

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.616 OF 1988

CHRISTINE AUMA OGENDO PLAINTIFF

VERSUS

BARRACK AGUKO ONDIJO & ANOTHER..... DEFENDANTS

J U D G M E N T

This suit arises out of a road accident which occurred on 13th January, 1986 at **GOYA BRIDGE** along Majimbo-Usengo road involving a motor vehicle registration No.KXB 579 and, Plaintiff's father the deceased **ASIRA AWANA ASIRA**

The Plaintiff brought this claim in her capacity as the daughter of the deceased and on behalf of the estate of the deceased. In her evidence she told the court that on the material date her father was lawfully walking home along Majimbo-Usengo road in company of **P.W.2 OYUGI MAUMBO** when the said motor vehicle of the defendant left the road and veered off the road and knocked down the deceased. He was rushed to Bondo District Hospital where he died while undergoing treatment. The deceased was over 60 years and he was a fisherman. She further told the court that she incurred **Shs.5000** funeral expenses but she did not produce any document to prove the said alleged expenses.

The defence did not offer any evidence in defence. But counsel for the defendant in his submissions told the court that the Plaintiff's claim should fail on two grounds. First she brought this claim as legal representative of the estate of the deceased but she had not obtained Letters of Administration. He cited the case of **TROUSTIK UNION INTERNATIONAL OF ANOTHER VERSUS MRS JANE MBEYU AND ANOTHER CIVIL APPEAL NO.145 of 1990** in which a full bench of the Court of Appeal held that without first obtaining a grant of Letters of Administration or being an executor, a person may not properly file a suit under the Law Reform Act Cap 32.

Secondly under the Fatal Accident Act, the claimant must prove that the deceased had an income from either a salary or business and that he used to support her so that at his death she has lost some support. In the present suit the Plaintiff had not established that the deceased had a source of income and that she used to support her.

I agree with counsel for the defendant that the Plaintiff having filed this suit without first obtaining grant of letters of administration and having failed to show that the deceased had a source of income and she used to support her through that income the Plaintiff's suit must fail.

For the above reasons this suit is dismissed with costs.

Dated and delivered at Nairobi this 21st day of February, 2000

J.L.A. OSIMEO

JUDGE