



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 1 OF 1999**

**GRACE WANJIRU GICHUKI ..... PLAINTIFF**

**VERSUS**

**PETER GATERU MACHARIA ..... DEFENDANT**

**JUDGMENT**

This is a most tragic accident. Samuel Kabanga Gathuthi (now deceased) was at the young age of 23 years old standing along the Thika Nairobi High way when a motor vehicle driven and managed by the defendant Peter Gateru Macharia knocked Samuel.

According to the death certificate his death occurred at the Kenyatta National Hospital as a result of the said injuries.

His sister, Grace Wanjiru Gichuki filed suit on 4.1.99 against the defendant seeking compensation for the wrongful death occasioned by the negligence of the defendant.

(I wish to just point out that the heading of the plaint should have read as follows:-

Grace Wanjiru Gichuki

(Suing as the administratrix and legal representative

of the estate of Samuel Kabanga Gathuthi, deceased).

Grace Wanjiru Gichuki has been referred in para I as an administrator. The correct word should be administratrix referring to a female and administrator referring to a male).

(I hope in future this would be adhered to).

**A) LIABILITY**

On the 9.6.04 the parties conceded to liability at 100% against liability. Judgment was duly entered. I hereby confirm the same.

**B) QUANTUM**

The claim before court are brought under the Law Reform Act and the Fatal Accidents Act. I wish to begin with the Fatal Accident Act.

a) Fatal Accidents Act

According to the plaint the “particulars pursuant to statute” stated:-

**”The deceased was a 4th year Bachelor of Arts student at Kenyatta University. He has completed his 4th year Course just a month before the accident whereby he had a promising future ahead of him. His estate has suffered loss and damages as a result of the said accident.”**

The above statement are not pleaded, nor does it amount to particulars as to statute.

According to section 8 of the Fatal accidents Act the dependents of the deceased are to be named, their ages and relationship to the deceased particularized.

For example, the parents of the deceased, would in this instance be the person to claim. I assume the deceased was single and had no children.

The plaintiff as a sister is not permitted to claim under this head but as an administratrix may claim for the estate if within 6 months the dependants have failed to make a claim or vice versa

. I would accordingly dismiss this claim under the Fatal Accidents Act.

b) The Law Reform Act

i) Pain and suffering

The death certificate reflects that death occurred at Kenyatta National Hospital. The abstract shows death occurred at the Kenyatta University bus stop

. I would award the conventional sum of Ksh.10,000/- under this head as death did not occur instantaneously.

ii) Loss of expectation of life.

I would in fact award a sum of Ksh.70,000/-.

iii) Lost years

The advocate for the defendant brought up the issue that the deceased may not have been a student at the Kenyatta University. This is a valid argument but there was a witness PW2 who stated he was class mate with the deceased and in fact went to the said University with him. The ideal situation would of course be that a letter form the University confirming this fact should have been tendered.

I would in this instance state that on a balance of probability the deceased may have been a student as there is indeed no official proof to this effect it will effect the multiplicand herein.

a) Multiplicand

The plaintiff confirmed that if the deceased had lived then he would have become a teacher and earned a gross salary of Ksh.28,000/-. His is what he witness PW2 is now earning since he left the University.

The advocate for defendant implied that there was no guarantee that he deceased would have graduated or if he did, would have obtained a job.

Nonetheless, I find that an authority submitted by the advocate for the plaintiff an award of Ksh.400,000/- was given in the case of:-

Cecilia Khakayi

v

Kenya bus services

Hccc 38/99

A young female adult aged 26 years old in 1996 – a house girl was involved in a motor vehicle accident as a passenger.

I awarded a claim under the Fatal Accidents Act to a sum of Ksh.5000/- multiplicand and a multiple of 20 years.

The award under this suit is for lost years. The deceased would have been useful in his life. His friend testified that they were together. I would on the balance of probability award Ksh.3,000/- as a minimum wage for the multiplicand and on the grounds that the deceased may or may not have been a University student.

The deceased was aged 23 years old. I find a multiplier of 20 years is adequate.

The claim is to the estate and I therefore do not impose a dependency ratio.

Thus  $\text{Ksh.3,000/-} \times 20 \times 12 = \text{Ksh.720,000/-}$ .

#### b) Special Damages

The claim was withdrawn. This was for police abstract Ksh.100/- and funeral expenses Ksh.80,000/-. The same is accordingly marked as withdrawn. I accordingly enter judgment for the plaintiff on the proved sum.

In Summary:-

1) Pedestrian, male adult aged 23 years old in 1997

2) Motor vehicle/pedestrian accident

3) Injuries: Fatal

4) Quantum:

A) Law Reform Act

a) Pain and suffering Ksh. 10,000/-

b) Loss of expectation of life Ksh. 70,000/-

c) Lost years  $\text{Ksh.3,000/-} \times 20 \times 12 = \text{Ksh.720,000/-}$

B) Fatal Accidents Act

a) Loss of dependency Nil

Claim not particularized

Dependents not named as required under section 8 of the Fatal Accidents Act.

c) Special Damages Nil

Withdrawn \_\_\_\_\_

Total Ksh.800,000/-

I award the costs of this suit to the plaintiff. I award interest on General Damages from the date of this judgment.

Dated this 15th day of June 2004 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**

*Faiza Ngatia & Co. Advocates for the plaintiff*

*Wagaki Murage & Co. Advocates for the defendant*