

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE 67 OF 1998

SUSAN WANJUGU MUCHEMI PLAINTIFF

VERSUS

JAMES KABATHI MWANGI DEFENDANT

J U D G M E N T

Susan Wanjugu Muchemi (hereinafter referred to as the Plaintiff) brought this suit against James Kabathi Mwangi (hereinafter referred to as the Defendant) seeking general damages under the law Reform Act and the Fatal Accidents Act arising from the death of her late husband John Muchemi Waweru (Deceased) whom she claims died as a result of a road traffic accident involving the Defendant's Motor-vehicle Registration No. KXR 795 which accident the Plaintiff contends was caused by the negligence of the Defendant's driver or agent.

Although the initial hearing proceeded interpartes before Juma J. Further hearing proceeded ex-parte as the defendant failed to attend court despite having been served with a hearing notice.

In her evidence the Plaintiff produced documents showing she was the administrator of the estate of the deceased. She also produced proceedings of the Traffic case decided in Muranga case No. 197 of 1997 wherein the Defendant's driver was convicted of causing the death of the deceased by dangerous driving. She prayed for damages on her own behalf and on behalf of the 2 children of the deceased and also on behalf of the estate of the deceased. Although the Defendant had filed a defence denying the Plaintiff's claim and contending that the accident was substantially contributed to by the negligence of the driver of an unknown motor vehicle and the negligence of the Deceased, there was no evidence to substantiate these allegations, or contradict the findings of the traffic court.

I am satisfied therefore that on the evidence on record, there was sufficient evidence to prove that the death of the deceased was caused by the negligence of the Defendant's driver in driving dangerously. I do therefore find the Defendant vicariously liable for the negligence of his driver. According to the evidence of the Plaintiff the deceased was 29 years old. His income as at the time of his death as testified to by his employer (P.W.2) was 500/= daily as a matatu driver.

Counsel for the Plaintiff has urged the court to adopt a multiplier of 26 years. This is reasonable given that the deceased had 26 years to reach 55 years. His oldest child was only 6 years and youngest child only 3 years. I would therefore assess the loss of dependency under the Fatal Accidents Act as follows: $15,000 \times 12 \times 26 \times 2/3 = 3,120,000/=$ I would further award a sum of Kshs.100,000/= being damages for loss of expectation of life under the Law Reform Act.

Accordingly I give judgment in favour of the Plaintiff as against the Defendant in the sum of Kshs.3,220,000/= together with costs and interest thereon from the date of this judgment. An appropriate application shall be filed for distribution and investment of the minors shares.

Dated signed and delivered this 14th day of September 2005.

H. M. OKWENGU

JUDGE