



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 2495 OF 1997**

**JANE KANYI KAHARA.....PLAINTIFF**

**V E R S U S**

**THE ATTORNEY GENERAL.....DEFENDANT**

**JUDGEMENT**

This is a suit by the mother as legal representative of the deceased Stephen Muthuo Kahara who was killed by Police gunfire on 3.10.96 in Gichagi Village, Uthiru. It is a suit brought on behalf of the estate under Law Reform Act Cap 26 of the Kenya Laws claiming special damages and damages under Law Reform Act for the benefit of the estate and damages for loss of expectation of life.

PW1 Moses Gichara the brother of the deceased stated how on the night of 18.10.95 when sleeping he heard shouts, screams and commotion from his neighbours about 100 yards away. He saw figures in the dark whom he said were two Policemen. According to what he was told, he was shot on the shoulder and was taken to the hospital. He said his brother died. He ran away, without seeing who those people were who were shooting. He was not able to say if they were Policemen.

PW2 Jane Kanyi Kahara said how she was sleeping in her house on the night of 3.10.96 when she was woken up with screams outside her house. She found that her 4 children had gone outside. One of her sons a 31 year old Mukiri told her that deceased was lying by the roadside. She went and found two Policemen at the spot where the deceased was lying. They told her they had already killed him but he was still alive so the Police offered to escort him to Hospital.

PW2 hired a vehicle and took him to Hospital but he died the next day. Through Succession Cause No. 1719 of 1997 she obtained Letters of Administration Pex.1. She identified one of the two Administration Policemen who was called James Mbaria . She said the deceased was a hawker.

PW3 SIMON MUKIRI KAHARA a brother of the deceased was working with Dominion Engineering Works. He stated that on 3.10.95 when he heard screams outside his neighbour's house, he called out his three brothers and they went out, then he heard gunshots and people went to their houses but as he ran back he saw his brother lying down on a path. He called him, lifted him, but he could not walk. He ran to his house and his mother who came out pleading with the Administration Police not to kill her son. He however, did not see who shot him.

It is not controverted that there were screams that night from the neighbourhood and the brothers went out and then the deceased met his death. He was taken to Kenyatta National Hospital and died the next day on 4.10.96. His death certificate PEx2 shows cause of death to have been Acute Peritonitis Post Abdominal injury of the bowels consistent with bullet wound. He was 21.

Although there was no eye witness there was, evidence connecting the shooting causing these injuries

with the two Administration Police at the scene, there is evidence that they were aiming to shoot further, until the mother stopped them. They also agreed that they had killed him.

I find that one or both of the Police shot and caused deceased's death. It was unlawful killing and they must be liable.

Damages:

Special damages proved are: -

(i) Death Certificate Kshs. 100.00

(ii) Broadcasting Kshs. 600.00

(iii) Coffin Kshs. 8,000.00

**Sub Total** **Kshs.8,700.00**

As to quantum, it is noted that the deceased died after sometime in the Hospital. He underwent pain and suffering. I award Kshs.10,000/- and for loss of expectation of life, I give Kshs.60,000/-. As for lost years, according to Death Certificate, the deceased was 21 years. There was no proof of income except that he was a hawker. I would agree with defence counsel that Kshs.1,500/- per month for about 30 years, making the lost years be Kshs.(1500 x 30 x 12 x 2/3) amounting to **Kshs.360,000/-**.

So total claim under Law Reform is  $Kshs.360,000 + 60,000 + 10,000 = 430,000.00$

There was no claim under Fatal Accidents Act.

Therefore, the total award is  $Kshs.430,000 + 8,700 = Kshs.438,700.00$  plus interest and cost.

DATED at Nairobi this 25th day of July 2003.

**A.I. HAYANGA**

**JUDGE**

**Read to Mr. Olewe for Plaintiff**

**No appearance for Defendant.**

**A.I. HAYANGA**

**JUDGE**