



REPUBLIC OF KENYA



KENYA LAW
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**Kamigwi v Nyaga (Civil Case 16 of 2013)
[2025] KEHC 3219 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL CASE 16 OF 2013
J WAKIAGA, J
FEBRUARY 18, 2025**

BETWEEN

LUCY RUTH WAIRIMU KAMIGWI PLAINTIFF

AND

MICHAEL GITARI NYAGA DEFENDANT

JUDGMENT

1. By a plaint dated 25th April 2012 filed at the High Court of Kenya Civil registry at Nyeri the plaintiff sued the defendant for general and special damages arising from a road traffic accident on 21st may 2011 a long Kenol Sagana involving motor vehicles registration numbers KBJ 737F registered in the name of the defendant and KBF 197 R owned and driven by the deceased Gregory Ndungu Kamigwi.
2. It was alleged that the defendant so negligently and carelessly drove the said motor vehicle, thereby causing the same to collide with the deceased motor vehicle as a result thereof occasioning fatal injuries to the same as a result of which his estate represented by the plaintiff suffered loss and damages.
3. The particulars of negligence were pleaded as :
 - a. Driving at an excessive speed in the circumstances
 - b. Driving without due care and attention
 - c. Failing to take any or evasive action
 - d. Failing to observe the highway code
 - e. Overtaking without due care and attention to other motorist when it was unsafe to do so
 - f. Causing head on collision
 - g. Breaking the road traffic rules



- h. Causing the accident .
4. It was pleaded that at the time of the said death the deceased was aged 33 years and working as an accountant with Airtel limited earning a gross salary of kshs 158,946 and as a result thereof the estate suffered special damages amounting to kshs 68.956.
5. By a statement of defence filed on 10th September 2012 the defendant t denied ownership of the said motor vehicle and stated that the said accident was caused by or substantially contributed by the wonton negligence of the deceased and or the driver of motor vehicle registration KBF197R .
6. The particulars of negligence were pleaded as follows:
- a. Failing to maintain proper sufficient or any lookout at all for his own safety and the safety of other road users and the well-being of other road users
 - b. Driving at a speed which was manifestly excessive in the circumstances
 - c. Coming onto the lawful path of travel of the motor vehicle registration number KBJ 737 F
 - d. Driving a defective motor vehicle
 - e. Failing to break swerve or in any other manner avoid colliding with the motor vehicle registration number KBJ 737F
 - f. Failing to head the warning sign from the driver of motor vehicle registration number KBJ737F
 - g. Violating other traffic rules, the provision of the *traffic Act* and Highway Code
 - h. Causing the said accident by ramming into motor vehicle registration number KBJ 737F.
7. In the alternative the defendant contended that the said accident was inevitable and caused by circumstances beyond the control of any reasonable man faced with the circumstances therein.
8. By an application dated 15th November 2016, the firm of Muthoga Gaturu & co Advocates who had filed a defence on behalf of the defendant, applied for leave to cease acting for the same on the grounds that they had not received instructions from the defendant’s insurers Ms African Merchant Insurance Company Ltd, which application was allowed on 17th September 2018 on condition that the defendant be served personally.
9. On 5th march 2024 having been satisfied that the plaintiff had personally served the defendant, the matter proceeded before me, having been satisfied that the defendant had been duly served with the hearing notice the matter proceeded for hearing exparte before me with the plaintiff testifying and relying on her witness statement recorded on 25th April 2012.
10. It was the plaintiff’s testimony that that on 21st may 2011, the family of the deceased was travelling from Nyeri to Nairobi. She was in one motor vehicle together with her son known as Anthony who was the driver , a daughter and three other people, while the deceased was in another motor vehicle, which was a head of them. That when they got to Kakuzi, they found that the deceased had been involved in a motor vehicle accident and had died. In support of her evidence, she produced a bundle of documents .
11. She stated that the deceased was at that time working with Airtel , earning a salary of kshs 158746 and managing the family farm, earning of which he supported his family. He was born in the year 1978, which had lost the said support.



