



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 358 OF 1989

JAMES IRUNGU MWANGI PLAINTIFF

VERSUS

KENYA CANNERS LTD & ANOTHER DEFENDANT

SUMMARY NOTES

- 1) Running down Cause
- 2) Passenger female adult aged 31 years old in 1988
- 3) Multiple collision between four vehicles (Bus, heavy/trailer, pick up).
- 4) Injuries: -Fatal
- 5) Liability:-Established by High Court Juma J on 20.11.98 and

a) confirmed by court of appeal at

50% against the 1st

defendant 2nd

defendant

50% against the 3rd

defendant

Jointly and severally.

5) Jurisdiction:-

High Court lacked jurisdiction to make award.

The plaintiff had no locus to file suit under both Fatal Accidents Act and the

Law Reform Act

Suit struck out.

6) Possible award

A) Quantum:-

i) Law Reform Act –withdrawn 23.03.04

ii) Fatal accidents Act

Ksh.1,306/50 x 12 x 20 x 2/3 Ksh.209,004/-

Discounted Ksh .9,000/-

Apportionment

a) Mother - Ksh. 50,000/

b) Son –David - Ksh. 50,000/

b) Daughter Alice - Ksh. 50,000/

c) Daughter Sheila - Ksh. 50,000/

Subject to Workman’s Compensation

N.B. one child not proved to belong to deceased

iii) Special Damages - Nil not proved

7) Suit stands struck out

8) Case Law:-

a) Nancy Wangari Maina vs Stephen Wairuga & Another

Hccc No.487/1998, Rimita, J.

b) Teresia Njeri (suing as a legal representative)v Kenya Breweries Ltd & Ano.

Hccc No.374/97

c) Musa Alulwan V Attorney General

Hccc 1597/00

d) Zecharia Waithaka Waitara v Sunrise Security Ltd & Another

Hccc 505/99

Un reported, Ang’awa, J.

9) Advocates:-

M. Kigotho Advocate for the plaintiff

M. Wanga Advocate for the 1st

defendant

T. Tiego for Shah & Parekh Advocates for the 2

nd

defendant

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JUDGMENT

1) JURISDICTION

I lack jurisdiction to make an award in this case and duly enter judgment. The suit be and is hereby struck out with costs to the 1st defendant, 2nd defendant and the 3rd defendant.

B) REASONS FOR LACK OF JURISDICTION

i) Brief back ground

This suit arises from a horrific accident that occurred 16 years ago between a company bus that was transporting staff workers home and three other vehicles. The bus approached a narrow bridge along the Oliiptip road near Chania river bridge. Ahead of the two was a pick up which was behind a lorry. Both were stationary and were waiting for a long trailer coming from the opposite side of the road to cross the bridge. The bus collided into the pick up which pick up collided into the lorry. The bus swerved into the path of the on coming lorry and trailer.

Five of the staff died on the spot. The rest were taken to various hospital in Thika. A total of 26 staff passengers died. Some were injured,

Everlyine Waithira Muiruri died in the said accident.

I) Locus

Her brother filed suit on the 25.1.89 on behalf of himself and the dependents of the deceased.

A test suit was heard by Ringera J (as he then was) (30.1.95 – 17.10.96) and concluded by Juma J (8.12-97 to 20.11.98) when Ringera J was appointed a Solicitor General.

The test suit held the staff bus and the lorry trailer to blame equally for the accident at 50% to 50% ratio (Hccc 4139/89) (consolidated). The court of appeal confirmed this finding on liability.

The parties were to come in their various file for the assessment of damages.

The plaintiff in this case James Irungu Muiruri a brother to the deceased withdrew the claim under the Law Reform Act on the 23.3.04. The reasons being that at the time the suit was filed he held no letters of grant and or representation to file this suit before court.

The suit proceeded to hearing on the claim under the Fatal Accidents Act. After the trial it transpired that the plaintiff was NOT a dependent to the estate of the deceased as described under Section 4 and 8 of the Fatal Accidents Act. He therefore had no locus to bring the claim on behalf of himself nor the dependents. If he wished to do so he required to have held grants of letters of representation which he did not have.

The person to sue would have been the mother to the deceased, failing which, the children through a next of friend.

On these grounds the suit be and is hereby struck out with costs to the defendant 1,2 and 3.

POSSIBLE QUANTUM.

In the event that the plaintiff would have been successful in his claim under the Fatal Accidents Act only, an award of:-

Ksh.1,306/50 x 20 x 12 x 2/3 = Ksh.209,004/- . would have been awarded.

Those entitled to benefit would have been the mother Alice Wangui Muiruri then aged 63 years old.

Raymond Juma son

Alice Wangui – daughter

Sheila Wanjeri – daughter

A sum of Ksh.50,000/- each would have been apportioned between them equally. Ksh.9,004/- would have been discounted.

The Workwoman's Compensation would have been taken into account for defendant 1 and 2.

One child Mukuhi Waithira would not have had any award. The plaint described the child as the son of deceased The birth certificate describes the child as a daughter and gives the name Dorothy Mukuhi

B) Special Damages – not proved.

The claim and suit is struck out.

In Summary

1) female passenger aged 31 years old in 1988

2) Collision between four vehicles

3) Liability:- for the vehicles only

Against 1st and 2nd defendant 50%

Against 3rd defendant 50 %

Jointly and severally

Hccc 4139/89 Test Suit consolidated

(Juma J)

4) POSSIBLE QUANTUM

a) Law Reform Act withdrawn 23.03.04

b) Fatal Accidents Act

Loss of dependancy

Ksh.1,306/50 x 12 x 20 x 2/3 Ksh.209,004/-

Discounted Ksh. 9,004/-

Apportionment

a) Mother	Ksh50,000/-
b) Son David	Ksh.50,000/-
c) Daughter Alice	Ksh.50,000/-
c) Daughter Sheila	Ksh.50,000/-
Total	<u>Ksh.200,000/-</u>

Subject to workman's compensation being taken into account.

One child Mukuhi Waithria - son – no proof as belonging to the deceased.

5) Special Damages – not proved struck out.

I award the costs of this suit to the defendant 1,2 and 3.

Dated this 2nd day of June 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Mwangi Kigotho & Co. Advocates for the plaintiff

Archer Wilcock & Co. Advocates for the defendant