



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

**Civil Case 16 of 2001**

**ENOS NJERU KARANJA suing as the legal representative of the estate of**

**MARY MURINGO, STELLA KARIMI & MARGARET  
NJOKI.....PLAINTIFF**

**VERSUS**

**KENYA BUS SERVICES LTD.....  
.....DEFENDANT**

**AND**

**GEORGE MWENDA KIARA.....THIRD PARTY**

**JUDGMENT**

The Plaintiff in this suit was filed in the subordinate court on 17/8/1999. The cause of action arose out of a road traffic Accident. The claimants were fare paying passengers in motor vehicle No. KAH 649 T owned by the defendant and driven by Defendants authorized driver. The defendant filed defence denying negligence and alleging negligence on the part of a third party who was later joined as Third Party in the name of George Mwende Kiara. Thereafter this suit was by court order dated 22<sup>nd</sup> November 2000 transferred to High Court Embu for hearing and determination. By consent filed in court on 4/6/2002 the Defendant and the third party entered an agreement as to liability to the plaintiffs claim. The Defendant agreed to shoulder 80% liability while the Third Party agreed to take the remaining 20%.

On the hearing date the plaintiff gave evidence and produced grants of letters of administration regarding the 3 deceased Plaintiff's Exhibit marked 1 (a) (b) and (c). The deceased were his wife Mary Muringo and his two daughters Stella and Margaret who were all killed in the accident. He produced the marriage certificate of his wife and birth certificates of his daughters. He said his wife was a farmer and took care of children and the two girls were helping in the home during school Holidays. The plaintiff was left with 2 children first born: 1. Hampton Karanja

2. Beatrice Wanja.

Who were then in college. That was the close of Plaintiff's case.

On liability this was already agreed upon judgment is entered against the Defendant and third party on the basis of 80% defendant 20% Third Party.

On the issue of quantum the court is to consider claims for pain and suffering, Loss of Expectation of

life and loss of dependency and special damages if any. The death occurred instantly on the spot only nominal damages can be awarded. The proposed figure in the sum of Shs.10,000/- is reasonable and the same is awarded for each of the deceased person. The total award is Shs.30,000/=. For loss of expectation of life both counsel agree that a sum of Shs.100,000/= for the wife deceased is adequate compensation. The loss of expectation of life is of the same value. Whether one has already lived most of life or is young. In fact a young persons loss of life is more regrettable having been cut short at an early stage.

I am of the view that Shs.100,000/= for the each minor child on this head is adequate.

I therefore award a total of shs.300,000/= in all. On loss of dependency the court has to take into consideration that the dependants for Muringo wife are the husband, aged 47 years and son Hamton Karanja daughter Beatrice Wanja aged 13 years.

The husband works with KTDA as he said when he gave evidence. He has lost the help his wife gave in his farming projects and consortium and taking care of children. She was aged 43 years. Under Fatal Accident Act dependency is not awardable to sisters and other siblings. Therefore the person entitled to dependency here is husband and the surviving children.

In the case of Muringo (wife) there is no assessment of the value of the benefit from her farming activities or the other household chores. The defendants suggests that we treat her labour as that of any farmer in agricultural sector see Legal Notice No.36 of 2005 (unskilled) Shs.2,285/=. I think this to be a reasonable approach in cases where no assessment is possible. I adopt that figure as the value of her farming activities. There is no pleadings for loss of consortium and I do not make any award on this item. On multiplier the work of a farmer is onerous and heavy. It is not possible to say that a farmer is likely to live longer than other cases. There is illness which can bring the working life of a farmer to a standstill. There are other unforeseen circumstances which can terminate life anytime.

Therefore it is my view that one cannot say for certain active life will be lived up to the age of 60. I am of the view that the multiplier of 8 years is reasonable and I adopt the same for the wife. I also find that the benefit she earned in her farming business were more likely than not spent in the home. Therefore on considering the submissions of both parties I find a ratio of 2/3 to be appropriate. Therefore the loss of dependency for wife (Muringo) is calculated thus:-  $8 \times 2285 \times 12 \times \frac{2}{3} = 146,240/=$

Regarding the father's loss of dependency on his two daughters Stella and Margaret it is to be noticed that they were both students aged 15 and 12 years. They spent their time in school and earned no income but the father said they used to help in the home during school holidays. The Plaintiff chooses to claim for lost years instead of dependency. There is no evidence as to the value of any help they gave to their father. However the same can be said of the claim for lost years. It is all speculation to try to arrive at a figure to be earned in future particularly for young persons whose future careers can not be ascertained.

In this case I take the route taken by **Justice Mbogoh Masagha in the case of Stanley Maina Vs Nairobi De luxe Services Ltd, HCC No. 541/1992.** In that case deceased was aged 17 years she was a student. The Judge said (at page 2). **"It has not always been easy to assess damages for lost years or loss of dependency where the deceased is of school going age..... it is recognized however that while the children grow up they assist in my respects their parents and the same parents while contributing to the education of their children expect something in return in their (children) adult hood"**

In this case the learned Judge assessed the dependency at 1000/- per month for 16 years which he awarded as damages for loss of dependency.

I therefore, after considering the authorities cited and proposals of counsel set a multiplier of twenty (20) years in both cases and using taking the sum of Shs.1000/= per month for both minor children, the claim on this item is calculated thus:-

**1000 X 20 years X 12 X 2=480,000/=.**

I have taken the position of the dependency of the Plaintiff. As for special damages only a sum of shs.300/= for police Abstract was claimed. For funeral expenses the plaint stated “**to be provided**” No such information was submitted up to the time of trial. However it is common knowledge that in our society large sums of money is incurred as funeral expenses for various ceremonies transport and other traditional matters. In this case the plaintiff asks for shs.12,000/= for the purchase of coffin. This is reasonable and I award the same even without supporting documents.

The upshot of this trial is that:-

1. Judgment on liability is entered by agreement. Quantum is assessed as follows:-

**Deceased Mary Muringo:**

Loss of Expectation of life - Shs.100,000/=

Pain and Suffering - Shs.10,000/=

Loss of dependency - Shs.146,240/=

Coffin -Shs.4,000/=

**Total** **Shs.260,240/=**

**Stella Karimi:**

Loss of Expectation of life Shs.100,000/=

Pain and Suffering Shs.10,000/=

Lost of dependency Shs.240,000/=

Coffin Shs. 4,000/=

**Total** **Shs.354,000/=**

**Margaret Njeri:**

Loss of Expectation of life Shs. 100,000/=

Pain and Suffering Shs.10,000/=

Lost years/dependency Shs.240,000/=

Coffin Shs.4000/=

**Total** **Shs. 354,000/=**

The award therefore is Grand Total of **Shs.968,240/=**

The Judgment is therefore entered for plaintiff against the defendants in the said sum plus interest at court rates and costs. The decretal sum to be a portioned on the basis of agreed liability 80%/20%.

Orders accordingly.

Dated this 6<sup>th</sup> March, 2007.

**J. N. KHAMINWA**

**JUDGE**

**6/3/2007**

**Khaminwa - Judge**

**Njue – Clerk**

**Ms. Ndorongo**

**N/A**

Judgment read in open court.

**J. N. KHAMINWA**

**JUDGE**