



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2775 OF 1991

RAHAB MICERE MURAGE THRO'

ESTEHR WARIINI MURAGE ..... PLAINTIFF

VERSUS

THE HON. THE ATTORNEY GENERAL

AND 2 OTHERS ..... DEFENDANTS

**JUDGEMENT**

Rahab Micere Murage, filed suit against three defendants for the wrongful death of her daughter in a road traffic accident. This suit was filed on the 31st of May 1991. I did note on the file a pending application for an amended plaint which has never been prosecuted by her former advocates nor the current advocates. The amendments concerned the claim under the Law Reform Act at the beginning of the trial the plaintiff abandoned this claim. Nonetheless as a general rule hearing dates ought not to be taken until pending applications are heard and finalized.

In this suit only Rahab came to give evidence. She was not at the scene of accident when it occurred. She only heard of the accident and found her daughter in the mortuary. She claimed to be paid compensation for the wrongful death for her daughter. She also claimed special damages but admitted in evidence that she had no proof of this claim.

At the time of trial only the 2nd defendant's advocate attended. The 1st and 3rd defendants failed to attend.

According to the plaint, the facts and descriptions of this case is as follows:-

The deceased Esther Wakumi Murage was traveling in G. K. Motor Vehicle registration Number M400 belonging to the veterinary department. She was not a government employee. The said vehicle was traveling along the Kutus road in Kerugoya when a collision occurred between vehicle registration number KHW 617 and KUE 189.

The defendants entered appearance and filed defence (although I do not see the defence for the 2nd defendant on the file) in which they do not deny the accident but deny that they were neglected.

The statement of issues for determination can therefore be answered as such:-

The first issue concerns the plaintiffs locus to sue. The Plaintiff abandoned the prayers under the Law

Reform Act. She is entitled to sue nonetheless under the fatal accidents act section 4 for her own benefit and that of the deceased child.

As the second issue is whether or not the deceased was a passenger in the motor vehicle registration number G. K. M400 at the time of accident?

The plaintiff was unable to tell whether the deceased was a passenger. She was never an eye witness as to this.

(C) Whether or not the accident was caused by the negligence of either the first, second or third defendants driver, agent or servant?

The advocate for the plaintiff submitted that all the three defendants admitted an accident have occurred.

From the defence on record I find that there has been no admission as to negligence. It is the plaintiff to prove that an accident occurred and the negligence was attributed to the three defendants. She did not. The doctrine of Res. Ipsa loquitor Roguata was never pleaded.

In the case of MARY AYO WANYAMA & OTHERS VS NBI CITY COUNCIL CA 252.98 where the plaintiff came to give evidence stating that an accident occurred and was in fact not an eye witness the Court of Appeal held that no negligence had been proved. That the Hon. Judge was correct in dismissing the suit. I find in this case that no proof of negligence has been made all by the plaintiff. I would therefore dismiss this suit on a liability. Issue (D) has been taken care of.

I am required to ascertain that the quantum if any, that may be given. under the fatal accidents act the plaintiff produced a letter of offer of employment. That was no proof (by way of pay slip) that the deceased was actually employed. The death certificate reflected that she was aged 25 years old. She would have worked for another 32 years. The multiplicand of 3,600/= and multiplier of 20 years (and not 30 years) would be fair. This  $Kshs.3,600 \times 20 \times 12 \times 3/3rd = kshs.476,000/=$ .

I would have been required to opposition this sum against the dependants.

The plaintiff has stated she received only record 500/= and food stuff. The child lives with her now. She seems to not have any proof of the existence of the child by way of a birth certificate or a letter possibly from the chief. There seems to be no baptism certificate to prove that the child existed. If there had been the apportionment would have been:-

Mother to deceased Kshs.176,000/=

Child to the deceased Shs.300,000/=

The child if a minor would have had the amount invested on his behalf.

The special damages was never proved. I dismiss the same to have proved this documentary evidence. By way of receipts would have sufficient.

This suit stands dismissed with costs to the 2nd defendant who attended court. No costs is awarded to the 1st and 3rd defendants who were duly served but failed to attend court.

## IN SUMMARY

1. Motor vehicle collision between 3 vehicles
2. Adult female aged 25 years passenger

3. Injuries:-

FATAL

4. Liability – Nil not proved

5. Quantum – Nil not proved

6. Possible award

(a). Raw Reform Act. – abandoned

(b). Fatal accidents act. Kshs.3,600/= x 12x20x2/3 =Kshs.476,000/=

(c ). Special damages – Nil not proved.

7. Costs

Suit dismissed with costs to the 2nd defendant. No costs awarded to 1st and 3rd defendants.

Dated this 3rd day of July, 2001 at Nairobi.

M. ANG'AWA

JUDGE