



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

**CIVIL SUIT NO. 1565 OF 1999**

**ELIZABETH MARY WAIRIMU KIBANDI**

**JULIUS MBURU NGUGI ..... PLAINTIFFS**

**VERSUS**

**KISUMU BANCO MANUFACTURERS LIMITED ...1ST DEFNDANT**

**REUBEN IKOHA ..... 2ND DFENDANT**

1. Running Down Action
  2. Male adult aged 30 years old in 1996
  3. Pedestrian run down by defendant's motor vehicle
  4. Injuries
- Total
5. Liability 60% against the plaintiff  
40% against the defendant

6. Quantum

1. General Damages

(a) Law Reform Act

(i) Pain & Suffering Nil

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

(b) Fatal accident act Nil Possible award

**JUDGMENT**

Charles Ngacha Ngugi, aged 30 years old in 1996 was a Barber. On the 15.8.96 he was run down by a motor vehicle registration KWD 054 that was owned by the 1st defendant and driven by one Reuben Ikoha the 2nd defendant herein. The vehicle was a family large canter.

As a result of being run down the young man sustained fatal injuries.

His widow, jointly with another took out limited grants of letters of administration ad colligenda bona and filed suit against the two defendants.

In this joint defendants the two defendants denied that the accident occurred as a result of their negligence. They also in the alternative claimed ..... negligence on the part of the deceased. There are statements of agreed issues filed between the parties on 11.4.01 dealing with the status of the plaintiffs, the liability of the parties and the quantum:-

#### A. Status of the parties

(issues 1 & 2)

The two plaintiffs are the administratrix and administration respectfully of the estate of the late Charles Ngacha. They derive their locus from a limited grant of letters of administration ad colligenda bona under section 67 (1) of the act dated 30th July 1999. This grant was issued in the High Court of Kenya at Nairobi – a Principal Registry. The plaintiffs are competent to claim under the Law Reform Act.

#### B. Liability (Issues 3, 4, 5, 6, 7, 9)

I have two versions of what occurred on the fateful day. According to Philip Kinuthia (PW2) the second witness in this case who describes himself as the brother of the deceased, the two of them were walking along the Pumwani road. The deceased was slightly in front of him a vehicle that overtook others suddenly lost control and came into the pavement where they were and knocked the deceased at the back of his head with the front grill of the vehicle. He died immediately on the spot.

On cross-examination he stated that there were many people on the pavement. That the vehicle was very near them. At first they never saw the vehicle. That on seeing the vehicle the grill protruding out then knocked him.

He was uncertain whether the side mirror knocked him. The other version came from the 2nd defendant, the driver of the vehicle belonging to the 1st defendant. He stated that he was traveling on a dual carriage way. The traffic was bearing with vehicles on either side.

He was in one lane (that he described as lane “B”) whilst a Matatu (public passenger vehicle) was in the other (that he described as lane “A”). It seems that as he was driving at a speed of 30 k.p.h someone suddenly came onto the road and collided with his vehicle. He was notified by plain-clothes police officers to quickly run and make a report to the police. He obeyed leaving his vehicle behind. (I believe this could have been in order to avoid the usual MOB JUSTICE that Kenyans are in habit of retorting to). The police station was nearby.

In cross-examination, this witness insisted that it was ..... impossible for his vehicle to be on the pavement or foot-path. Other vehicles there would not have permitted this. The deceased had suddenly come out of the road and immediately onto the path of the motor vehicle.

In deed the particulars of negligence pleaded against the deceased supports this allegation. The witness story is that the deceased “carelessly and suddenly (emerged) in front of the said motor vehicle as it approached and when so close to it that (he) could not avoid colliding with (the deceased).”

The deceased had in fact jumped from the front of a matatu and collided with his motor vehicle. He stated that the matatu had been in lane ‘A’ whilst he was in lane ‘B’ of the dual carriage-way. I find from the evidence before me that the defendant’s version of the story appears more realistic.

The plaintiff’s witness two stated that he was behind the deceased when the vehicle came onto the pavement and knocked him behind the head with the front grill that had spikes. If this was true then he

would have been first knocked down as the vehicle would have had to come from behind them. If the vehicle came from the front then the deceased would have been knocked on his front. There were many people on the pavement. It seems that no one else got injured or knocked down by the said vehicle. I find that the deceased did indeed jump into the road and that he was duly knocked by the vehicle belonging to the defendants whilst on the road. He stepped out suddenly onto the road and from in front of the matatu vehicle.

The question arises as to who is to blame for this accident. I would find that the deceased contributed to the said accident by suddenly coming out onto the road. The road was a dual carriageway. The 2nd defendant and as pleaded in their defense stated that the deceased came from in front of the matatu motor vehicle. This means the deceased had in fact closed in front of the matatu to reach the 2nd defendant's motor vehicle.

The 2nd defendant owed a duty of care to other road users and pedestrians who were using the road. The deceased also owed a duty of care to other road users to ensure that as he crossed the road he had made a proper look out before suddenly coming onto the road.

I would hold that the deceased contributed to the accident due to negligence. I would compute the ratio at 60% against the deceased and 40% against the 2nd defendant as driver of the vehicle and 1st defendant as owner and is unconsciously liable for the said accident both jointly and .....

