



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 183 OF 2015**

**PRISCILLAH WANJIKU MWANGI**

**(Suing as the Administrator and Legal Representative of the Estate of**

**MAINGI KIMANYA MWANGI (Deceased) .....PLAINTIFF**

**VERSUS**

**KAIRITHI BURUGU.....1<sup>ST</sup> DEFENDANT**

**NAIROBI BOTTLERS LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The plaintiff is the administrator and legal representative of the estate of the late Maingi Kimanya Mwangi, who died as a result of a road traffic accident that took place on 16<sup>th</sup> May, 2012 along Eastern by pass road, Nairobi. She brought this suit claiming damages under the Fatal Accidents Act and Law Reform Act blaming the accident on the defendants.

The deceased was driving motor vehicle registration No. KBK 188 N which collided with motor vehicle registration No. KAK 983 H owned by the 2<sup>nd</sup> defendant and being driven by the 1<sup>st</sup> defendant at the time of the accident.

The defendants denied the plaintiff's claim and pleaded that the deceased was wholly to blame for the accident, and or substantially contributed to its occurrence.

The plaintiff gave evidence in support of her claim but since she was not present at the time of the accident her evidence did not add any value in relation to liability.

P.W. 1 PC Alex Osoro attached to Kayole Police Station gave evidence and produced a copy of the OB entry and police abstract relating to the accident. He was also not present neither did he witness the accident, and his duty was only limited to production of those documents.

The accident abstract showed that the matter was still pending under investigation. However, the OB entry read that the point of impact was on the lane of the defendants' motor vehicle. That OB entry was based on information given by the 1<sup>st</sup> defendant who was the driver of motor vehicle registration No. KAK 983 H. The defendants did not give evidence because the court was informed the driver, the 1<sup>st</sup> defendant herein, had left the 2<sup>nd</sup> defendant's employment.

As it is therefore, on evidence on record and going by pleadings, the court is not in a position to conclusively determine which driver was to blame for the accident. Under the circumstances therefore, the only logical conclusion is that both drivers were equally to blame for the accident. Liability is therefore apportioned at the ratio of 50:50. The 2<sup>nd</sup> defendant is vicariously liable for the negligence of the 1<sup>st</sup> defendant.

Both parties have filed submissions on the matter and cited some authorities. The deceased died instantly after the collision. I have considered the submissions on pain and suffering. Under that head I make an award of Kshs. 20,000/=. The deceased was a bank manager with Equity Bank Limited. He died at the age of 36 and there is no suggestion that he was in poor health. Indeed, he was at the prime of his age. In that regard, I make an award of Kshs. 200,000/= for loss of expectation of life.

As a bank manager he earned a gross salary of Kshs. 153,000/= per month. From his payslip exhibit 7, there were several deductions in

addition to the statutory deductions. He had a car and Sacco loans which contributed to the total deductions leaving a net balance of Kshs. 65,562/=. The deductions towards payment of his loans were to add value to his life and therefore, the net balance of his salary is what should be used in calculating loss of dependency.

The plaintiff and her husband depended on their son, which dependency was lost following his death. The deceased was not married. Being single he must have been using most of his earnings on himself and I am persuaded he used 1/3 of his salary on his parents. That is the dependency they lost.

The standard retirement age is 60 years and therefore, when he died at the age of 36, he had 24 more years to be in lawful employment. However, there are risks in life that cannot be overlooked, including disease and accidents like the one that ended his life. Taking that into consideration, I consider a multiplier of 20 years to be a reasonable figure to work with.

Loss of dependency therefore works out to Kshs.  $65,562 \times 12 \times 20 \times 1/3 =$  Kshs. 5,244,960/=. The plaintiff pleaded special damages amounting to Kshs. 20,100/=. However in her evidence she only produced a receipt Kshs. 15,000/= paid to her advocates. Special damages must be specifically pleaded and strictly proved. The plaintiff has only proved Kshs. 15,000/=. There shall be an award therefore of Kshs. 15,000/= special damages. In the end there shall be judgment for the plaintiff against the defendants jointly and severally as follows;

a. Pain and suffering	Kshs.	20,000/=
b. Loss of expectation of life	Kshs.	200,000/=
c. Loss of dependency	Kshs.	5,244,960/=
d. Special damages	Kshs.	15,000/=
Subtotal	Kshs.	<u>5,479,960/=</u>
Less 50% contributory negligence		
Total	Kshs.	<u>2,739,980/=</u>

The plaintiff shall also have the costs of the suit and interest at court rates, which shall also be subject to 50% deduction representing contributory negligence.

**Dated, signed and delivered at Nairobi this 7<sup>th</sup> Day of May, 2020.**

**A. MBOGHOLI MSAGHA**

**JUDGE**