



REPUBLIC OF KENYA

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

Civil Case 110 of 2004

DANIEL MUGARU KURIA (*Suing as legal representative of the*

***Estate of Ann Wambui Mugaru – Deceased*).....PLAINTIFF**

VERSUS

GEOFFREY GITHEKI MACHARIA.....1ST DEFENDANT

KENYA BUS SERVICES LTD.....2ND DEFENDANT

JUDGMENT

Daniel Mugaru Kuria, the plaintiff herein, filed suit on behalf of the estate of Anne Wambui Mugaru – deceased (*hereinafter referred to as the deceased*) against the defendants Geoffrey Githeki Macharia (1st defendant) and Kenya Bus Services Limited (2nd defendant) seeking to be paid damages under both the **Law Reform Act** and the **Fatal Accidents Act** on account of the fatal injuries that the deceased sustained when motor vehicle registration No.KAP 973Z Scania Bus owned by the 2nd defendant and driven by the 1st defendant violently collided with motor vehicle registration No.KAJ 919G wherein the deceased was lawfully traveling as a passenger. The plaintiff pleaded that the said accident, which occurred on the 3rd of August, 2003 along Naivasha-Nairobi road, was caused by the negligence of the 1st defendant who carelessly drove motor vehicle registration No.KAP 973Z that he caused it to collide with motor vehicle registration No.KAJ 919G causing the deceased to sustain the fatal injuries.

When the defendants were served, they duly entered appearance. They filed a defence denying that they were the authors of the said accident that caused the death of the deceased. The defendants denied that they were negligent. They instead blamed the driver of motor vehicle registration No.KAJ 919G for causing the said accident. They particularized the negligence of the driver of the said motor vehicle in their defence. They urged this court to dismiss the plaintiff's suit with costs. On the 27th of March, 2006 the plaintiff and the defendant recorded a consent whereby they compromised the issue of liability. The defendants agreed to bear 100% liability for the said accident. This court therefore was only left with one issue to determine, i.e. the assessment of damages that should be paid to the estate of the deceased.

During the hearing of the case, neither the defendants nor their counsel appeared in court although they had been served by the plaintiff and informed of the date when this case had been fixed for hearing. This court was satisfied that the defendants were properly served. It ordered the plaintiff to proceed with

his case, the absence of the defendants notwithstanding. The plaintiff called one witness; himself. He testified that the deceased was his daughter who at the time of her death was 23 years old. He testified that the deceased died when motor vehicle registration No.KAP 973Z owned by 2nd defendant collided with motor vehicle registration No.KAJ 919G owned by the Catholic Diocese of Nakuru, wherein the deceased was lawfully travelling as a passenger. The plaintiff testified that after the accident, the deceased was admitted at Kijabe Mission Hospital in serious condition. She succumbed to her injuries three days later and died. He testified that the deceased at the time of her death was working as a teacher at St. Mary's Kindergarten at Eldama-Ravine which school is owned by the Catholic Diocese of Nakuru.

The plaintiff recalled that the deceased was housed at the school compound and was being paid a monthly salary of Ksh.6,200/=. A letter confirming the monthly salary that the deceased was paid was produced as *plaintiff's exhibit No.1*. He testified that at the time of her death, the deceased was single and supported her parents and her younger siblings. He testified that the mother of the deceased is a house wife while he himself, his father, is a retired clerk. He testified that he was now a peasant farmer who had lost the support that he used to receive from the deceased. He testified the deceased used to give him and his wife a sum of Ksh.2,000/= per month. He testified that the deceased also supported her younger siblings. The plaintiff testified that he obtained limited grant of letters of administration which authorized him to file this suit on behalf of the estate of the deceased. The limited grant was produced in evidence as *plaintiff's exhibit No.2*. The plaintiff also produced the death certificate of the deceased as *plaintiff's exhibit No.3*. He further testified that he obtained a police abstract confirming that the said accident did in fact occur (*police abstract produced as plaintiff's exhibit No.4*). The plaintiff paid a sum of Ksh.100/= each to obtain the police abstract report and death certificate respectively. The plaintiff urged this court to award him damages and the costs of the suit as prayed in the plaint.

After the close of the plaintiff's case, the plaintiff filed written submissions in support of his claim for the estate of the deceased to be awarded damages under both the **Law Reform Act** and the **Fatal Accidents Act**. I have carefully considered the evidence that was adduced by the plaintiff in his case. I have also considered the submissions that he filed in quantifying the damages that he craves this court to grant him on behalf of the deceased's estate. As stated earlier in this judgment, the parties to this suit agreed by consent to compromise the issue of liability. The defendants are to bear 100% liability.

On quantum, the deceased was at the time of her death aged 23 years old. There is no evidence to suggest that she was of ill-health. Were it not for the accident she would probably have lived to a ripe old age. However this court is aware that the mere act of living is a risk. There is no guarantee that the deceased could have lived until she became old. With the increased incidences of terminal deceases such as HIV/AIDS and widespread poverty that has resulted in the life expectancy of an average Kenyan to be drastically reduced, this court would not hesitate to hold that the deceased could have worked until she reached the retirement age of 55 years. I have seen the authorities that the plaintiff has supplied. I am also aware of numerous decided cases on the issue of the multiplier to be applied in assessing damages to be paid to an estate of a deceased person under the **Fatal Accidents Act**. In the circumstances of this case, I will apply a multiplier of 20 years.

The deceased was earning Ksh.6,200/= per month at the time of her death. The plaintiff testified that the deceased supported her retired parents and her younger siblings. This testimony was uncontroverted. I therefore hold that the dependency ratio to be applied shall be 2/3. In the premises therefore the damages awarded to the estate of the deceased under the **Fatal Accidents Act** shall be;

Ksh.6,200/= x 20 x 12 x 2/3 = Ksh.992,000/=.

I will make no award under the **Law Reform Act** in a view of the Court of Appeal decision of **Kemfro Africa Ltd t/a Meru Express Services (1976) & Anor. Vs Lubia & Anor.[1987] KLR 30** which requires this court to take into account any award made under the **Law Reform Act** when making an award under the **Fatal Accidents Act**.

In the circumstances of this case therefore, I enter judgment for the plaintiff against the defendants both jointly and severally as hereunder;

(i) On liability

The defendants shall bear 100% liability.

(ii) On quantum

(a) The plaintiff is awarded the sum of Ksh.992,000/= general damages under the Fatal Accidents Act on behalf of the estate of the deceased.

(b) The plaintiff shall be paid Ksh.200/= being the proven special damages.

(iii) The plaintiff shall have the costs of the suit.

(iv) The damages awarded by this court shall only be paid to the plaintiff on behalf of the deceased's estate after the plaintiff has obtained full grant of letters of administration to administer the estate of the deceased.

DATED at NAKURU this 14th day of November, 2006

L. KIMARU

JUDGE.