



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

**Civil Suit 116 of 2004**

**WESLEY KIPKOECH KENDAGOR (*suing as legal representative of the estate***

***of the late Geoffrey Kipngetch Langat*).....PLAINTIFF**

**VERSUS**

**UNISTAR TRANSPORTERS LTD.....DEFENDANT**

**JUDGMENT**

The plaintiff, **Wesley Kipkoech Kendagor** has filed this suit on behalf of the estate of **Geoffrey Kipngetch Langat** (*deceased*) (*herein after referred to as the deceased*) who died as a result of a road accident involving a motor vehicle owned by the defendant. The accident is said to have occurred on the 27<sup>th</sup> April, 2004 along the Kericho-Kisumu highway when the motor vehicle which the deceased was traveling in as a fare paying passenger was involved in an accident with a motor vehicle owned by the defendant. The deceased died on the spot. The plaintiff blamed the defendant's driver for causing the said accident. Although the defendant filed a defence when they were served with summons to enter appearance, on the 6<sup>th</sup> June, 2006 the plaintiff and the defendant entered into a consent agreement whereby liability was apportioned as between the plaintiff and the defendant at the ratio of 20:80. The defendant is to bear 80% liability while the estate of the deceased is to bear 20% contributory negligence. The issue of quantum was left to this court for its determination.

The plaintiff called two witnesses to establish its claim as to the quantum of damages that is to be paid to the deceased estate. It was their testimony that the deceased was 21 years at the time of his death. The deceased is the first born of his mother, PW2 Rachel Chumo, who is disabled. The deceased was the first born of the other five siblings. The deceased had completed his secondary school education and had attained a mean grade of C-. The deceased had been admitted to Eldoret Polytechnic to take a **Certificate Course in Information Technology** which was to commence in May, 2004. The plaintiff had paid the school fees for the deceased to the said institution. The receipt was produced as plaintiff's exhibit No. 3. It was the plaintiff's testimony that the deceased's mother is the sixth wife of the father of the deceased who is aged 90 years old. They testified that it was expectation of the family of the deceased, that the deceased would have helped them after he finished his course. The plaintiff testified that the deceased at the time of his death helped his mother by cultivating the land. He testified that upon completion of his education, the deceased had a high chance of being employed. The deceased could therefore have supported his parents and his siblings.

The plaintiff however conceded that at the present time, the family of the deceased rely on farming activities from the deceased's father's 60 acre piece of land. PW2 testified that after the death of the

deceased, the family of the deceased purchased a coffin which they used to bury the deceased with. They also incurred expenses when the body of the deceased was kept at the Kericho mortuary before he was buried. She reiterated that the family had lost a person whom the family could have depended on. She testified that she did not have any receipts to support her testimony that she had expended money during the funeral of the deceased. The plaintiff produced the death certificate of the deceased as plaintiff's exhibit No. 1 and the limited grant of Letters of Administration *ad litem* that was issued to him to prosecute the case on behalf of the deceased's estate as plaintiff's exhibit No.2. The defendant did not call any witness and consequently closed its case.

After the close of both the plaintiff's and the defendant's case, the plaintiff and the defendant agreed by consent to file written closing submissions. Both the plaintiff and the defendant filed written closing submissions. The issue for determination by this court is what damages are to be paid to the estate of the deceased. The deceased at the time of his death was aged 21 years. He had just completed his secondary school and was due to join a college for further studies. The deceased had been admitted to undertake a certificate course at the Eldoret Polytechnic. His tuition had already been paid. The deceased died before he could join the said college. He was unmarried at the time of his death. He had not been formally employed at the time of his death. He had not therefore earned a salary which could assist this court in quantifying the damages payable to the estate of the deceased. The plaintiff however testified that the deceased was a dependable person who could have completed his course of Information Technology and could have secured employment upon completion of the said course.

This court is aware of the decision of the Court of Appeal in the case of Sheikh Mushtaq Hassan vs. Nathan Mwangi Kamau Transporters & others (1982 -88) 1 KAR 946 where Nyarangi J.A. held at page 953 as follows:

*“The financial assistance relative to the ability of the deceased which is normally expected and readily provided is obliterated by the death. The cost of bringing up the deceased and the expense of his/her education is lost, never to be redeemed. All the benefits that would accrue to the parents, and where it applies, the younger brothers and sisters of the deceased as the deceased matured physically and materially, are extinguished. Now, almost all assistance of this kind would in the conditions of Kenya*

*most wholly economic in substance”.*

At page 954,

*“In general, in Kenya, children are expected to provide and do provide for their parents when the children are able to do so and to the extent of their abilities. The children are expected to do that by the established customs of the various African and Asian communities in Kenya”.*

**In the present case, although it is evident that the deceased had not earned a living, evidence adduced how he used to assist his disabled mother at the farm. His family sent him to college so that he could improve his future earning capacity. It was the expectation of the family that upon completion of his course, the deceased would offer assistance to them. I have considered the submissions that were made by the plaintiff and the defendant. Whereas the plaintiff submitted that the plaintiff should be paid on behalf of the estate of the deceased the sum of Kshs. 1,398,000/= as general damages for pain, suffering, loss of expectation of life and loss of dependency, the defendant submitted that the estate of the deceased should be paid a global sum of Kshs. 100,000/=. The plaintiff did not rely on any decided cases. The defendant relied on the case of Daniel Njuguna Muriithi vs. Kennedy Kinya Huikia (unreported) and the case of Jemima Wambui Njoroge Vs. Philip Mwangi Nairobi HCC No. 242 of 1990 (unreported).**

I have considered the totality of the evidence adduced in this case and the applicable law, and it is my view that the estate of the deceased would be adequately compensated by being awarded a global sum of Kshs. 500,000/= for loss of dependency under the **Fatal Accidents Act**. I would further award the plaintiff the sum of Kshs. 30,000/= being the funeral expenses. I agree with the decision of Visram J when he held at page 3 of his judgment in Jane Katumbu Mwanzia vs. Republic Nairobi HCCC No.

3177 of 1997 (unreported):

*“It is very hard for people attending to burial procedures of their loved ones to concern themselves with matters of details such as receipt for every expense in contemplation of a suit which they may not even be aware of at the time of burial. To insist on strict legal rules in such a case would not only amount to a denial of justice but also present the court as being out of touch with reality”.*

The upshot of the above reasons is that judgment is entered for the plaintiff against the defendant as hereunder:

**(i). On liability,**

Liability was apportioned by consent as between the plaintiff and the defendant at the ratio of 20:80. The plaintiff shall bear 20% contributory negligence while the defendant shall bear 80% liability.

**(ii). On quantum,**

**(a). General damages under the Fatal Accidents Act**

Kshs. 500,000/-.

**(b). Special damages .....Kshs. 30,000/=**

**Total ..... Kshs. 530,000/=**

Less 20% contribution.....Kshs. 424,000/=

**(iii) The plaintiff shall have the costs of the suit.**

**(iv) Interest on special damages shall be paid from the date of filing this suit while interest on the general damages awarded shall be paid from the date of the delivery of this judgment.**

**DATED at Kericho this 22<sup>nd</sup> day of March, 2007.**

**L. KIMARU**

**JUDGE**