



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 261 OF 2010**

**MICHAEL KUIYAKI KAGIRI**

**LOISE WANJIKU KUIYAKI.....PLAINTIFFS**

**- V E R S U S -**

**D. H. LALJI.....1<sup>ST</sup> DEFENDANT**

**D. G. STICKLERS.....2<sup>ND</sup> DEFENDANT**

**BROOKE BOND LTD.....3<sup>RD</sup> DEFENDANT**

**CROFORD KATUMO NZIOKI.....4<sup>TH</sup> DEFENDANT**

**MUUS (K) LTD.....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1) The late **Esther Mugure Mwaura**, was knocked down and fatally injured by motor vehicle registration KAD 620D while lawfully walking along **Mang'u-Thika** road on 8<sup>th</sup> April 2008. **Michael Kuiyaki Kagiri** and **Loise Wanjiku Kaiyaki** the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in their capacities as the legal representatives of the Estate of Esther Mugure Mwaura, deceased, filed this compensatory suit against **D. H. Lalji, D. G. Sticklers, Brooke Bond Ltd** and **Croford Katumo Nzioka** and **Muus (K) Ltd**, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants respectively.

2) Before the suit proceeded for hearing, the 1<sup>st</sup> defendant's name was deleted as a party to this suit and thereafter the case against the 2<sup>nd</sup> defendant was withdrawn. This suit therefore proceeded for hearing as a formal proof against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants since judgment in default of appearance and defence had been entered.

3) The plaintiffs presented the evidence of two witnesses namely: Michael Kuiyaki Kagiri (PW1) and Herman Kang'ethe Mungai (PW2). It is the evidence of Herman Kangethe Mungai (PW2) that he knew the late Esther Mugure Mwaura since they worked together for Makwa Secondary School.

4) PW2 stated that the deceased was a teacher while he himself was a groundsman supervisor.

5) PW2 averred that on 8.4.2008, at around 8.45am he saw the deceased walking to school along Mang'u Road and before they could meet the deceased was knocked down by a speeding lorry thus fatally injuring her.

6) PW2 blamed the lorry driver for the accident. He said the lorry was being driven on the wrong side of the road and at a very high speed. PW2 also pointed out that the deceased was knocked down while walking on the extreme left side of the lorry.

7) Michael Kuiyaki Kagiri (PW1) told this court that the deceased was his wife while Loise Kuiyaki, the 2<sup>nd</sup> plaintiff is their daughter. PW1 produced the letters of administration to show that the plaintiffs are the legal representatives of the Estate of Esther Mugure Kuiyaki, deceased. PW1 produced the police abstract form which indicate that the 3<sup>rd</sup> and 5<sup>th</sup> defendants are the owners of lorry registration no. KAD 620D while the 4<sup>th</sup> defendant was the driver at the fateful day.

8) At the close of evidence two issues emerged for the determination of this court namely: liability and quantum.

9) The **first** question as to who is liable for the accident. The evidence of PW2 clearly show that the driver of lorry registration no. KAD 620D is wholly to blame for the accident. PW2 was able to show that the lorry was driven at a very high speed and on the wrong side of the road. It was also shown that the deceased was knocked down at the extreme left side of the road. The evidence of PW2 were never controverted.

10) The second issue on quantum. The plaintiffs proposed to be paid damages under the Law Reform Act and under the Fatal Accidents Act. On pain and suffering the plaintiff asked this court to award ksh.50,000/=. It is said that the deceased was in great pain and was screaming following the accident. It is clear from the evidence that the deceased passed away while waiting to be attended to at the casualty. She must have felt great pain. Though PW2 did not estimate the time the deceased took before succumbing to her injuries, it would appear she did not last for long. I find the award of ksh.30,000 on this head to be reasonable.

11) The plaintiff also sought for ksh.150,000 for loss of expectation of life. The plaintiffs cited the case of **Richard Macharia Nderitu –vs- Philemon Rotich Langa (2013) eKLR** in which the claimant was awarded ksh.100,000/=. The aforesaid decision was made about 4½ years ago. I find no good reasons to depart from the aforesaid decision. Consequently I award the plaintiff ksh.100,000/= as reasonable.

12) On special damages, the plaintiff s have sought for ksh.500/= as pleaded and proved. I am satisfied that the plaintiffs tendered credible evidence proving the aforesaid sum. I grant it as prayed.

13) The last prayer is for loss of dependency. The plaintiffs proposed a multiplier of 15 years at the rate of ksh.34,733/= per month by two thirds. It is not in dispute that the deceased was aged 46 years at the time of her death. All factors remaining constant, she would have retired at the age of 60 years. A multiplier of 14 years would therefore be applied. I agree with the plaintiffs' proposal that the multiplicand of 2/3 should be applied since as a mother most of her income is devoted to the family.

14) It is apparent that the deceased earned a basic salary of ksh.40,949. A net salary of ksh.34,733 would remain if PAYE tax of ksh.6,216 is deducted. On this head I award a sum of ksh.3,890,096/= tabulated as follows:

$$34,733 \times 12 \times 14 \times 2/3 = 3,890,096.$$

15) In the end judgment is entered in favour of the plaintiffs and against defendants jointly and severally as follows:

**i. Damages for loss of dependency ksh.3,890,096/=**

**ii. General damages for pain & suffering Ksh. 30,000/=**

**iii. Loss of expectation of life ksh. 100,000/=**

**iv. Special damages ksh. 500/=**

**Total Ksh.4,020,596/=**

**v. Costs of the suit.**

**vi. Interest at court rates (i) – (iv) above from the date of judgment until full payment.**

**Dated, Signed and Delivered in open court this 7<sup>th</sup> day of December, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant