



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL SUIT NO. 137 OF 1997

**DINAH JAMES ABISI (*Suing as the Personal and Legal Representative of the Estate of*
JOHN KARINGO MOMANYI (deceased).....PLAINTIFF**

VERSUS

MESHACK SINGEI KIMUTAI.....DEFENDANT

JUDGMENT

On or about 4th August, 1995 the deceased viz, John Kiringo Momanyi was a lawful passenger in Motor Vehicle Registration No. KUM 967 being driven along Fort Ternan Muhoroni Road when by the negligence of the defendant, its agent and/or servant in driving managing and/or controlling the said vehicle he permitted the same to cause an accident, as a result of which the deceased John Kiringo Momanyi sustained fatal injuries and his estate and dependants have suffered loss and damages. During the hearing, the PW1 – Dina James Ambisi who is the mother of the deceased deposed that her son died due to a road accident. She produced the Death Certificate and Burial Permit – Exhibit 1 and 2 respectively. Besides the above, she also produced the Grant of Letters of Administration *ad colligenda* – Exhibit 3. According to the mother of the deceased, her son boarded a vehicle registration No. KUH 967 on 4th August, 1995 prior to getting the accident. The PW1 later learnt that it was the owner of the vehicle who later reported the matter to the police. The PW1 also produced the Police Abstract which contains the details of the accident. In addition to the above, the PW1 explained that by the time of the accident, his son was aged 29 years and had finished school three years earlier. Apart from the above, the PW1 testified that prior to his death her son used to help her plough the family land in Kisii.

On completion of the evidence of the PW1, Mrs. Odhiambo, Counsel for the plaintiff made oral submissions to guide the Court on liability and quantum of damages. According to Mrs. Odhiambo, the defendant is 100% liable since he never controverted the evidence on record. She was of the opinion that the accident was due to overspeeding since a vehicle **cannot** just overturn. In support of her submissions, she quoted the case of **Njuguna Mungai Vs Poseidon Investment Company Limited** where it was held that over-speeding is an act of negligence. As far as lost years are concerned, Mrs. Odhiambo submitted that the deceased used to earn Kshs.5,000 per month and she urged the Court to apply a multiplier of 15 years and a dependency ratio of 1/3. That means that in total, the plaintiff is claiming Kshs.300,000. Mrs. Odhiambo also addressed the Court on loss of expectation of life and pain and suffering.

This Court has carefully considered the above evidence and submissions. Though the defendant was duly served, he never attended Court nor did he send his Advocate. No reasons were given for the absence of both the above.

Consequently, the Court decided to proceed ex-parte seeing that the case was over 7 years old. Despite the above, the Court has perused the defence on record. The same has denied all the allegations that have been levelled the defendant. After considering all the above carefully, I find that it was the defendant who had caused the accident through his negligence. The principle of *res ipsa loquitor* applies in this case. That means that the defendant is fully to blame for the accident. I hereby find that the defendant was 100% liable for the accident.

Though the deceased was said to be a small-scale farmer in Kisii, it is common knowledge that Kisii is a fertile agricultural area where many crops grow well. The Court concurs with the calculations which have been reflected under lost years. The upshot is that the plaintiff has proved her case on a balance of probabilities and hence I hereby enter judgment in her favour on the following terms:

(a) Loss of Expectation of Life:

Kshs.100,000.00

(b) Lost Years:

$5,000 \times \frac{1}{3} \times 12 \times 15 = 300,000$

(c) Pain and suffering:

Kshs.10,000.00

(d) Special damages:

- Police Abstract – Kshs.100.00

- Death Certificate – Kshs.50.00

- Funeral Expenses – Kshs.21,150.00

Kshs.431,000.00

(e) Costs of the Suit.

(f) Interest on (a), (b), (c), (d) and (e) from today to the date of payment.

MUGA APONDI

JUDGE

29TH MARCH, 2005

Judgment read, signed and delivered in open Court in the presence of Mr. Oduor for plaintiff.

MUGA APONDI

JUDGE

22ND APRIL, 2005