### C. Quantum (Issue No. 8)

The deceased sustained fatal injuries as a result of the said accident. He died immediately according to PW2's evidence. The claim made through his estate is under the Law Reform Act and the fatal accidents act. General Damages

#### (a) Law Reform Act

##### (i) Pain suffering & Loss of amenities

There must be evidence that the deceased was alive soon after the accident. According to PW2 he died immediately. I make no award under this head of damage.

##### (ii) Loss of expectation of life

The deceased was aged 30 years old and was at the prime of his life. He worked as a banker and his estate has loss under this head. I award Khs.70,000/- as a conventional sum.

#### (b) Fatal accidents Act

##### (ii) Loss of dependency

The plaintiff and widow to the deceased claims under this act for loss of dependency. In such a situation her task is to prove dependency. She can also claim under the Law Reform for lost years but this must be taken into account as both her and her status are one and the probability of a double claim may arise.

Nonetheless she claimed that her husband as a banker would give her about 300/- at any given time from his business.

The issue of the deceased income is crucial. This is easy to prove which one is in formal employment an employer comes and takes a document showing the salary of his employee where a person such as the deceased is in an informal section, proof of .... Can be called through a colleague and or a similar person in such business. I expected that the said plaintiff would call another banker to describe to court how

much maize he/she would buy per day and for what amount. How much the sale per day would be per week and the expenses.

The only evidence I received was from the widow who stated that during the rainy season more maize would be sold. PW2 a banker himself did not give evidence of the average income earned by a banker.

I would find that income in this case had not been proved to arrive at the multiplicand namely, the wage earned. In order to prove the dependency the plaintiff must also show that she was dependant on the deceased. This she said she was all through she lived in the Rural area. She mentioned she had five children of whom one was born after the death of the deceased. There was no baptism or birth certificate produced to prove the children belonged to the deceased. I would reject dependency of children not proved as belonging to the deceased. I would dismiss this head of damage.

In the event that the plaintiff was successful in proving this claim I would just note the recommendation point forward by the parties. The advocate for the plaintiff claims that an income of Kshs.2,400/- (multiplicand) be given. The number of years that the deceased would have lived she recommended as 30 years (multiplier). In total (2,400/- x 30x12). She asked for Kshs.864,000/-. The advocate for the defendant recommended that an income of Kshs.300/- (multiplicand) be used with 15 years (multiplier) and 2/3 in total (Kshs.3,600/-15x2/3=) 36,000/-.

I would have found that, according to the plaintiff Kshs.300/- was sent to her every Saturday. This would come to a total of Kshs.1,200/- per month.

The deceased was aged 30 years and would have worked for 20 years as a banker or to allow for any emirates his status may or may not have improved from being a banker. This 1,200/-x12x20 = Kshs.288,000/-

As there were no children and or proof of dependency on the part of the children this sum is discounted at Kshs.88,000/- to allow lump sum payment or revenge by the widow. The sum of Kshs.200,000/- would have been subjected to ..... by 40%

contribution thus leaving amount due as Kshs.80,000/-. This would have gone to the widow as her entitlement.

I now turn to special damages.

The plaintiff pleaded in the plaint the following special damages.

- |   |               |
|---|---------------|
| (a) Funeral expenses                        | Kshs.20,000/- |
| (b) Police abstract                         | Kshs. 100/-   |
| (c) Court fees for traffic case proceedings | Kshs. 700/-   |
|   | Kshs.20,000/- |

- (a) Funeral expenses

The plaintiff voluntary stated that they used a lot of money for funeral expenses. The advocate stated that it is a fact that the body had to be transported from place to place before burial. No. supporting evidence was shown to court of the amount obtained. Thus there is no proof that Kshs.20,000/- was how much were donations as donations cannot be claimed.

I would reject this claim of Kshs.20,000/- as not having been proved.

- (b) Police abstract

An expense of Kshs.100/- has been claimed. I find the plaintiff had never spoken of this claim during her evidence, she also did not produce the government receipt she received after she paid for the report.

I would accordingly dismiss this claim. © Traffic Court Proceedings The defendant told the court he had been changed in a traffic court and was acquitted.

The advocate for the plaintiffs did not lend evidence to this effect with the plaintiff, no proceedings were produced in court to prove negligence under section 34 of the evidence act. The claim now made of Kshs.700/- is for obtaining the proceeding. The plaintiff never spoke of this amount at all not produced a receipt from court to prove this. I accordingly dismiss this claim.

I hereby enter judgment for the plaintiff on the claims that have been proved.

In summary

1. running down action
2. Male adult aged 30 years old in 1996
3. Pedestrian – rundown by a motor vehicle
4. Injuries Fatal
5. Liability – 60% against the plaintiff 40% against the defendant
6. Quantum

I General Damages (a) Law Reform Act

(i) Pain & Suffering Nil

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

(b) Fatal accidents act – Nil Possible award

Kshs.1,200/-x12x20=288,000/-

Discounted Kshs.88,000/-

Namely 200,000/-

Subject to opponent.

Total - Kshs.70,000/- Loss 60% Kshs.42,000/-

Net total Kshs.28,000/-

© Special Damages Nil

I award costs of this suit to the plaintiff. I amount interest on General Damages from the date of this suit dated this 18th day of July 2002 at Nairobi on 12.7.02

**M.A. Angawa**

**Judge**