



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

Civil 78 of 1997

GLADYS BANCHIRI NYAMBEKI PLAINTIFF

VERSUS

INTERFREIGHT (K) LTD DEFENDANT

JUDGMENT

The plaintiff herein instituted this suit against the defendant in her capacity as the administrative of the estate of the late *Gabriel Muchiemo Onyiego (deceased)*. On 26th July 2006, the parties recorded a consent on the issue of liability wherein the plaintiff is to shoulder 20% liability and the defendant 80%. This leaves the matter for determination the issue of quantum.

The plaintiff gave evidence during the hearing and according to her, the deceased who was a fare paying passenger aboard motor vehicle KST 049 Peugeot 504 matatu met his untimely death when he was aged 39 years. He was at the time working as a lecturer at the Nairobi University where he was earning a net salary of **Kshs.24,531/-**. The deceased is survived by the plaintiff, the widow - *Gladys Banchiri Nyambeki*, *Edison Mukura Mochiemo* - son, *Maureen Nyangoge Mochiemo* – daughter, *Geraldine Bochere Mochiemo* – daughter and *Franklin Nyabate Mochiemo* – son and they all depended on the deceased.

The plaintiff therefore sought for damages under the **Fatal Accidents Act** and also under the **Law Reform Act** for the loss of the expectation of life and for the pain and suffering. The plaintiff also sought for special damages for legal fees and funeral expenses.

On the issue of quantum, Counsel for the plaintiff submitted that the deceased who was working at the Nairobi University was expected to work up to the age of **65** years of age and urged the court to consider the multiplicand of **26** years. He also submitted that the deceased died leaving behind a widow and children and the conventional multiplier to be used in arriving at the right sum be awarded for loss of dependency is $\frac{2}{3}$. He relied on the previous decided cases to support that preposition as follows;

In the cases of **Nai HCCC No. 1681 of 1999 – James Gichuru Kiunjuru & Another – Vs- Mainyo Investment Ltd, Nai HCCC No.6357 of 1990 – Rispa Ajiambo Barasa & 6 others –Vs- Humprey Ravies Duncan Masiga & Another** and **Kakamega HCCC No. 12 OF 1985 – Mrs. Miriam Sei & 2 others –Vs- John Njenga Kihuro & Another.**

Applying the above principles, the plaintiff’s Counsel submitted that the court should award the plaintiff **Kshs.5,138,640/-** arrived at as follows;

Loss of dependency – **Kshs.24,705 x 26 x 12 x 2/3 = Kshs. 5,138,640/-**.

On the heading of loss of expectation of life, Counsel urged the court to award **Kshs.100,000/-** and for the special damages to award the funeral expenses for which the receipts were produced and legal fees all amounting to **Kshs.38,454/-**.

The defendant did not defend this suit but their Counsel filed written submissions and urged the court to use a multiplier of **12** years and multiplicand of $\frac{2}{3}$ considering that the deceased was bound to retire at the age of **55** years. In regard to loss of expectation of life, Counsel for the defendant proposed an award of **Kshs.80,000/-**.

I have taken into consideration the evidence on record, the documents that the plaintiff produced in evidence to support of her case as well as the submissions by both Counsels for the plaintiff and defendant. The deceased died at the prime age of **39** years and was survived by a widow and four children who depended on him for their upkeep. The deceased was a married man and evidence was led as to how he used to pay house rent, pay school fees for his children and give the plaintiff some money for food. It is possible from the evidence that the deceased was spending $\frac{2}{3}$ of his salary on his family and multiplicand of $\frac{2}{3}$ in this case would be reasonable.

The deceased in this case was working as a lecturer at the University of Nairobi and he was earning a salary of **Kshs.24,531/-** per month. Assuming the deceased would have worked up to the age of **55** years which is the retirement age, a multiplier of **16** years as lost years would be reasonable.

The Court of Appeal held in the case of **Davinty –Vs- Haji & Another [2004] 2 KLR**

*“The principle on which damages for lost years under the **Law Reform Act** are assessed are admirably articulated by **Lord Scarman in Gannel Vs Wilson [1981] I ALL E.R 578 at page 593 paragraphs g – j** thus:*

“The problem in these cases which has troubled the Judges since the decision in pickets case, has been the calentation of annual loss before applying the multiplier (i.e the estimated number of lost working years accepted as reasonable in the case). My Lords, the principle has been settled by the speeches in the house of picketts case. The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at the time of death would suggest was reasonable likely to achieve subtle mathematics calculations, based as they must on events or contingencies for a life which he will not live, are out of place, the Judge must make the best estimate based on known facts and his prospects at the time of death.”

In this case therefore, I find the deceased would have worked for **16** years and he spent about $\frac{2}{3}$ of his income on his dependants thus:

24,531 x 16 x 12 x $\frac{2}{3}$ = 3,139,968/-.

I also award the plaintiff **Kshs.100,000/-** for the loss of expectation of life and **Kshs.39,269/-** for special damages made up as follows: -

Legal fees as in Exbs 4, 6 and 7 (a-e)	14,675.00
Death advertisement in the Daily Nation	7,314.00
Funeral expenses proved (Exh 7, 8 and 5 (a+b)	17,280.00
	Kshs.39,269.00

In the result, the plaintiff shall have judgment for

- Kshs.3,139,968/-

For the loss of expectation of life - Kshs.80,000/-

Special damages - Kshs.39,269/-

Less 20% contribution of liability

Less Kshs.651,847/- = Kshs.2,488,121/-

I hereby enter judgment for the plaintiff for Kshs.2,488,121/- to be divided amongst the dependants as follows: -

- o Gladys Banchiri Nyambeki - widow - 888,121/-**
- o Edison Mukura Mochiemo - son - 400,000/-**
- o Maureen Nyangoge Mochiemo - daughter - 400,000/-**
- o Geraldine Bochere Mochiemo - son - 400,000/-**
- o Franklin Nyabate Mochiemo - daughter - 400,000/-**

The plaintiff will also have the cost of the suit.

Judgment read and signed on 2nd day of March 2007.

MARTHA KOOME

JUDGE