Submissions

12. At the close of the prosecution case, it was submitted that as a result of the accident, the defendant who was the driver of motor vehicle registration number KBJ 737 F was involved in a collision with Motor vehicle registration KBJ 197R as a result of this, the defendant was charged and convicted of the offence of causing death by dangerous driving. The deceased was single aged 33 years as at the time of death earning kshs 158,946 with which he assisted his mother the plaintiff and siblings.
13. On liability it was submitted that the defendant should be held liable at 100% based on the finding of the traffic case, which imputed liability on the part of the defendant who did not tender in any evidence to controvert the plaintiff's case .
14. On quantum it was submitted that an award of Kshs 50, 000 under pain and suffering, kshs 120, 000 under loss of expectation of life should be awarded. On lost earning it was submitted that since the deceased was single, the court should adopt a multiplicand of 1/3 and a multiplier of 22 years thus $1/3 \times 158,946 \times 12 = 13,987,248$. On special damages, it was contended that the same was pleaded and proved by receipts at kshs 92,956.

Determination

15. There are only two issues for determination in this cause: the issue of liability and quantum of damages payable herein.
16. Liability is an issue of evidence. In this cause the plaintiff did not testified on how the accident occurred and only relied on the proceedings from the traffic court which was produced in the bundle of documents as part of pre-trial conference directions. From the said proceedings, the accident was caused by a head on collision between the two motor vehicles when the defendant attempted to overtake another motor vehicle. The investigating officer testified that from the measurements, it was the defendant which crossed onto the lane of the deceased motor vehicle and hit the same and was therefore to be blamed.
17. From the circumstantial evidence tendered, the fact that the defendant was charged and convicted of the offence of causing death by dangerous driving and taking note that the defendant did not offer any evidence in rebuttal, it is the finding of the court and I hold that the defendant is liable at 100%. In this I find support in the case of Trust Bank limited v Paramount Universal Bank Ltd & 2 others Milimani HCCC no 1243 of 2000 where the court held that failure to adduce evidence means that the evidence adduced by the plaintiff against the defendant is uncontroverted and unchallenged.
18. On quantum, the deceased died on the spot. The general principle for award under the heading of pain and suffering is that where the period of suffering is short only a nominal damage is awarded, I would therefore award a sum of kshs 50, 000 as proposed by the plaintiff which I find reasonable and with the acceptable range of awards See Sukari Industries Limited v Clyde Machimbo Juma [2016] e KLR and Kenya Power and Lighting Co ltd v Lopeta [2022] KEHC 567 KLR .
19. For loss of expectation of life, it is the finding of the court that an award of Kshs 100,000 is reasonable
20. Loss of earning capacity; the age of the deceased was given as 33 years as supported , single as at the time of death .The deceased was employed by Ms Airtel with a salary of kshs 158,946. Having taken into account the life expectancy of a male Kenyan and the vicissitudes of life I am the considered view and hold that a multiplier of 12 years is reasonable and adopt the same. I take the view that the deceased salary herein was gross and therefore subject to taxation at the current rate of 30%. Thus, an award under this heading comes to $1/3 \times 111,264 \times 12 \times 12 = 5,340,672$, which I hereby award.



21. The plaintiff is entitled to an award for special damage as pleaded of kshs 92,956 which I hereby award

Disposition

22. I therefore find and enter judgement for the plaintiff against the defendant as follows:

- a. Liability 100%
- b. Pain and suffering kshs 50,000
- c. Loss of expectation of life kshs 100,000
- d. Loss of dependency kshs 5,340,672
- e. Interest thereon at courts rate from the date herein
- f. Cost of the suit

23. And it is ordered

DATED SIGNED AND DELIVERED VIRTUALLY THIS 18th DAY OF FEBRUARY 2025

J. WAKIAGA

JUDGE

In the presence of:

No appearance for Mr. Nderi for plaintiff.

