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- 1) Running Down Cause
- 2) Motor vehicle –self accident
- 3) Female adult – passenger aged 58 years old in 2000
- 4) Injuries: - Fatal
- 5) Liability: - 100% against the defendant
- 6) Quantum:
 - a Law Reform Act
 - i) Pain and suffering Ksh.10,000/ -
 - ii) Loss of expectation of life Ksh.70 ,000/-
 - iii) Lost years Ksh.72,000/ -
Ksh.3,000/ - x 12 x 2 years
 - b) Fatal Accidents Act
Loss of dependency Nil
 - c) Special Damages Ksh.14,550/ -
The balance sum of Ksh.10,420/ -
dismissed as not having been proved _____

Total Ksh.166,550/ -
- 7) Case law Nil
- 8) Advocates
R.W. Chege advocate for the plaintiff
R. Oira advocate for the defendant

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 749 OF 2001**

SAMEUL NJOROGE KAMUNYA PLAINTIFF

VERSUS

LUCY WAMBUI KIBEDEFENDANT

JUDGMENT

The fact of this case as per the evidence of PW2, a passenger and the defendant, the driver of the motor vehicle in question that was involved in a self traffic accident is as follows:-

On the 3.10.00 at 10.00 a.m., Lucy Wambui Kibe had a pick up which she used to transport several ladies in. She herself, a teacher by profession, had been requested by those ladies to give them a lift to a funeral of one of their friend’s father who had died. As she was going to the said funeral, the defendant (Lucy) agreed to do so. One of her passengers was Alice Njeri Njoroge who sat in front seat with her. The other passenger was Jane (PW2) who sat at the left back of the pick up.

According to both ladies, the vehicle was travelling down hill as it approached an uphill climb. The defendant (Lucy) stated that she hit a pot hole and the vehicle over turned. She had not seen the said

pot hole nor was she aware of it a month or two previously when she had used the road. The plaintiff's witness on the other hand said that the defendant had been over speeding. She sat at the back suddenly the vehicle swerved and had a self accident. The defendant produced the lower court ruling of a subordinate case . The magistrate who wrote the ruling (I had been supplied with no proceeding) stated that in fact she was in a dilemma because all the witnesses who were friends to the defendants (accused) refused to testify. The only one who agreed was one Jane (PW2) in this case. Further it was not clear in her mind whether blame should be attributed to the defendant (accused). Yes, an accident occurred but is the defendant to blame for it or was the accident an act of God.

The trial magistrate was to decide whether the defendant was reckless and or careless in her driving to cause the accident. The High Court is to find out from the evidence deduced whether the defendant was negligent in tort and did she cause the said accident by her conduct or did she do so due to factors outside her control. The facts according to the trial magistrate is that the vehicle was going "down hill" at a high speed in order to gain sufficient power to do an up hill climb. The defendant likewise stated that she drove down hill but hit a pot hole unexpectedly causing the vehicle to roll. The particulars of the negligence by the plaintiff is that the defendant failed to drive with due care and attention and failed to control the said vehicle at a speed or give that was sufficient for her to actually make the up hill climb this causing the accident.

The parties drew up agreed issues on the 30.8.02 and sort this court to determine the same:-

A) JURISDICTION

Issue No.1 is whether the plaintiff is the administrator of the Estate of Alice Njeri Njoroge (deceased)? The said estate of the late Alice Njeri Njoroge is administered by the plaintiff. He duly produced to court limited grant of letters of administration ad litem to file suit dated 13.1.01. The suit was duly filed on 9.5.01.

I hold that the plaintiff has locus to bring this suit before court. This court has jurisdiction to hear this suit.

I) LIABILITY

Issues 2,3,4,5 and 6 deal with liability namely:-

- 2) Whether the road traffic accident which occurred on 3.10.00 was an act of God
- 3) Whether the driver was driving negligently?
- 4) Whether the defendant was owner of motor vehicle KZA 876.

