



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 3109 of 1996**

**PATRICK MURERWA MBUI.....PLAINTIFF**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....DEFENDANT**

**JUDGMENT**

The plaintiff brought this claim against the defendant in his capacity as the administrator of the estate of the deceased Fredrick Weru Mbui.

The Kenya Government in the Department of Police employed the deceased and at the time of his death he was of the rank of a Constable.

The plaintiff's case is that on or about the 1<sup>st</sup> August 1994 the deceased was at his work station at Malaba Police Station. While there he was shot and fatally wounded by another police officer by the name P.C. Murunga of the General Police Unit. He died as a result of that bullet wound. The said P.C. Murunga was arrested and charged with the murder of the deceased and after a full trial he was convicted for manslaughter.

The plaintiff in his evidence told the court that the deceased was his brother and had brought this claim as the administrator of his estate and had obtained letters of administration which he produced to court as Exhibit II.

He issued notice to the Attorney General as required by the state on 25<sup>th</sup> September 1996 but delayed to file the suit because he had to await the outcome of the Criminal Case which had been preferred against the said P.C. Murunga who had killed the deceased. Before he filed this suit he had applied for leave to file suit out of time and was granted the leave to file this suit out of time. He told the court that the deceased was aged 33 years when he died and he was of the rank of a corporal earning Shs.4,055/= per month.

His net pay was Shs.3851/= after deducting Shs.204 tax. He was unmarried and used to assist his elderly mother. He blamed the defendant for the death of the deceased. He urged the court to give judgment in his favour as prayed in the plaint but withdrew the claim for special damages since the funeral expenses were withdrawn since the state took the responsibility for the funeral expenses.

The defendant did not offer any evidence in defence but in his submissions counsel for the defendant challenged the order that extended time to file the suit. He raised the issue of limitation. He submitted that a party seeking leave to file a suit out of time must adduce evidence in that regard unequivocally stating plausible reasons for the delay. He further submitted that since leave application for extension of time to file suit being ex parte, its challenge can only be mounted at the hearing of the main suit. I agree with counsel that is the substantive law but procedural law requires that the intention to challenge the leave ought to be contained in the defence which was done in this suit. Paragraph 8 of the defence which discloses the intention to raise the issues as a Preliminary Objection.

Secondly since if the suit is barred by statute that goes to the jurisdiction of the court, the same must be raised at the earliest opportunity and this suit before the hearing started because if the same is proved,

it will lead to the suit being struck out.

However be it as it may, I am satisfied that the leave to file the suit out of time was properly granted and it cannot be faulted.

After considering the evidence and all the annexures produced by the plaintiff I am satisfied that liability against the defendant is proved. The next issue for consideration is quantum. The deceased was 33 years old at the time of death. Counsel for the plaintiff suggested a figure of Shs.100,000/= for loss of expectation of life which he said is the conventional amount awarded in such matters and I agree with him.

For loss of years he suggested a multiplier of 22 years which he multiplied with the monthly salary of Sh.4,385/=. With due respect to counsel this omitted deduction for tax which was Shs.204/= per month. The net income for the deceased was Shs.3,851/= per month.

I concur with counsel that the deceased had 22 years to retirement and I adopt that multiplier. The figure for lost years could be worked out as follows –  $2/3 \times 3851 \times 12 \times 22 = \text{Sh.}677,776/=$  -

Accordingly there shall be judgment for the plaintiff and against the defendant for Shs.677,776/= with costs and interest.

Dated and delivered at Nairobi this 1<sup>st</sup> November 2006.

**J.L.A. OSIEMO**

**JUDGE**