learned counsel. I am satisfied on balance that the Deceased died as a result of injuries received when he was knocked down by motor vehicle registration KAH 594 A on 14th November, 2004. The Deceased was then standing on the central reservation of Jogoo Road, Nairobi. It is a dual-carriage-way. I am also satisfied on balance that the accident was caused by the sole negligence of the Defendant who was both the driver and owner of the motor vehicle. No evidence has been tendered to prove the negligence attributed by the Defendant to the Deceased and a third party. In the circumstances, the Plaintiff has proved his case on liability to the required standard. I will enter judgment for him on liability at 100%.

I will now consider damages.

(A) Under the Law Reform Act:

(i) Pain and Suffering

From the testimony of PW2, the motor vehicle hit the Deceased and then lay on him. Although he may have died soon thereafter, it is unlikely that he died instantly. I will award KShs 10,000/00 under this head.

(ii) Loss of Expectation of Life

By all indications the Deceased was in a promising banking career. He was an enterprising young man with good expectations in his future life. I agree that the conventional sum under this head is KShs. 100,000/00, and I will award that sum.

(B) Under the Fatal Accidents Act:

Loss of Dependency

The Deceased was aged 26 years at death. He was unmarried. I accept that his parents and siblings were his dependants. The usual ratio of dependency is **two-thirds** of a deceased's income. I will use that.

What was the Deceased's income? The Deceased's gross monthly pay was KShs 62,000/00 as per Exhibit P8. The same document discloses that his net pay after various deductions was KShs 35,365/00. That is the income for purposes of assessing damages under this head. It will be the **multiplicand**.

What about the **multiplier**? Ordinarily, it would be expected that the Deceased would have worked to at least the age of 55 years, the official retirement age for most public servants. As there is no evidence that his contract of employment provided for any higher retirement age, I will take 55 years as a useful guide. But allowance must be given for the vagaries and uncertainties of life. These include the high incidence of death among young people from HIV/AIDS and the many deaths on our roads that have been a constant factor in our national life for many years now. Bearing in mind that the deceased was aged 26 years at death, I will in the circumstances use a multiplier of 27 years.

In the event I will award damages under the Fatal Accidents Act in the sum of **KShs 7,638,840/00** worked out as follows:-

KShs.35,365/00 x 12 x 2/3 x 27 = KShs 7,638,840/00

(C) Special Damages

KShs 110,150/00 was claimed. Only KShs 23,800/00 was proved. I will award that sum.

To summarize, I will enter judgement for the Plaintiff against the Defendant as follows:-

(i) General damages KShs 7,748,840/00

(ii) Special damages 23,800/00

Total KShs 7,772,640/00

There will be interest at court rates on the general damages from the date of judgement, and on the special damages from the date of filing suit, till payment in full. The Plaintiff will also have costs of this suit and interest thereon at court rates from the date of filing suit. There will be judgement accordingly.

I am required to apportion the damages awarded under the Fatal Accidents Act among the dependants. I will apportion the damages awarded under that statute in the sum of KShs 7,638,840/00 as follows:-

(i) Plaintiff (Deceased's father)..... KShs 4,138,840/00

(ii) Eunice Wacera Gatithi (mother)..... 500,000/00

(iii) Margaret Wairimu..... 500,000/00

(iii) Anne Wanjiru..... 500,000/00

(iv) Stephen Mwangi..... 500,000/00

(v) Agnes Wairimu..... 500,000/00

(vi) Titus Muthie..... 500,000/00

(vii) Daniel Kamonde..... 500,000/00

KShs 7,638,840/00

Titus Muthie and Daniel Kamonde are minors. I direct that their shares be invested in the joint names of the Plaintiff and the Registrar of the Court in a reputable bank or financial institution. Interest thereon shall be released periodically to the Plaintiff for the upkeep of the minors. The principal sum shall be released to each minor upon attaining the age of 18 years. I also direct that the legal costs due to the advocates, if any, shall be paid from the Plaintiff's share. Those will be the orders of the court.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF DECEMBER, 2008.

H. P. G. WAWERU

JUDGE