



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

CIVIL CASE NO. 859 OF 1999

NANCY NJERI MUTHIANI (Suing on behalf of the estate of Joseph Muthiani).....PLAINTIFF

Versus

JAMES WAMBUA 1ST DEFENDANT

**THE HON. ATTORNEY GENERALTHIRD
PARTY**

JUDGMENT

On the 18th day of October 1997 the deceased one Joseph Ngila Muthiani was traveling as a fare paying passenger in motor vehicle KLT 143 when it was involved in a motor vehicle collision accident with vehicle registration GK L720 along the Kangudo Road.

Joseph Ngila sustained fatal injuries. His widow and another took out letters of representation to his estate dated 16th April 1998 and sued the registered owner of motor vehicle KLT 143; the defendant herein. The defendant took out third party proceedings against the Attorney General for the motor vehicle G.K. L 720.

This suit was set down for hearing on 7th April 2003. The Attorney General having been duly served with a hearing notice failed to attend court. Proceedings against him continued under Order 9b r 3 (a) CPR. The plaintiff and defendants proceeded to compromise this case. They were in agreement in all aspects save the issue of the multiplier.

I wish to summarize the extent of their compromise for ease of reference:-

Judgment on liability was agreed at 25% against the plaintiff and 75% against the defendant.

The claim under the

I) Law Reform Act:-

a) Loss of expectation of life Kshs 100,000/=

b) Pain & Suffering Kshs 10,000/=

II) Special Damages NIL

Total Kshs. 110,000/=

The claim under the Fatal Accidents Act was agreed on the following facts duly admitted by both parties.

- a) Loss of dependency
 - i) 2/3 dependency
 - ii) Multiplicand Kshs 23,000/=
 - iii) Multiplier

Facts admitted deceased aged 61 years old

Retirement age as a professional at the University of Kenyatta 72 years as per two letters dated 24th May 1985 and 18th September 2002.

The parties requested this court to determine what the multiplier should be.

The plaintiff's advocate through the plaintiff tried to imply that though the deceased would have worked up to 72 years old as a lecturer, he would have continued to work for a much longer period past the 72 years. The plaintiff asked for 14 years.

Thus Ksh. 23,000 c 14 c 12 x 2/3 = Ksh 2,576,000/=

The 4 years would be used as credit.

I find it difficult to understand this reasoning. It seems from the plaintiffs evidence that the deceased, apart from teaching at his University, would also go to other Universities / schools and colleges to teach yet no documentary evidence to this effect was tendered by her. The concept that after 72 years he would have worked in these institution on part time basis may be true but there is no evidential proof of fact that this actually happened.

The facts placed before me is that the retirement age was increased from 60 years to 72 years (another 12 years). That two letters produced support this fact which is duly admitted by both.

I would determine the issue of a multiplier to state what this may be at.

The defendant had argued that it be at 7 years Thus Kshs 23,000/= x 7 x 12 x 2/3 = Kshs 1,288,000/= subject to apportionment.

I would take a multiplier of 10 years to allow for any eventualities.

Thus Kshs 23,000/= x 10 x 12 x 2/3 = 1,840,000/=

I would discount this sum by Kshs 40,000/= to allow for lump sum payment and or early remarriage by the widow I am required to apportion this amongst the dependants duly proved. As follows:-

Nancy Njeri Muthiani widow	Kshs. 1,800,000/=
Wilson Gatima son born 1974	Nil
Mercy Wameru Daughter born 1976	Nil
Grace Wanjiru Daughter born 1978	Nil

Mary Njeri Daughter born 1980 Nil

I make no award for the children as they were adults at the time the deceased passed away.

In Summary

1. Running Down Cause
2. Male adult aged 61 years old in 1997
3. Passenger – motor vehicle accident

Between two vehicles

4. Injuries – Fatal
5. Liability: 25% against the plaintiff

75% against the defendant

Non appearance at trial by 3rd party

Proceedings under Order 9b r 3(a) CPR

6. Quantum

Agreed between the plaintiff and defendant

I General Damages

i) Law Reform Act

a) Loss of expectation of life Kshs 100,000/=

b) Pain & Suffering Kshs. 10,000/=

ii) Special Damages Nil

Total Kshs. 110,000/=

iii) Fatal Accident Act

a) Loss of dependency

23,000/ x 10 x 12 x 2/3 =

Kshs 1,840,000/=

Discounted 40,000/=

Kshs 1,800,000/=

Gross Total 1,910,000/=

Less 25% 477,500/=

Final Total 75% 1,432,500/=

I award the cost of this suit to the plaintiff I award interest on General Damages from the date of this judgment.

Dated this 8th day of April 2003 at Nairobi

M. ANG'AWA

JUDGE

Morara Apiemi Maillanyi Co Advocate for plaintiff (brief held)

Ramesh Manek Advocate for the defendant