



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL CASE 1622 OF 92**

**JACKSON KILONZO MBATHA ..... PLAINTIFF**

**VERSUS**

**NAKUMATT HOLDING LTD. & 2 OTHERS..... DEFENDANTS**

**JUDGEMENT**

A motor vehicle accident collusion occurred on the 18th of November 1995 between four vehicles. The vehicles were owned by the 1st defendant, vehicle registration KAG 141D Isuzu lorry, the second defendant who owns vehicle registration KJM 81. Fiat lorry; the third defendants Nissan matatu registration number KAE 019Z and the Toyota Corolla registration KAC 998N.

As a result of the said accident Andrew Munguti Mbatha filed this suit on behalf of the estate of his brother. (I refer to the deceased as husband and wife.

Each of the parties were represented by an advocate. On the

27.3.00 the parties entered into consent on liability. This was

apportioned as follows:-

1st defendant 30%

2nd defendant - 5%

3rd defendant - 50%

Plaintiff - 15%

The parties went further and agreed on quantum. The advocate for the 3rd defendant stated that he did not receive instructions for approval of the settlement but was in principal in agreement with the figures after considering the figures put before me and the evidence on the same. I entered judgement in terms of the parties agreement.

The third defendant then filed an application seeking that the judgement be reversed. I granted the application on the 11th July 2000. I allowed the 3rd defendant and the rest of the advocates to set this matter down for hearing on the issue of quantum.

On the 24th of July 2000 a full hearing was heard as to quantum and the assessment of damages. In principle the advocate for the third defendant stated that the only aspect of the quantum he was disputing to the earning of the wage factor. This he questioned in that though there was no proof that the deceased husband earned Ksh.

Basic salary Ksh.45,674/-

Entertainment allowance Ksh.750/-

Petrol per month Ksh.10,000/-

Ksh.55,744/-

and the deceased wife earned

Basic salary Ksh.8,400/-

The advocate for the 3rd defendant questioned the plaintiff extensively on this and stated that the salary is gross. It should have taken into account the income tax that was paid. This should have been deducted before the quantum was done. Mr. Mureithi for the plaintiff had no difficulties on this point. He applied 1/3 deduction to the salary.

The advocate for the defendant then stated that the multiplier was not proved by the advocate for the plaintiff to be 8 years. He himself recommended a multiplier for 9 years for the deceased/husband. There was no evidence that the deceased

husband was to work for 60 years. This is quite correct. The plaintiff should have brought in evidence from the bank employer that the deceased husband would retire at the age of 60 years. If they would take the figure of 55 years old, this being the normal years that is required for retirement in the civil servant then the age of retirement, if he had lived would have been 46-55 = 9 years. As to the deceased/wife, it is noted that she was a civil servant. That she was aged 41 years at the time of death and that she too would have retired at the age of 55 years old. This would mean that her retirement age would have been after 14 years.

This would therefore mean in calculating the loss of dependency the figures would have been as follows:- Deceased/husband

$$1/3 \times \text{Ksh.55,744/-} \times 12 \times 12 = \text{Ksh5,391,040 9 years}$$

$$\text{Deceased/wife } 1/3 \times 8,400 \times 14 \times 12 = \text{Ksh.940,800/-}$$

The advocate for the 3rd defendant made no comment on the multiplier of 14 years for the deceased wife.

As to the issue of the funeral expenses the advocate for the 3rd defendant stated that this had not been proved. I must state that this was not an issue. It had been pleaded for Ksh.120,000/-. The plaintiff asked for Ksh.200,000.

The plaintiff now stated that he left his receipts for the funeral expenses and did not immediately come with them to court.

I hereby had allowed the assessment of damages to be done to see if the earlier figures approved by the court in its earlier judgement was excessive.

From the evidence before the court I am satisfied that the multiplier of 9 years for the deceased/husband and 14 years for the deceased/wife has been established.

According to past authorities and law one could envisage that anything may have happened to the two couple such as early retirement on illness. Nonetheless a multiplier of 8 years had been approved. I do not think this was excessive. The advocate for the 3rd defendant in fact prays for 9 years which is in fact is more than that which was originally given. Further the two deceased are entitled to Ksh.5,351,000/- and Ksh.940,800/- respectively.

The issue of income tax and dependency on the said income of the two is taken care of by the subtraction of the 1/3 from the said two income.

I do not see any excess in the settlement reached by all the parties. I would therefore in conclusion enter judgement for the plaintiff in terms of the original settlement which I hold is fair and realistic as follows:-

1. Subject

i) Fatal accident

a) Deceased No.1 aged 46 years

b) Deceased No.2 aged 41 years.

2. Liability

(By consent)

I) 1st defendant - 30%

ii) 2nd defendant - 5%

iii) 3rd defendant - 50%

iv) Plaintiff - 15%

3. Quantum i) General Damages

a) Pain and suffering for deceased No.2

only Pauline Ndungu Munguti (wife)

Ksh.10,000/-.

ii) Fatal Accident Act

a) Loss of Dependency for 2 deceased

couple Ksh.2,304,000 (Ksh.24,000/-

pm x 8 years x 12 months).

4) Special Damages

ii) Funeral expenses Ksh.50,000/-.

5) Party and party costs

Agreed at Ksh.320,000

(inclusive of additional court fees of Ksh.70,000).

There are three minor children who are dependant on the said estate. An application for the apportionment on the figure of Loss of dependency is to be filed and approved by the court is normally to be done.

These are my orders and judgement is hereby entered accordingly.

Costs of this hearing will be paid by the 3rd defendant.

Dated this 26th day of July 2000 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**