



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**HIGH COURT CIVIL CASE NO. 3177 OF 1997**

**JANE KATUMBU MWANZIA .....PLAINTIFF**

**- V E R S U S -**

**T.M. MWANZUI.....1ST DEFENDANT**

**ATTORNEY GENERAL.....2ND DEFENDANT**

**J U D G M E N T**

On 8th April, 1997, Esther Kalunda Kamali, now deceased, was travelling in motor vehicle registration number KAA 876Y when the same collided with a military vehicle registration number 53 KA 07. She was fatally injured and died on the same day. The first motor vehicle mentioned above belonged to the 1st Defendant. The 2nd Defendant is sued as the representative of the Government. The Plaintiff brings this suit as the legal representative of the Deceased on her own behalf and that of the estate of the Deceased.

The question to be answered first is who between the two Defendants is liable for the collision of their motor vehicles. The evidence of these two Defendants was variant. The 2nd Defendant's witnesses stated that it was the 1st Defendant's driver who ignored instructions given by a military police officer to stop to enable a military convoy cross a road. The 1st Defendant's only witness denied that he was ever instructed to stop. He also denied that there was any such convoy. The military officers who were called as witnesses in this matter appeared to be honest citizens and their testimony was consistent in all aspects. The 1st Defendant's driver, as was expected gave evidence to contradict the 2nd Defendant's witnesses. I am left to wonder why the 1st Defendant did not bother to call some of the passengers who were travelling in his motor vehicle at the time of the accident. He chose to call his driver only and that witness was not impressive at all. Upon weighing the evidence available before the Court, I think that, on a balance of probability, the 1st Defendant's driver was reckless and I think he is the one who caused his vehicle to collide with the 2nd Defendant's military truck. There is no material to suggest that the 2nd Defendants were negligent in this case. I am, therefore, of the view that the 1st Defendant is wholly liable for the damage in this case. The suit against the 2nd Defendant must and is hereby dismissed with costs.

Now, coming to the issue of quantum it is not in dispute that the Deceased was 57 years old at the time of her death. As to the matter of loss of dependency, this court is at a loss and is unable to make any award under that head. This is because no particulars of the Deceased dependants were ever supplied and there was no proof of such dependants. The Plaintiff admitted herself that she was not a dependant of the Deceased. She named other persons but again it is unclear whether those other persons were dependants of the Deceased. The Deceased's income was also not proved.

Although there was no special proof by way of receipts that the Plaintiff is entitled to funeral expenses, this Court will allow a sum of K.shs. 100,000/=. In my view, this is a reasonable expense which cannot be ignored merely because the Plaintiff could not produce any receipts in support of the same. In deciding this, this court is well aware that special damages must not only be specifically proved but also proved. However, there are cases, as in this one where the Court will be called upon to apply its wisdom and decide the case in light of social realities of the day. It is very hard for people attending to burial procedures of their loved ones to concern themselves with matters of details such as receipts for every expense in contemplation of a suit which they may not even be aware of at the time of the burial. To insist on strict legal rules in such a case would not only amount to a denial of justice but also present the Court as being out of touch with reality.

I also award the Plaintiff K.shs. 20,000/= for pain and suffering and K.shs. 100,000/= for loss of expectation of life.

I, therefore enter judgment for the Plaintiff as follows:-

- |                                 |                |
|---------------------------------|----------------|
| (a) Funeral expenses            | K.shs. 100,000 |
| (b) Pain and suffering          | K.shs. 20,000  |
| (c) Loss of expectation of life | K.shs. 100,000 |

T O T A L            K.shs. 220,000

The Plaintiff shall also have the costs of this suit against the 1st Defendant.

**DATED and DELIVERED at NAIROBI this 20th day of June, 2001.**

**ALNASHIR VISRAM**

**JUDGE.**