



- 1) Running Down Cause
- 2) Motor vehicle collision between two vehicles
- 3) Driver male adult aged 27 years old in 1997
- 4) Injuries: Fatal
- 5) Liability 100%
- I) As determined in another case involving similar parties in case Hccc129/98 (Visram CA) (as he then was)
- ii) Later in court of appeal 204/01 dismissed on technicalities Gicheru JA. (as he then was)
- iii) Evidence produced under section 34 of the Evidence Act Cap.80 Laws of Kenya
- iv) The High Court is bound by the decision of the court of appeal.
- 6) Quantum
- 1) Law Reform Act
- i) Pain and suffering Ksh .5,000/-
- ii) Loss of expectation of life Ksh.70,000/-
Ksh.75,000/-
- II) Fatal Accidents Act
- i) Loss of dependancy
Ksh.10,000/- x 12 x 25 x 2/3rd Ksh.2,000,000/-
Less discounted Ksh.1,995,000/-
Subject to appointment and
Compliance of S.58 of Succession
Act Cap.160 and De Bonis non
of 5th schedule
- III) Special Damages – abandoned
Total Ksh.2,070,000/-
- 7) Case Law
- a) Pauline Kuloba Mwadime v Duncan Mwadoga Mukahe
(Nbi) Hccc 2774/92, Mwera,J.
- b) Joshua Omoth v Johnson Kakusu Sirimana & 2 Others
Nbi Hccc 3204/89, Gacheche (CA) (as she then was)
- c) Francis Nandi Titus v Esther Muthoni Wanyoike
Nbi Hccc No.820/96
(Private sector self or employee work for longer years than those in public sector)
- d) Section 34 Evidence Act
- i) Elijah Ole Kool v George Ikuyu Thuo
Visram CA (as he then was)
- ii) George Ikuyu Thuo v Elijah Ole Kool
C.A. Nairobi 204/01
Gicheru JA (as he then was) (Single judge on a point of technicalities-
Application dismissed).
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- 8) Editorial Note
Evidence Act Section 44

9) Advocate
S.M. Chege & Co. Advocates for the plaintiff
Kimani Waweru & Co. Advocates for the defendant

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1300 OF 1998

NGIGI KIMANI PLAINTIFF

VERSUS

GEORGE IKONYA THUO DEFENDANT

JUDGMENT

Originally this suit had been filed by one Ngigi Kimani who described himself as the administrator in this case in the estate of Moses Ndungu Ngigi, the deceased herein. He named himself and one Lydiah Nyagichuhi Gitiya as the parents to the deceased. He apparently died and the plaint was duly amended to substitute him with Beth Wanjiku Gatimu as an administratrix. This suit involved a road traffic accident where Moses Ndungu Ngigi is said to have passed away due to the negligence of the defendant agent and or servant driving another vehicle that is said to have caused a collision.

1) LOCUS

The issue of locus to sue in this case by the plaintiff Beth Wanjiku Gatimu was an issue. She produced grant of letters of administrator intestate P & A 41 issued by the High Court of Nakuru on the 19.2.98. This grant was issued in the name of Beth Wanjiku Gatimu and Ngigi Kimani Kiluki. I would find from this evidence that the said plaintiff has locus to file and bring this suit before this court. Section 58 of the Law of Succession Act required there to be two administratrix. I believe at a later stage compliance of a 'de bonus non' grant for the deceased administrator would be made

II) LIABILITY

I turn to the issue of liability and was informed by the advocate for the plaintiff in his opening remarks and led the plaintiff in evidence that the issue of liability had been decided in another case similar to this one involving a passenger who also later passed away. This same case was decided by Visram (CA) (as he then was). It went on appeal to the court of appeal for leave to appeal by filing the records out of time together with notice of appeal. The application was dismissed by a single judge. Gicheru JA (as he then was) on grounds that the delay in bringing the said application was inordinate.

It was thus in a way of confirming that the judgment on the said case was final in the absence of any further action on the matter. Where there are several cases and there is no Test Suit, once a judgment has been decided on liability in one of the cases and that said case goes to the court to appeal for hearing or (as in this above case) for leave to file notice of appeal and records out of time, if the same decision of the High court is upheld or leave to file appeal out of time is dismissed, then the judgment of the High court stands as if it has been confirmed by the court of appeal.