I shall deal with the further issues 5 and 6 at a later stage that concerns contributory negligence. The whole aspect of negligence in this suit is that the defendant claimed that without any fault of her own she hit a pot hole and had a tyre burst. The accident was therefore inevitable and an act of God. An act of God can be said to be something that occurs which is beyond the control of the person who has caused it. This, the knocking of the pot hole was beyond the control of the defendant, has been alleged. I believe the correct position here is the ability of the plaintiff to travel at a speed in order to gain momentum to travel up hill is important to note. The only problem was that she was unaware of the said pot hole that was on the road. If the pot hole was not there the accident would not have occurred. I see it difficult to understand that because the pot hole was on the road it was an act of God and thus inevitable.

The plaintiffs ought to have taken 3rd party proceeding in which she should have sued the persons responsible or the maintenance of the road. Pot holes occur not by an act of God but by the negligence of allowing a road to be in disrepair.

The defendant should and is required to take due care in the way that she was driving. The care

was to ensure that the said vehicle as I was being driven was so done prudently and in a manner as to take into account the eventualities of the said road

.I find that the defendant was negligent in driving the vehicle by not taking due care. I do not hold or say that this accident was inevitable in the circumstances or that it was an act of God. As to issue No. 5 and 6. It deals with contributory negligence on the part of the deceased.

5) Whether the deceased died due to her own negligence?

6) Whether the deceased died while trying to jump from the moving vehicle Reg . KYA 876 of the defendant?

The evidence shows that the deceased was seated in the front of the vehicle. That in fact when the accident occurred it was the deceased who was injured with others. She was, therefore, being inside the cabin unable to jump out of the vehicle whilst it was moving.

I therefore hold that the deceased did not in any way contribute to this self accident. I find that the defendant is to blame for this accident at 100%.

III QUANTUM

A) Law Reform Act

i) Pain and suffering

The deceased died later. According to the death certificate 3 days later having suffered from head injury brain haemorrhage, injury to the abdomen and Hemoperitonium.

I would award Ksh.10,000/- under this head.

i) Loss of expectation of life An award of Ksh.70,000/- is hereby amended

ii) Lost years

The plaintiff spoke passionately of how the deceased was his farm manager, career of his children and supporter.

Though the deceased was all this, she in fact was a house wife who contributed tremendously to their tea picking plantation farm. She was aged 58 years old.

I would award a multiplier of 2 years; a multiplicand of the minimum wage of Ksh.3,000/- per month. I believe that house wife do contribute to society by looking after their family and home.

Thus $Ksh.3,000/- \times 2 \text{ years} \times 12 = Ksh.72,000/-$

Fatal Accidents Act

I make no award under this act as the children have not been adequately proved by way of certificate to be minors and dependants. Nonetheless I am not inclined to give an award under this heading as the plaintiff is both an administrator and dependent. He can claim only under one head for himself.

Special Damage

The plaintiff had made a claim installing Ksh.24,970/-. The parties agreed to Ksh.14,550/- which sum I accordingly confirmed. The balance of Ksh.10,420/- is hereby dismissed as having not been proved.

I accordingly enter judgment for the plaintiff on the proved heads

In summary

- 1) Self accident, passenger female adult aged 58 years in 2000
- 2) Injuries: Fatal
- 3) Quantum:

General damages

I: Law Reform act

- i) Pain and suffering Ksh.10,000/-
- ii) Loss of expect of life Ksh.70,000/-
- iii) Lost years Ksh.72,000/-

Ksh.3000/- x 12 x 2

Total Ksh152,000/-

II: Fatal accidents Act Nil

III: Special damages Ksh.14,550/-

Total Ksh.166,550/-

I award the costs of this suit to the plaintiff. I award interest on

General Damages from the dates of this judgment. Interest on Special Damages from the date of filing suit.

Dated this 24th day of November 2004 at Nairobi.

M.A. ANGA'WA

JUDGE

Kiage & Co. Advocates for the plaintiff

Ratemo Oira & Co. Advocates for defendant