



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

Civil Case 2152 of 2000

DORIS NYAGUTHI MUHINDI1ST PLAINTIFF

SAMUEL MAINA KIRUTHU2ND PLAINTIFF

VERSUS

KARIUKI KARANU KAGO1ST DEFENDANT

BARUA ESTATE LIMITED2ND DEFENDANT

JUDGMENT

1: BACKGROUND

1. In this running down cause a tragic road traffic accident occurred between two motor vehicles on the 29th May 1999 at 1.00 p.m. along the Tigoni/Limuru/Banana Hill road. As a result of the said accident the driver of one of the vehicles Charles Muhindi Kiruthu sustained fatal injuries.

2. His widow and brother took out letters of administration and sued the driver and registered owner Kariuki Karanu Kago & M/s Bwana Estate Ltd the 1st and 2nd defendant herein respectively for damages in TORT.

3. The parties coming for hearing on the 22 January 2007 asked that I determine the issue of liability and quantum between the parties.

II: Liability

4. I must commend the plaintiff for the well presentation of their case. A total of seven witnesses were called to prove liability and quantum before this court. The witnesses would have been fewer on the aspect of quantum which will be dealt with later below.

5. PW4 Robert Kinuthai Karani an eye witness to the accident stated that he was at a small shopping centre talking with his colleagues when he noticed a motor vehicle pick up registration No. KAL 675J driven by the deceased being driven along the Tigoni Banana Hill Limuru road. There was a lorry approaching from the opposite direction being registration No. KAD 132Z Tata lorry. This lorry according to the plaint and evidence was driven by the 1st defendant and was registered in the name of the 2nd defendant. The said lorry left its side of the lane and headed towards the pick-up. The pick-up

moved as far as possible off the road. The lorry passed the yellow driving line and went into the lane and side where the pick up vehicle was and collided into it. PW4 and other members of the public went to rescue the deceased who was taken to hospital but died before he reached there.

6. At the time of the accident PW4 was about 40 to 50 meters away.

7. A police abstract form (Ext P3) was tendered in evidence confirming that indeed an accident occurred involving the lorry and the pick-up on the 29 May 1999. The driver to the lorry was arrayed to court and was duly fined on 4.7.2000 for the offence of causing death by dangerous driving.

8. Who then is to blame?

None of the defendants were present to court to give their version of the story. They denied that the doctrine of Res Ipsa Loquitur applies. They stated that the deceased was the one who was over speeding and was driving at an excess speed. That the deceased without prejudice contributed to the accident. They also pleaded that the accident was inevitable. They failed to put in evidence show that the accident was inevitable and was not due to the 1st defendants negligence and or recklessness.

9. I am of the opinion that the driver of a vehicle owe a duty of care to other road users. That in this case the 1st defendant caused the said accident by leaving his side of the lane and colliding into the deceased's vehicle that had vertically gone of the road to avoid the said accident. This was an act of negligence. I hereby find herein that the plaintiffs have established their case on a balance of probability and duly find the 1st defendant liable at 100% for this accident together with the 2nd defendant who is liable at 100% vicariously for the acts of its agent and or servant

III Quantum

A: Law Reform Act

a) Pain and suffering

10. The plaintiff is said to have been rushed to hospital but died before he could reach there. It is hereby suggested by the advocate for the plaintiff that an award of Ksh.5,000/- be made under this head of pain and suffering. The death certificate reflects the place of death as Tigoni. I would allow this head of damages at Ksh.5,000/-.

Loss of expectation of life

a) A sum of Ksh.70,000/- is conventional and would duly allow this sum.

b) Lost years to be taken into account.

The Fatal Accidents Act

ii) Multiplier and multiplicand

The deceased herein was aged 38 years old at the time of death. He was described by his widow as working for Serena Hotels before venturing out on his own to become a consultant. It transpired during cross examination of the witnesses that the deceased was in fact a holder of a diploma from the polytechnic. He was engaged with the work of engineering and worked together with PW7 who used to give him consultancy to do. It appears that the deceased was extremely skilled in his business and was accordingly successful. The plaintiff attempted to call PW5 who worked as a director in a another company but stated that he indeed was able and did do this accounts for deceased to show that his income was around the range of Ksh.318,000/-. This evidence was rejected by court as inadmissible which the defendant objected the witness giving such evidence.

