



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 359 OF 1998

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BENJAMIN KOKO LUCAS)

ELIZABETH MUNYIVA LUCAS)) ::::::::::::::::::::::: PLAINTIFF

**(suing as next of kin and on behalf of
the estate of DANIEL MULEI LUCAS**

F. M. NZINGA ::::::::::::::::::::::: DEFENDANT

**Coram: J. W. Mwera J.
Ithuku Advocate for Plaintiff
N/A Advocate for Defendant
C.C. Muli**

J U D G E M E N T

Both plaintiffs herein filed this suit on 21.10.98 as next-of kin of the deceased Daniel Mulei , whom it was pleaded died on 4.3.97 while travelling as a fare-paying passenger on the defendant’s motor vehicle Reg. KAG 540 M along Mombasa – Nairobi Road near Athi River.

It was averred that the defendant or his agent drove the said motor vehicle at the point mentioned in an excessive speed in the circumstances that he was unable to effectively managed/control it whereupon the said motor vehicle veered off the road and overturned. Daniel was fatally injured. That Daniel died at age 22. He had been employed as a caretaker and he enjoyed good health. The plaintiffs prayed for damages, costs and interest.

An affidavit of service sworn on 2.12.98 stated that the defendant was served with a summons to enter appearance plus a copy of plaint at his shop. He accepted service. He did not enter appearance and an interlocutory judgement was entered against him on 14.12.98. Formal proof followed on 14.6.2000.

Richard Muoki (P.W.1) was travelling with the deceased whom he knew from Lita to Nairobi on the day of the accident in motor vehicle KAG 540 M. they had paid fare. On the way the matatu’s rear tyre burst when its driver was going at a very fast speed. He lost control and the matatu rolled six times. Daniel died at St. James Hospital Nairobi where he had been taken for treatment.

Elizabeth Munyiva (P.W.2), the late Daniel’s mother testified next. She had taken out a grant to

administer the estate of Daniel, jointly with her other son Benjamin. This was not procured before the suit was filed. However P.W.2 told the court that the deceased worked for the Kenya Methodist Church at Kibera (Exh.P1). From his earnings he gave P.W.2 Sh.500/= per month for her use and to support Daniel's ten siblings. Receipts from the hospital totalled Sh.8,670/= (Exh.P2) and that a further Sh.4000/= was paid for mortuary services at Chiromo Campus. There was also a police abstract (Exh.P5), a death certificate (Exh.P.6) and a bundle of receipts for all funeral expenses of Sh.19,690/= (Exh.P.4).

It was submitted that the defendant bear 100% liability and that is granted. It was not refuted that himself or driver was unable to properly manage control his motor vehicle when going at a high speed a tyre burst and it rolled killing the deceased.

There was submission that an award issue under the Law Reform Act. It cannot. The law is that such awards issue only when a grant to administer the deceased's estate is taken out before suing. Here a grant issued on 4.7.2000 long after the suit was filed on 21.10.98. Therefore no award under this act.

Under the Fatal Accidents Act, the plaintiff told the court that the late Daniel came home to see her twice a month and gave her Sh.500/- each time. A note from his employer said that Daniel earned Sh.1800/= per month. It was not produced by its maker but be that as it may. With that salary in Nairobi this court is unable to find how the deceased could spare Sh.1000/= for his mother per month.

However having died at age 22 a multiplier of 20 is adopted over a multiplicand of Sh.500/=. It was not said that Daniel was married. On doing so that sum of Sh.500/= would definitely go down as he would focus on his family.

Loss of dependency is Sh.120,000/=

(500 x 12 x 20)

There was proof of Sh.19,690/= special damages and that is awarded.

The total award is:

Loss of Dependency Sh. 120,000/=

Special Damages Sh. 19,690/=

Total Sh. 139,690/=

(One Hundred Thirty Nine Six Hundred Ninety Shillings)

The plaintiff also gets costs and interest on the lower court scales.

Judgement accordingly.

Delivered on 4th July 2001.

J. W. MWERA

JUDGE