



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NO. 491 OF 1994**

**MUYEKHO TUMA.....PLAINTIFF**

**VERSUS**

**A.FRED.....1ST DEFENDANT**

**M. O. A. DUNCAN.....2ND DEFENDANT**

**M. MICHIRA.....3RD DEFENDANT**

**T/A OBUYA BUS SERVICES**

**JOHN KIPRUTO.....4TH DEFENDANT**

**AND**

**MAICON MBANGA**

**KAMBALA MUTEKE.....THIRD PARTIES**

**JUDGMENT**

The Plaintiff, Muyekho Tuma, filed this suit on behalf of the estate of Solomon Muyekho Tuma (*hereinafter referred to as the deceased*) against the Defendants claiming for special and general damages in tort arising out of the road traffic accident that occurred on the 2nd of October 1993 involving motor vehicle registration number KAB 542 K and a trailer registration number KN 8423R/KN3379. The deceased sustained fatal injuries in the said accident. The Plaintiff blames the Defendants in negligence for the death of the deceased and has filed this suit under the provisions of the Law Reform Act and the Fatal Accidents Act for compensation on behalf of the deceased's estate. The Defendants filed a defence denying the Plaintiff's claim. They also sought leave of this Court to issue Third Party Notice to the owners of motor vehicle registration KN 8423R/KN 3379. Leave was duly granted. It however appears from the record that the Defendants did not pursue the joining of the said third parties to this suit.

At the beginning of the hearing of this case this Court was shown the judgment delivered on the 23rd of October 2002 by P. J. Ransley (Commissioner of Assize - as he was then ) in **Nairobi HCCC No. 605 of 1994 Sarah Achieng' –versus- Fred M. D., Duncan M. Michira and John Kipruto** (unreported ) where the Defendants in this suit were found to be solely liable in negligence for the accident that occurred on the 2nd of October 1993. The Plaintiff in the said case was also a passenger in the same motor vehicle as the deceased. The said Court having found that the Defendants in this suit solely liable for the said accident, this Court adopted the finding of the said Court as ordered that judgment be entered against the Defendants jointly and severally on liability. The Defendants herein were found to be liable to the Plaintiff in negligence. They were solely to be blamed for the accident that resulted in the death of the deceased.

Having adopted the judgment of the said Court in **Sarah Achieng's** case (supra) this Court took the Plaintiff's evidence to determine the quantum of damages to be paid to the deceased estate. The Plaintiff called one witness, himself. He testified that the deceased was his son who had died in a road accident that occurred on the 2nd of October 1993. He produced the Death Certificate of the deceased (plaintiff's exhibit No. 1). Police abstract report was also produced (plaintiff's exhibit No. 2 ). The Plaintiff testified that the deceased was employed as a policeman at the time of his death. He was married and had two children, one of the children had died. He was survived by one child. She is called Millicent Khalivindzi. After the death of the deceased, the deceased's wife called Rhoda left the homestead of Plaintiff and was married elsewhere. The Plaintiff was left with the child.

It was the Plaintiff's evidence that the Plaintiff used to support the family from the salary that he earned as a Police Officer. The Plaintiff earned a net salary of Kshs 3007/20. The payslip of the deceased was produced as Plaintiff's Exhibit No. 3(a) and (b). The Plaintiff testified that he obtained letters of administration that gave him authority to file this suit. The said letter of administration were obtained in **Nakuru H. C. Succession Cause No. 463 of 1993**. The said letters of administration were produced as Plaintiff's Exhibit No. 4. The Plaintiff further testified that the police buried the deceased but he purchased the food that was used to feed the mourners. The Plaintiff testified that he paid the sum of Kshs 100/= for the abstract report (plaintiffs exhibit No. 5 ). The Plaintiff prayed for this Court to order that Defendants pay him damages. He testified that the deceased used to support him and his family by sending him Kshs 3000/= every month. The Plaintiff produced a baptismal card to prove that indeed Millicent Khalivindzi was the child of the deceased. The Plaintiff further testified that as the widow of the deceased was married elsewhere, she was no longer a beneficiary of the deceased estate. The Defendants did not call any witness. The parties agreed by consent to file written submissions.

I have considered the evidence that was adduced by the Plaintiff in this case. I have also considered the written submissions filed on behalf of the Plaintiff and on behalf of the Defendants. The deceased was aged 28 years at the time of his death. He was employed as a Police Officer. He was young and therefore had prospects of being promoted by his employers. He earned a net salary of Kshs 3007/20. The Plaintiff testified that the deceased used to send the sum of Kshs 3000/= every month to the Plaintiff, his wife and children for their support. I do find this evidence to be obviously untrue. The deceased could not send his entire salary for his family's upkeep. He must have used part of his salary for food and clothing. The Plaintiff testified that he was a farmer. Part of the upkeep of the deceased family must have come from the farming activities. The Plaintiff adduced evidence that the wife of the deceased was married elsewhere after the death of the deceased. One of the two children of the deceased died, leaving only one child Millicent Khalivindzi. The Plaintiff does not however disclose the age of the daughter of the deceased.

From the evidence adduced by the Plaintiff it is impossible to determine the dependency ratio to be applied. Counsel for the Plaintiff has suggested the dependency ratio to be applied 2/3 of the deceased salary. The Defendants on their part have suggested the dependency ratio of 1/3. From the evidence adduced by the Plaintiff, it is clear that the Plaintiff supported his family by sending part of his monthly salary. In the circumstances of this case, the Plaintiff was required in law to prove dependency. From the evidence adduced, I assess the dependency to be 2/5.

The Plaintiff suggested a multiplicand to be applied to be twenty five years. The Defendant on their part suggested a multiplicand of nine years. This Court takes judicial notice of the fact that police officers being civil servants are entitled to work until they reach the retirement age of 55 years. In deciding the multiplicand to be applied this Court takes into consideration the fact that the standard of living in Kenya has of late dropped due to various factors such as the increased incidences of poverty, the AIDS pandemic and road traffic accidents. It cannot therefore be said that the deceased would have worked until retiring from work at the age of 55 years. In the circumstances of this case, and doing the best that I can, I assess the multiplicand to be applied to be 18 years. I will award the Plaintiff the sum of Kshs 25,000/= being the funeral expenses.

In the circumstances therefore I do enter judgment for the Plaintiff against the Defendants jointly and severally as hereunder:

- (i) Funeral expenses ..... Kshs. 25,000/=
- (ii) Abstract report ..... Kshs. 100/=
- (iii) General damages to be paid under The Fatal Accidents Act  
3007/20 (the deceased's salary) x 2/5  
dependency ratio x 18 years (multiplicant) x  
12 months = 259,822/10

TOTAL Kshs. 284,922/10

An award shall not be made under the Law Reform Act, an award having been made under the *Fatal Accidents Act*. (See **Kemfro Africa Ltd t/a Meru Express Services, Gathogo Kanini –versus- A M Lobia & Oliver Lobia 1982-88]1 KAR 727**). The Plaintiff shall have the costs of the suit. Interest on the special damages shall be applied from the date of the filing of the suit whilst the interest on general damages shall be applied from the date of this judgment.

**DATED at NAKURU this 22nd day of October, 2004.**

**L. KIMARU**

**AG. JUDGE**