



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**(Milimani Law Courts)**

**CIVIL CASE 2070 OF 1998**

**DAVID WAIYA KARIUKI .....PLAINTIFF**

**VERSUS**

**PETER SUTTLE .....DEFENDANT**

**JUDGMENT**

The plaintiff herein David Waya Kariuki is related to Paul Kiburu Kariuki (now deceased) as a brother. He informed this court how the deceased had been run down by a motor vehicle accident when the deceased was ridding his bicycle. He was not at the scene of the accident but he indeed produced letters of grant limited ad colligenda bona that gave him the locus to bring this suit. The deceased parents or mother is over 70 years and aged. He also produced a police abstract report and a death certificate.

From these foregoing the plaintiff closed his case.

**A) LIABILITY**

The defendant was not present before court nor did the advocate for the plaintiff call him to give evidence. The police abstract reflects that the defendant appeared before the subordinate courts and the case was pending for hearing.

No other evidence was deduced to show how the accident occurred. The advocate for the defendant called for the dismissal of the suit on the grounds that the plaintiff was served with the defence. They failed to file a reply and indeed any counter claim Thus, relying on the Civil Procedure Act order 6 r Civil Procedure Rules where there is no reply to the defence then the admission would be deemed to have been admitted. Namely, that it was the cyclist who was negligence.

It is the plaintiff who should establish negligence as pleaded in the plaint. The witness called was not at the scene of the accident. What he should have done as a plaintiff was to call for the proceeding of the Traffic court case as reflected in the police abstract to be produced to court as evidence under Section 34 of the Evidence Act Cap.80. Namely, the proceeding produced in one court may be used in a subsequent court and witnesses there need not be called a second time. He would have, failure to there being a court case, called the investigating officer to confirm therein the reconstructed scene of the accident to give an expert opinion on what may have really occurred. Lastly the plaintiff should have pleaded “res Ipsa Loquitor” “things speaks for themselves”.

I accordingly find that no liability has been established by the plaintiff. See the case of Mary Oyoo Munyao v Nairobi City Council C.A.252/98, Yusuf Abdallah suing as a legal representative of Mombasa

liners.

I am required by law to state what my award would have been if the plaintiff was successful in this case:-

I) Law Reform Act

i) Pain and suffering No evidence was led to inform the court as exactly what time the deceased died. I can only guess from the death certificate that the place of death was at Kenyatta Hospital and not on the said road.

I would have awarded Ksh.10,000/-

ii) Loss of expectation of life A reasonable sum of Ksh.70,000/- would have been awarded.

iii) Lost years The advocate for plaintiff recommended 1.190m. He had no supporting document for a salary. His brother said he was employed as a watchman. No employer came to give evidence to this effect. I would nonetheless take the minimum wage said to be Ksh.209/- per day or 3,000/- per month a reasonable multiplier of 20 years would be reasonable for a young man aged 30 years old. Thus 3,000/- x 20 x 12 = ksh.720,000/-.

II) Special Damages

As to the claim under Special damages the plaintiff had made no claims and none would be awarded.

I accordingly dismiss this suit with no orders as to costs to the defendants as he was absent.

In Summary

1) Cyclist /motor vehicle collision

2) Male adult aged 29 years in 1991

3) Injuries Fatal

4) Liability Nil

4) Quantum: Possible award

a) Law Reform Act

i) Pain and suffering Ksh.10,000/-

ii) Loss of expectation of life Ksh.70,000/-

iii) Lost years

Ksh 3,000/- x 20 x 12 Ksh.720,000/-

Ksh.800,000/-

b) Fatal Accidents Act Nil

c) Special Damages Nil not pleaded

Suit dismissed with no orders as to costs. The defendant being absent.

**Dated this 2nd day of December 2004 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

**Muraguri & Muraguri & Co. Advocates for the plaintiff**

**Wangai Nyuthe & Co. Advocates for the defendant**