



Kamau (Suing for an on Behalf of the Estate of Jane Ruguru Mwangi - Deceased) v Langat & another (Civil Case 620 of 2007) [2024] KEHC 12667 (KLR) (Civ) (18 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12667 (KLR)

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

CIVIL

CIVIL CASE 620 OF 2007

AN ONGERI, J

OCTOBER 18, 2024

BETWEEN

DAVID MBUGUA KAMAU (SUING FOR AN ON BEHALF OF THE ESTATE OF JANE RUGURU MWANGI - DECEASED) PLAINTIFF

AND

BERNARD KIPKURUI LANGAT 1ST DEFENDANT

PETER NJUGUNA 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case, David Mbugua Kamau has filed this suit as the personal representative of Jane Ruguru Mwangi (deceased) who was his wife.
2. He is claiming general damages under the *Fatal Accidents Act* for fatal injuries the deceased sustained on 7/5/2006 while travelling in motor vehicle registration no. KAU 893M along Bomet-Narok Road.
3. The plaintiff is claiming the following remedies against the two defendants;
 - i. Special damages of ksh.48,630/=.
 - ii. General damages under the *Fatal Accident Act* and the *Law Reform Act*.
 - iii. Costs of the suit.
4. The plaintiff averred as follows in the plaint dated 4/9/2007.
5. On or about the 7th day of May 2006, the deceased was lawfully travelling as a passenger in the motor vehicle registration number KAU 893M along Bomet-Narok Road when the 1st defendant so negligently drove, managed and/or controlled the said motor vehicle KAV 102K that he caused the



same to veer off its lane and rammed onto motor vehicle registration number KAU 893M head on and as a consequence the deceased sustained fatal injury which eventually occasioned her death.

Particulars of Negligence of the Defendant

- i. Driving at an excessive speed in the circumstances.
 - ii. Failing to stop, slow down, swerve or in any other way so as to manage or control the said motor vehicle so as to avoid the accident.
 - iii. Driving without due care and attention.
 - iv. Failing to maintain any or any proper control of the said motor vehicle.
 - v. Failing to maintain any proper look out for other road users.
 - vi. Driving a defective motor vehicle.
 - vii. Causing the accident
6. By reason of the said death, the deceased, aged 31 years working as a teacher earning a salary of 24,712 per month, who lost normal expectation of a long life and her dependants have suffered loss and damage

Particulars Of Special Damages

- a) Police abstract and death Certificate Kshs.300/=
 - b) Burial Permit Kshs.2,800/=
 - c) Obtaining letters of administrators Kshs.5,030/=
 - d) Funeral and Transport expenses Kshs.40,000/=
 - e) Motor vehicle search kshs.500/=
- Kshs.48,630/=

And the plaintiff claims both special and general damages.

7) Particulars pursuant to statute

A. The name of the person for whose benefit this action is brought is as follows:

1. David Mbugua Kamau Husband Adult
2. Phylis Wangari Mwangi Mother Adult
3. Geoffrey Ihuthia Mwangi brother junior
4. Paul chege brother adult
5. John Kamau brother adult
6. Edward Gachure brother adult
7. Jeremiah wachira brother adult
8. Simon Gitahi brother adult
9. Charles Ngige brother adult



8. Further, by reason of the matters aforesaid, the deceased lost her life and her estate has suffered loss and damage.
9. The plaintiff shall invoke the doctrines of *Res Ipsa Loquitar*. The 1st defendant is responsible for the acts/omissions of the 2nd defendant.
10. The administrator was issued with letters of Administration vide High Court Probate and administration Cause No. 821 of 2007 on 27th June 2007.
11. The parties recorded a consent on liability at the ratio of 10% to 90% in favour for the plaintiff against the defendant. I find that the issue of liability is settled by the said consent.
12. The parties filed written submissions which I have duly considered.
13. On the issue of quantum of damages, the same are assessed as follows;
14. Liability 90:10% in favour of the plaintiff against the defendant.
 - a. Special damages ksh. 48,630.
 - b. Damages for pain and suffering ksh. 100,000.
 - c. Loss of expectation of life ksh. 100,000.
 - d. Loss of dependency $22,107 \times 12 \times 29 \times \frac{1}{3} = \text{ksh.} 2,564,412$.
Less 10% contributory negligence Ksh.2,531,737.80
15. Judgment be and is hereby entered in favour of the plaintiff against the defendants jointly and severally in the sum of kshs.2,531,737.80 plus costs and interest from the date of this judgment in respect of general damages and from the date of filing suit in respect of special damages until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 18TH DAY OF OCTOBER, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

