



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

**Civil Case 380 of 1994**

**LILIAN MUTHONI KINYUA (*Alias* LILIAN MUTHONI GITAU)..... 1<sup>ST</sup> PLAINTIFF**

**LABAN MWANGI GACHEMA ..... 2<sup>ND</sup> PLAINTIFF**

**JULIUS KAMANDE NJUGUNA ..... 3<sup>RD</sup> PLAINTIFF**

**LILIAN MUTHONI KINYUA ..... 4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JULIUS N. KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**SAMUEL GICHOHI ..... 2<sup>ND</sup> DEFENDANT**

**ALBERT MBURU WAMBIRI ..... 3<sup>RD</sup> DEFENDANT**

**JOHN MWAURA NJUKU ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

The plaintiffs herein instituted this suit against the defendants in their capacity as the administrators of the estate of ***Erastus Gitau Njuguna*** (*herein referred to as the deceased*). ***Julius Kamande Njuguna*** give evidence during the hearing of this suit and detailed how on the 26<sup>th</sup> day of April 1993, he and the deceased were traveling as fare paying passengers aboard motor vehicle registration number KAA 241E. They were traveling along Muranga - Sababa road. The vehicle was owned by the 1<sup>st</sup> defendant who was the registered owner while the 2<sup>nd</sup> defendant was the driver. The plaintiff was in the same vehicle with the deceased and another brother called ***Peter Nyaga Njuguna*** in the same vehicle. When they reached a place called Sababa this vehicle collided with motor vehicle registration number KZB 616 which was being driven by the 4<sup>th</sup> defendant and was owned by the 3<sup>rd</sup> defendant. As a result of the said collision, the deceased sustained fatal injuries and the plaintiff blamed the 2<sup>nd</sup> defendant for driving the vehicle at an excessive speed. The plaintiff blamed both the drivers of the two motor vehicles for careless driving with caused the two motor vehicles to have a head-on collision. The plaintiff was also injured in the same accident and he lost his two brothers the deceased herein and ***Peter Nyaga Njuguna***. The deceased died while undergoing treatment at the Muranga District Hospital.

Evidence was also given by the deceased wife who is also the 1<sup>st</sup> plaintiff in this suit. She was not present when the accident occurred but she gave evidence regarding the plaintiff's claim under the Law Reform Act and the Fatal Accident Act. She testified that the deceased was the sole bread winner. He

used to provide for his family and consisting of the plaintiff and six children. According to the death certificate, the deceased was aged 39 years as at the time of death. The plaintiff testified that the deceased was a businessman who used to deal with livestock and was running a butchery however the plaintiff did not produce any document to support her contention that the deceased used to earn Kshs.50,000/- per month from his businesses. They also produced the letters of administration which was issued to the plaintiffs in February in 1994. They also produced the police abstract form that shows the registered owners of the motor vehicles which were involved in the accident.

Following this accident which involved the 3<sup>rd</sup> defendant, he filed a suit being **NAKURU HCCC NO. 379 OF 1994**. In that judgment *Ondeyo J* found that the drivers of the two vehicles were equally to be blame for the collision in which the deceased suffered fatal injuries. This decision was based on that decision of *Rimita J* in **NAKURU HCCC 560 OF 1993**. This court having come to a concurrent finding on the issue of liability regarding this same accident, that issue has already been decided.

The 3<sup>rd</sup> defendant, ***Albert Mburu Wambiri*** the owner of motor vehicle KZB 616 which was driven by the 4<sup>th</sup> defendant, John Mwaura Njuku, he was not at the scene of the accident when the accident occurred but he was called and arrived at the scene of the accident. He also produced judgment in **TRAFFIC CASE 1115 OF 1996 – S.R.M MURANGA** where the driver of motor vehicle KAA 241E was charged with the offence of causing death by dangerous driving. He was convicted and sentenced to five years imprisonment. He contended that the driver of his motor vehicle was not charged and it was his case that he should not have been sued in this case because the accident was solely caused by the negligence of the driver of motor vehicle KAA 241E who was trying to overtake when the accident occurred.

The deceased was survived by the following dependants;

- à **Lilian Muthoni Kinyua** - widow
- à **Beth Wambui Gitau** - daughter aged 14 years
- à **Flora Njeri Gitau** - daughter aged 12 years
- à **Josphat Njuguna Gitau** - son aged 10 years
- à **Faith Waitherero Gitau** - daughter aged 8 years
- à **Briston Kinyua Gitau** - son aged 3 years

Having considered the evidence by both the plaintiffs' witnesses and the 3<sup>rd</sup> defendant, it is clear the accident occurred as a result of a collision between the two vehicles. The 3<sup>rd</sup> plaintiff was a passenger in the vehicle KAA 241E and he said that both vehicles were over speeding and considering the concurrent judgments by this court regarding the two suits arising from the same accident, I do not find any compelling reasons where this court should depart from the decisions in those two cases regarding the finding on liability. Although in those decisions the defendants did not adduce evidence. I have considered the evidence by the 3<sup>rd</sup> defendant and on a balance of probability I find that both vehicles were liable for the accident. I find that the four defendants were entirely to blame for the accident and liability will be shared equally between the 1<sup>st</sup> and 2<sup>nd</sup> defendants on one hand and the 3<sup>rd</sup> and 4<sup>th</sup> defendants on the other.

On the issue of quantum, although no material by way of documentary evidence was produced to enable this court to establish the monthly income of the deceased, Counsel for the plaintiffs submitted that based on the evidence of **PW 1** and **PW 2**, Kshs.30,000/- per month should be a reasonable estimated for the deceased earnings. Counsel cited a number of cases in support of this; the case of **HCCC NO. 1299 OF 1998 – NAIROBI – Elijah Oleku Vs George Ikonya Thuo** and the case of **Joyce Wambui Ngungu Vs Toffic Bus Services Ltd – HCCC NO. 1331 OF 1997 – NAIROBI**.

In the 1<sup>st</sup> case the deceased was aged 32 years as in time of his death and in the second case the deceased was aged 40 years with three children in school who he used to support. The challenge in the present case is to establish the fair monthly income which the deceased used to earn to support his wife and five children. In the earlier case **HCCC NO. 379 OF 1994 – NAKURU**, *Ondeyo J* gave a sum of Kshs.15,000/- to the deceased person who died in this accident as a fair monthly earnings. I would award a sum of **Kshs.10,000/-** as the multiplicand and the deceased having died at the age of 39 years, I would use a multiplier of 16 years. The deceased had a large family and this would justify the finding that he spent 2/3 of his income on the dependants. Thus  $Kshs.10,000 \times 16 \times 12 \times 2/3 = Kshs.1,280,000/-$  for loss of dependency. On pain and suffering, it would appear that the deceased died the same day while undergoing treatment at the hospital and I would award him **Kshs.30,000/-** for pain and suffering. On the loss of expectation of life, I will award the plaintiff a conventional sum of **Kshs.70,000/-**. On special damages the plaintiff pleaded for Kshs.50,100/- but they only produced receipts for **Kshs.1,080/-** which I award.

*Judgment for the plaintiff as follows;*

*Loss of dependency* - **Kshs.1,280,000/-**

*Pain and suffering* - **Kshs. 30,000/-**

*Loss of expectation of life* - **Kshs. 70,000/-**

*Special damages* - **Kshs. 1,080/-**

**TOTAL Kshs.1,381,080**

**I award the costs of this suit and interest to the plaintiffs. Liability shall be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants 50% while 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally the other 50%.**

**It is so ordered.**

**Judgment read and signed on this 20<sup>th</sup> day of April 2007.**

**MARTHA KOOME**

**JUDGE**