



- 1) Running Down Cause
- 2) Pedestrian female adult dated 29 years in 2.5.2003
- 3) Motor vehicle/pedestrian accident
- 4) Injuries:-Fatal
- 5) Liability:

100% against the defendant

Interlocutory judgment

Deputy Registrar 8.4.04

- 6) Quantum:
 - a) Law Reform Act
 - i) Pain and suffering Nil
 - ii) Loss of expectation of life Ksh.70,000/-iii) Lost years Ksh.4000/-x 20x12x2/3 Ksh.640,000/-b) Fatal accidents act
 - i) Loss of dependency Nil
 - c) Special Damages Nil_____Ksh.710,000/-

7) Case law

- a) Gla Franklyn Onyango Ngonga
v
Josephine Mumbi Ngugi & Another

Hccc 181/2001, Ondeyo, J.

- b) James Muhoro Ndungu & Another

v
Wilson Nzioka Mutiso

Hcc No.995/2001, Ang'awa,J.

- 8) Advocates:-E.N. Khamati advocate for the plaintiff

No appearance for the defendant

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1240 OF 2003

DANIEL MWANYASI & ANOTHER PLAINTIFF

VERSUS

PAUL MUCHIRU DEFENDANT

JUDGMENT

George Andaji Auna was a work mate of Josephine Kache Mwanaysai. As they finalized their assignment, Josephine crossed the road and stood on the other side of road alone that was at Desai Road. Aura her colleague was still on the opposite side of the road.

Suddenly, a speeding public service vehicle Reg. KAN 845 Toyota Matatu crushed into Josephine who was off the road.

As a result of the said accident Josephine sustained fatal injuries.

Her father together with her mother took out grant of letters of administration intestate (P & A 41) and sued one, Paul Muchiru as the driver of the said vehicle .When he was served with the summons to enter appearance and plaint he failed to appear and file defence.

On the 8th of April 2004 the deputy registrar entered an Interlocutory Judgment against the defendant under the ministerial powers bestowed upon the deputy registrar under Order 48.

A) LIABILITY

The effect of the Interlocutory judgment is that judgment on liability is final at 100% against the defendant. Under order 9a r 5 (b) CPR the plaintiffs set down this suit for assessment of damages on quantum.

B) QUANTUM

i) Law Reform Act

The plaintiff holds grants of Letters of Adminsitration intestate. I confirm that he has locus to file this case.

The case though should have been headed as follows:-

Daniel Mwanaysi Jimmy Mambichi

Agnes Majala Mwanaysi Plaintiff

(Suing on behalf of the estate of Josephine Kache Mwanayansi (deceased)) versus

Paul Muchiru

I hope in future that the format would be adhered to.

Under this head I find as follows:-

i) Pain and suffering

The eye witness (PW2) did not inform this court whether after the accident occurred the deceased (Josephine) was alive or not. As there is no evidence disclosing the status of the deceased I make no award under this head.

ii) Loss of expectation of life

I award the conventional sum of Ksh.70,000/-.

ii) Lost years

It appears the deceased was not a married lady. She was aged 29 years old and had a bright future before her as a saleslady. I give 20 years as a multiplicand.

I was not informed of her aspiration in the future by her employer or parents.

I would compute lost years relying on the minimum wage of Ksh.4,000/- per month.

Thus $4,000/- \times 20 \times 12 \times 2/3 = \text{Ksh.640,000/-}$.

The case law of:

GLA Franklyn Onyango Ngonga v Josephine Mumbi Ngugi & Another, Ondeyo J - Nakuru 18/2001.

James Muhoro Ndungu & Another v Nelson Nzioka Mutiso

Nairobi. 995/01, An g'awa, J.

was relied on by the advocate to prove awards given for general damages. On quantum the multiplier of 18 years was a factor.

i) Fatal Accidents Act Cap.32 Laws of Kenya

Where there are no administrators within six months of death the dependents are permitted to file suit under this act. The estate may also file suit under this act but what ever is filed and awarded must be taken into account where the administrator and the dependents are the same.

It is important to note that the statute must be complied with strictly.

It requires that the dependents be those as described in section 4 of the Act. Namely, parents, child or spouse (wife or husband).

It also requires that the particulars of such dependents including their age be disclosed.

Such particulars together with a statement of claim must be delivered to the defendant or advocate of the person on whose behalf the claim is being sort.

In this this instant case the dependants are described as the father and mother. Both are administrator/administratrix. By suing under this claim they are claiming twice and whatever award is made must be taken into account.

The other dependents are three sisters and two brother all aged between 39 – 22 years old. Section 4 does not disclose brother and sister as dependents. There requires to be evidence that dependents are those relying on the defendant's The brother and sisters are all above 18 years old and most certainly do not fall under this category.

I dismiss the suit under this head.

iii) Special Damages

A claim of Ksh.35,350/- was made.

It seems that this has not been proved to my mind. The same be and is hereby dismissed as I see no documents to prove this.

I note the advocate has made claim. An advocate is not permitted to disclose his fees in the plaint. He is not a litigant nor party to the suit. The advocate fees are paid after taxation and by the plaintiff direct to be recovered from the defendant where costs are awarded.

The judgment in this case will be entered on the proved claims.

In Summary

- 1) Pedestrian female adult aged 29 years in 29.5.2003.
- 2) Motor vehicle pedestrian accident
- 3) Injuries: Fatal
- 4) Liability: 100% against the defendant.

Interlocutory judgment by deputy registrar 8.4.04

4) Quantum:

1) Law Reform Act

- a) Pain and suffering Nil
- b) Loss of expectation of life Ksh.70,000/-
- c) Loss years

$$\text{Ksh.4,000} \times 20 \times 12 \times \frac{2}{3} = \text{Ksh.640,000/-}$$

II) Fatal Accident

III) Loss of dependency	Nil
Special Damages	Nil_____
Total	<u>Ksh.710,000/-</u>

I award the cost of this suit to the plaint. I award the interest on general damages for the date of this judgment.

Dated this 29th day of July 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Mwanyumba & Co. Advocates for the plaintiff

Paul Muchiru – the defendant