



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

MILIMANI LAW COURTS
CIVIL SUIT NO. 1503 OF 1999

**BERNARD MAINA (Suing
on behalf of**

**THE ESTATE OF JOSHUA
KINYUA MAINA).....
PLAINTIFF**

VERSUS

**FRANCIS
NDICU.....
.....DEFENDANT**

JUDGMENT

On 10th October 1997, the plaintiff who was based in Nairobi sent for his son, Joshua Kinyua Maina. The son was then based in Nanyuki. After waiting for him for several days he learnt that his son had died on 13th October 1997, as a result of injuries sustained in a road accident on the Muranga-Thika Highway, while on his way to Nairobi. Unknown to the plaintiff, his son's body had already been transferred from Thika and had been lying at the City Mortuary.

The plaintiff thereafter obtained a Limited Grant of Letters of Administration of his Estate to enable him file a civil suit under Section 67(I) of Succession Act, and proceeded to file this suit against Francis Ndicu. He avers that the deceased was involved in a fatal accident while travelling as a fare-paying passenger in motor vehicle registration number KAB 056V which he claims was owned and driven by the defendant. He therefore prays for special and general damages, together with interest thereon and costs of this suit.

The defendant denies that the subject vehicle was involved in an accident on 13th October 1997, and puts the plaintiff to the strict proof thereof. He further denies that the deceased was a passenger in the said vehicle, and finally denies that the plaintiff is entitled to any damages as claimed. He prays that the suit be dismissed with costs.

At the hearing of this suit, though the defendant's counsel crossexamined all the witnesses, the defendant chose not to give evidence.

The plaintiff adduced evidence to the effect that, the deceased was a passenger in the said vehicle which was involved in an accident on the Thika-Muranga Road at 12.30 p.m. on 13th October 1997. PW III also gave evidence to the effect that the plaintiff has sent him to Nanyuki to request the deceased to

come to Nairobi to see him. On the material day, he escorted the deceased to the bus stage at Nanyuki, saw him board the subject vehicle which departed for Nairobi as soon as it was full to capacity. The Police Abstract Report, which was produced as an exhibit, clearly indicates that the defendant was the owner and the driver of the subject vehicle, and that the deceased was a passenger in the same vehicle at the time of the accident. It also indicated that his death was as a result of injuries that he sustained during the said accident. This is further enhanced by the fact that the Death Certificate indicates that the cause of death was "Head injury due to motor vehicle Accident" on the aforementioned date.

The plaintiff impressed me as a forthright person, and he has proved his case on a balance of probabilities.

The plaintiff claimed that his son was earning a sum of shs 9,000.00 per month, based on a six days working week and that he would assist him in the maintenance of his siblings. Gakuru General Contractors had gainfully employed the deceased as a mason, for three years prior to his death at a salary of Shs 300.00 per day worked. PWII, the proprietor of the said firm gave evidence to the effect that the employment depended on the number of contracts that his firm was able to procure from time to time. It was therefor not guaranteed that he would have been gainfully throughout the year for six days in a week. He was able to produce some, but not all the salary payment vouchers.

I do find that as a casual labourer, for whom jobs were not available for a whole year he might not have been employed for more than an average of four days in a week. Although PWII stated that his firm would employ the deceased only when contracts were available, it is worthy to note that as casual worker he would have been gainfully employed elsewhere during such periods when. I can thus safely assume that he would have worked for an average of four days in a week, in which case he would have earned shs 4,800.00 per month.

At the time of his death, Joshua Maina was 23 years old. Although as a mason he would have been able to remain in gainful employment until the age of 60 years, it would also not be incorrect to assume that he might not have enjoyed a long healthy life and would have probably remained in employment until the age of 53. In that case, I do take a multiplier effect of 20 and taken into account the fact that he was not married. This would amount to is $4800.00 \times 20 \times 12 \times 1/3 = \text{shs. } 384,000.00$.

Based on the submissions of both counsel, and on the case law before me, I award a sum of shs. 60,000.00 for loss of expectation of life

Although the funeral expenses were not specifically pleaded or strictly proven as required, I do however take note of the fact that funerals can be an expensive affair, and taking into account the status in life of the deceased, I do award a figure of Shs.10,000.00 under this heading.

I have taken into account the fact that he died instantly, and I award a sum of shs.1,000.00 for pain and suffering.

I therefore award a total sum of shs.455,000.00 to the plaintiff against the defendant, together with interest thereon until payment in full at court rates.

I also award him the costs of this suit and interest thereon.

Dated and delivered at Nairobi this 17th day of January 2001

JEANNE GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of Miss Ngetho for the Plaintiff. No appearance for the defendant