Where a judgment has been entered and no appeal preferred, then the said judgment is final. The subordinate courts and the superior courts are therefore bound by such judgment and the issue of appeal is thus decided under section 34 of the Evidence Act – namely the proceeding and or the judgment of the court is used as evidence in a subsequent case can be relied on in a related case instead of recalling the witnesses. As judgment was final the witness requires to put in the judgment. In this case the witness gave evidence and produced the judgment of the superior courts and the court of appeal whereby the judgment of a subsequent court on the same point was final. I would note that the evidence in this case as on the

facts were:- On the fateful day of the 13th day of April 1997, the deceased Moses Ndungu Ngugi was driving his motor vehicle. He had as passengers a male adult officer who was travelling together with his wife and child. His name was Elijah Ole Kool. As they travelled a lorry belonging to the defendant left its side of the lane and a collision occurred between the two vehicles. The deceased and Elijah Ole Kool were rushed to hospital. The child died at the scene of the accident. The deceased died soon after in hospital but Elijah Ole Kool passed away 7 months later. Liability against the defendant was found to be at 100%.

I confirm this finding and hold that the defendant is liable against the plaintiff at 100% liability.

III) QUANTUM.

a) Law Reform Act

i) Pain and suffering.

The evidence shows that the deceased died after being taken to hospital. Death was therefore not immediate. I would award Ksh.5000/- for the head of damages of pain and suffering.

ii) Loss of expectation of life

I award a sum of Ksh.70,000/- as being conventional. The deceased was at the prime of his age.

b) Fatal Accidents Act

i) Loss of dependency

a) Multiplier

At the time of death the deceased was aged 27 years old. In relying on the authority of:-

Francis Nandi Titus

V

Esther Muthoni Wanyoike & another

Nbi 820/96 Angawa,J.

Where I remarked that persons who work in the private sector tend to work for longer years. The advocate asked I award a multiplier of 25 years. The advocate for the defendant had no authorities to rely on or offer to this court. He nonetheless prayed that 18 years be awarded.

Other cases relied on was:-

Pauline Kuloba Mwadime

Vs

Duncan Mwandago Mwikamba

Hccc 2774/92 Mwera,J

Here a multiplier of 20 years was awarded for a 35 year old male adult who died as a result of a

road traffic accident along the Nairobi- Mombasa road.

Joshua Omoth

V

Johnson Kakusu Sirimana & 2 Others

Hccc 3204.89, Mbogholi,J.

Whereby the deceased a female adult aged 25 years and a civil servant died as a result of an accident A multiplier of 25 years was awarded.

In the case of:-

Harrison Nzuve Matheka

V

George Thiongo Njuguna

Hccc 1887/92, Gacheche (CA)(as she then was)

Awarded 25 years multiplier for a male adult aged 22 ears old who died as a result of a road traffic accident along Juja road Nairobi. He had been the driver.

I would find that a multiplier of 25 years would be reasonable in the circumstances.

b) Multiplicand

The father to deceased took over a furniture shop that was owned by the deceased when he had the accident and died. The father suffered high blood pressure and also passed away and died. It transpired during the evidence that the late father to the deceased had engaged auditors to audit the company. He had taken out a business certificate of registration and did all that was possible to document the business of the said firm. The advocate for the defendant took issue with this and stated as it was not physically the plaintiff's late husband to do this the evidence should not be relied on. The advocate for the defendant failed to ask for "further and better particulars" prior to the trial on the said documents nor did he attempt to bring any evidence to rebut the plaintiff. The plaintiff witness PW2, an accountant stated that audit had been done when in act at the period of business the deceased was alive. I am nonetheless permitted to rely on the concept of "norminal damages" which I do. The advocate for the defendant states I award Ksh.10,000/- as a multiplicand. The plaintiff prays for Ksh.105,000/- per month before taxation being Ksh.73,000/- per month.

I find that indeed the deceased was self employed and ran a carpentry shop. That such evidence deduced by the accountant reflected the business as belonging to the deceased, later his father and documents signed by the widow to confirm the income per month. I would allow as norminal income the sum of Ksh.10,000/-. Thus $Ksh.10,000/- \times 25 \times 12 \times 2/3 = Ksh.2,000,000/-$. Less discounted Ksh.5,000/- is hereby given to allow for a lump sum payment and early remarriage giving a net total of Ksh.1,995,000/-. The plaintiff produced the baptismal certificate of the two children. This is acceptable to court. Proof that the children belonged to the deceased and that the plaintiff was a lawful wife was given in evidence via the baptism certificate together with a chiefs letter. This evidence was not challenged.

I find it hard nonetheless to relate to one, Eunice Ruga Ngugi, said to be a step mother. It seems when the suit was originally filed the widow, children and Eunice Ruga were not describe as dependants. The plaint was amended and the four were included. I noted from the grant of letters the plaintiff was originally a Co-administratix. I would therefore accept she and the children are dependents under section

M.A. ANG'AWA

JUDGE

S.M. Chege & Co. Advocates for the plaintiff

Kimani Waweru & Co. Advocates for the defendant