



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 2862 OF 1991

DAVID MUTURI NJOROGE.....PLAINTIFF

VERSUS

NAIROBI CITY COMMISSION.....1ST DEFENDANT

PETER NDONI NGUGI.....2ND DEFENDANT

JUDGMENT

Liability

The Plaintiff is suing as the administrator of the estate of the late Peter Njoroge. He is the uncle of the deceased. PW2 James Kihara in his evidence said that he is a brother to the deceased. On 1.7.1990 they were in Ngei estate, Huruma, Nairobi. They were standing besides the road in a plot they intended to build on when a City Council lorry left its way and knocked the deceased. He had himself to run away to avoid the lorry. They took the registration number of the lorry which was KUL 961. The lorry did not stop. It was in high speed and it looked like it had lost control. His brother died at Kenyatta National Hospital. He denied the suggestion in the defence that he was attempting to cross the road or that he was drunk. I accept the evidence by PW2 on how the accident occurred. I have read the defence to the claim and I reject the contention that the accident was as a result of the negligence of the deceased. The evidence by the plaintiff witness who was present when the accident happened was that the lorry had left the road and knocked the deceased while on the pavement.

I hold and find that the second defendant was wholly to blame for the accident. The second defendant was an employee of the 1st defendant and was in the course of his employment. The 1st defendant is therefore vicariously liable.

Damages

I accept the evidence that the deceased was not married and was working with a salary of Shs.480/- per month. He was therefore being unmarried in a better position to help his parents than if he was married.

Under the Law Reform Act I shall award a sum of Shs.100,000/- Under the Fatal Accidents Act, I will take a multiplier of 22. The deceased was 33 years at the time of his death.

Judgment

There will therefore be judgment for the plaintiff as follows:

(a) For loss of life = Shs.100,000/-

(b) For loss of Dependency

1480 x 22 x12 x 2/3 = Kshs.260,000/-

Total = Kshs.360,480/-

The plaintiff shall have the costs and interest.

Delivered and dated this 26th day of July, 2000.

KASANGA MULWA

JUDGE