

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2113 OF 1996

LAWRENCE GAIKHO MATHENGE PLAINTIFF

VERSUS

KENYA BREWERIES LTD. & ANOTHER..... DEFENDANT

JUDGMENT

This is a case whereby Michael Gathimba Maina (now deceased) was at a petrol station with PW2. A lorry belonging to the 1st defendant and driven by the 2nd defendant was so driven negligently, as it entered the petrol station, that it knocked down the deceased. He later died whilst admitted to hospital.

The deceased was aged 34 years old. He was unmarried. This suit was filed by his brother who prayed for damages under the Law Reform act and under the Fatal Accidents Act. The defence entered appearance and filed defence. They claimed that the plaintiff was negligence.

Before the trial began the advocate for the plaintiff conceded that there was no letters of administration taken out by the plaintiff prior to filing of the suit. He therefore withdrew the claim under the Law Reform Act.

As to the claim under the Fatal accident Act, the plaintiff stated that he was now 34 years. He appeared to be married. That the deceased would occasionally assist him pay for rent and food. That he was a labourer and did not have a steady income. Their father was deceased. No mention of their mother was made.

Unfortunately the advocate for the plaintiff failed to exchange his documents, if any that he had.

He then stated that the deceased was employed earning Ksh.8,000/-. No proof of this was given.

The advocate for the defendant claimed that there has been no where that the statute had been pleaded in the Plaintiff. Further no dependants were described.

Under the Fatal accidents Act Cap.32. It states under Section 4(1).

“Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused.....”

It therefore means that this case is a non-starter. The plaintiff does not fall under any of the said category.

I hereby dismiss this suit with costs to the defendant. (The plaintiff should have withdrawn this suit, applied for leave to file a suit out of time for good reasons. Join in their mother as dependant).

Dated this 24th day of February, 2000 at Nairobi.

M.A. ANG’AWA

JUDGE