



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Case 48 of 1998**

**KARIUKI JOHN NG'ANG'A.....PLAINTIFF**

**VERSUS**

**STEPHEN MUNENE KIGUNDU.....DEFENDANT**

**JUDGMENT**

The Plaintiff amended the plaint on 12/6/99 substituting herself in place of her deceased husband who died after being hit by a motor vehicle on Makutano/Sagana Road on 15/1/1998. He was a police officer on duty at Makutano. The plaintiff was not present when the accident occurred but the deceased was hospitalized at Jamii Hospital at Karatina. According to information obtained at police station she came to know that the driver of the motor vehicle KAE 882 V was the Defendant Stephen Munene Kigundu who was listed as owner in the police Abstract Exhibit 1. The deceased was treated by Dr. M.M. Kibuku who made a letter/report of how he treated the deceased from 15.1.98 until he died on 28/10/98 (Exhibit 3). He certified that the deceased sustained severe head and chest injuries. The deceased was also treated at Karatina Government Hospital. Death Certificate was exhibited (Exh.2) showing that the death occurred on 30/10/98 as a result of Cardiorespiratory Arrest and L. Pneumonia. Thereafter the plaintiff obtained a grant of representation which is also exhibited. The plaintiff claims special damages.

Police Abstract - Sh.100/-

Medical Report - Shs.900/-

Medical treatment - Shs.93,072/-

Funeral expenses - Shs.20,000/-

Death Certificate - Sh.50/-

She also sought General damages pursuant to the Fatal Accidents Act and Law Reform Act.

On 21/2/2005 on application interlocutory Judgment was entered against Defendant who never entered appearance or filed a defence. The hearing proceeded to formal proof. The plaintiff stated that deceased had 3 children as listed on the plaint and that her husband who earned net sum of Shs.7,186/= used to support his family. At his death he was aged 47 years. I find in this case there is no evidence to support the allegation of negligence. There is no other evidence produced other than that of the plaintiff who was not at the scene at the material time. The traffic police who availed the Police Abstract were not called to give evidence. The deceased having been a policeman his employer may have carried out some investigations. Also there is no medical evidence to show what injuries were incurred by the accused and how later several months after the accident it is said the death occurred. There is no evidence to prove

that the death was occasioned by injuries suffered in the accident.

I have come to the conclusion that the plaintiff did not make serious effort to prove her case.

I am therefore bound to dismiss the same.

Dated this 30<sup>th</sup> October, 2007.

**J. N. KHAMINWA**

**JUDGE**

**30/10/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Ms Ndorongo HB for Plaintiff**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**