

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 266 of 1997

JAMES WAHOME NGATHU (FATHER) *Suing on behalf of* PAUL

KIIRITHO WAHOME (*deceased son*).....PLAINTIFF

VERSUS

MULEI MBETI1ST DEFENDANT

PURITY N. WANGOMBE.....2ND DEFENDANT

JUDGMENT

James Wahome Ngahu, the plaintiff herein instituted this suit on behalf of the estate of **Paul Kiritho wahome** (deceased) seeking for general and special damages as a result of a fatal accident that occurred on 20th June 1994. The accident involved motor vehicle reg. **No. KXD 889 Isuzu lorry** which was at the material time owned by the second defendant and was being driven by the first defendant. The plaintiff alleged that on 20th day of June 1994, he was together with his deceased son. They had hired a vehicle to transport charcoal and they were traveling along Nairobi-Mombasa road, and when they reached Makindu, the vehicle they were traveling in got a puncture. They parked the vehicle and the deceased was helping to change the tyre when vehicle reg. No. KXD 889 was so negligently driven. The wheel came off, hit the deceased it threw him on the road and he was run over by the same vehicle. The deceased sustained very severe injuries. The plaintiff tried to take the deceased to the hospital where he died three hours after admission. The plaintiff produced the death certificate which shows that the deceased was aged 22 years as at the time of his death. The plaintiff also produced a police abstract form which shows that the accident occurred involving the deceased and motor vehicle reg. No. KXD 889. The plaintiff also produced a limited grant of letters of administration *ad colligenda* bona in respect of the estate of the late Paul **Kiiritho Wahome**. The plaintiff was issued with the grant of letters of administration in respect of the deceased estate. According to the plaintiff, the deceased used to carry on the business of buying and selling charcoal and used to earn Ksh. 5,000/= per trip. He used to help the plaintiff with money to pay school fees for his other siblings for the four years he had been in that business. The plaintiff further testified that his son was in great pain before he died. He blamed the driver of the motor vehicle registration No. KXD 889 for the accident and the death of his son. He alleged that the motor vehicle was driven too fast, the motor vehicle tyres were wobbling and they came off and as a result of the accident, the plaintiff has suffered loss as he used to get assistance from the deceased. The plaintiff also testified that he incurred expenses for transporting the deceased's body from Makindu to his home in Rumuruti although he did not have receipts to support this payment.

Although the defendants filed statements of defence and agreed issues for determination, they did not attend court during the hearing of the suit. This case was partly heard before Justice Lesiit. The court directed that the matter do proceed from where it was left by Justice Lesiit and be heard by any other judge.

Counsel for the plaintiff filed written submissions and urged the court to find the defendants **100%** liable for the accident. The plaintiff did not wish to pursue the claim under the Fatal Accidents Act which was not specifically pleaded in the plaint or proved. Under the **Law Reform Act**, it was the opinion of the

counsel that a sum of KShs. 100,000/= should be awarded for pain and suffering while recalling that the deceased was under great pain and suffering before his death. For the loss of expectation of life, counsel submitted that the deceased was earning KShs. 20,000/=. He used to spend about KShs. 5,000/= on his father and considering that he was only 25 years, he could have worked up to the age of 60 years since he was self employed.

Counsel put forward the case of **Musa Arurwa vs. The Attorney General Hccc No. 1597 of 2000** where the High court applied a multiplier of 20 years for a deceased who was 26 year of age. Using the same reasoning, the plaintiff should be awarded 1.8 million. See also the case of **Douglas Leonard Oduory vs. Stephen Wachira Kariuki Hccc No. 1860 of 1993.**

On the issue of general damages for pain and suffering, the deceased died three hours after the injury. He therefore did not die instantly after the accident and I find an award of a conventional sum of KShs. 80,000/= under this heading appropriate. On the loss of dependency, the death certificate showed that the deceased was 22 years of age at the time of the accident. The plaintiff testified that the deceased used to earn KShs. 5,000/= every trip and an average of KShs 20,000/= per month out of which he used to spent KShs. 5,000/= on the plaintiff, however, no supporting documents were produced to support this high income. The deceased was also unmarried and it is not possible that he could have continued for the rest of his life to support the plaintiff at the same level. For lack of documents, I will estimate his earnings at KShs 3,000/= which is a reasonable estimate even for unskilled labor out of which he must have been using KShs. 1,000/= per month to support the plaintiff. I will therefore tabulate the plaintiff's award as **KShs. 1,000/= x 30 x 12= KShs. 360,000/=.**

Judgment is hereby entered for the plaintiff on liability at **100%**, general damages for pain and suffering **KShs. 80,000/=**, and for the loss and expectation of life **KShs. 360,000/=**, total **KShs. 440,000/=** with costs and interest.

Judgment read and signed this 9th day of November 2007.

M. KOOME

JUDGE