A former workmate at the Serena Hotel who worked under the supervision of the deceased before he voluntarily resigned to go into the private sector, stated that the deceased worked well as an engineer. He himself earns Ksh.70,000/- where he now occupies the position that the deceased would have. In coming to look at the multiplicand I would note that though the deceased may have had a higher income, the accounts and or profit and loss accounts relied should have been done by an independent firm of accounts or by his regular accountants. It transpired that the said persons who worked with him in consultancy did not have income tax return for their company nor any documentation to reflect and prove this income. I would therefore base the income that is to be given to be at Ksh.70,000/- being the amount that PW8 was getting in formal employment at the Serena Hotel.

The deceased being aged 38 years old would have worked informal employment up to the age of 55 years old. This would therefore mean a multiplier of 15 years would be reasonable to cater for any eventualities.

iii) Dependency ratio

11. The widow of the deceased gave evidence to state how she and her husband were parties in the said company. She was a sleeping partner. Her husband provided her and the children daily needs. They were dependant on him. I would hereby place the dependency ratio at 2/3 rd.

thus $Ksh.70,000/- \times 15 \times 12 \times 2/3 = Ksh.8.400,000/-$.

I discount this to provide for early lump sum payment and in the event of early remarriage by the widow at Ksh.50,000/-.

The law requires that I apportion this sum amount to the dependants which I accordingly do as follows:-

Doris Nyguthi Muhindi widow 38 years	1.350.000
Jamao Kiruthu Muhindi – son. 12 years	3.5 m
Mudia Muhindi – son 4 years	3.5m

The ages given above is at the time of filing suit in year 2000. That the sum for minors be invested with Old Mutual Company till the minors attain the age of 25 years. That the interest be paid per annum for the up keep of children to administrator.

III: Special Damages

The claim for special damages was abandoned by the plaintiff. This had been tabulated as follows.

- i) Funeral advertisement Ksh.11,960/-
- ii) Marble covering for grave Ksh.38,100/-
- iii) Letters of administration Ksh.19,500/-
- iv) Death certificate Ksh. 130/-
- v) Burial permit Ksh. 200/-
- vi) Post mortem Ksh.12,000/-
- vii) Coffin Ksh.55,000/-
- viii) Transport Houses Ksh.25,000/-

21ix) Food Accommodation and medical Ksh.55,000/-

Total Ksh.180,000/-

12. I wish to just comment that a claim for food, accommodation and clothes are not claimable under Special damages. The claim has been abandoned and the same is hereby dismissed.

13. I enter judgment for the plaintiff on the proved sum.

14. In summary

14.1. Motor vehicle collision between two vehicles

14.2. Driver male adult aged 38 years in 1999

14.3. Injuries Fatal

14.4. Liability

100% against the 1st and 2nd defendant jointly and severally with the 2nd defendant being vicariously liable for the acts of his agent and or servant.

14.5. Quantum

I: Law Reform Act Cap. 26 Laws of Kenya

a) Pain and suffering Ksh.5,000/-

b) Loss of expectation of life Ksh.70,000/-

b) Lost years

Taken into account

II: Fatal accident Act Cap 32 Laws of Kenya

Loss of dependency

$70,000/- \times 12 \times 15 \times 2/3 = \text{Ksh.8.4m}$

Discounted Ksh.50,000/-

Total Ksh.8.350.100/-

Subject to apportionment.

III Special Damages Nil

Abandoned

i) Funeral advertisement Ksh.11,960/- Nil

ii) Mable covering for grave Ksh.38,000/- Nil

iii) Letters of administration Ksh.19,500/- Nil

iv) Death certificate	Ksh. 130/- Nil
v) Burial permit	Ksh. 200/- Nil
vi) Post mortem	Ksh.12,000/- Nil
vii) Coffin	Ksh.55,000/- Nil
viii) Transport Hearse	Ksh.25,000/- Nil
vi) Food and Accommodation	Ksh.20,000/- Nil
Dismissed	<u>Ksh.180,010/-</u> Nil
Total	<u>Ksh.8.425,000/-</u>

15. I enter judgment for the plaintiff. I award costs of this suit to the plaintiff. I award interest on General Damages from the date of this judgment.

Dated this 1st day of February 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

B.N. Ngugi leading N. Gachomo for Gachomo & Co. Advocates for the plaintiff

K. Kibet leading G. Mwaura for Mwaura & Co. Advocates for the defendant.