



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL CASE NO 76 OF 2008**

**R K.....PLAINTIFF**

**Versus**

**LUCY WAMBETI NJUE.,.....DEFENDANT**

**J U D G M E N T**

1. **R K** sued **LUCY WAMBETE NJUE**, the registered owner of motor-vehicle registration number **KAS 514K** in her capacity as the legal representative of the estate of **F M N** alias **F N M** (deceased).
2. It was pleaded that on the **22<sup>nd</sup> December, 2005** at about 10.30am the deceased was carefully and lawfully riding a bicycle along **Kitui-Kanyonyo** road when the defendant or her driver hit him from behind. As a result of the accident the deceased suffered fatal injuries. She blamed the driver of the motor-vehicle for driving the motor-vehicle negligently. She claimed for general damages for pain, suffering, loss of expectation of life and lost years and special damages in the sum of **Ksh.41,500/-**.
3. The defendant neglected and/or refused to enter appearance which resulted into an interlocutory judgment being entered against her.
4. At the hearing, the plaintiff, a mother of the deceased stated that he had been carried as a pillion passenger on the bicycle when the accident occurred, she obtained a limited grant of letters of administration that enabled her file the instant suit. She obtained a copy of records from the registrar of motor-vehicles which established that the defendant herein was the registered owner of motor-vehicle registration number **KAS 514K** as at 22.12.2005.

5. **LIABILITY**

**PW2 SAMSON NGUMBAO** was carrying the deceased as a pillion passenger. He stated that he was riding off the road when he was hit from behind. The motor-vehicle was moving at a high speed. The deceased fell on the road while he (PW2) found himself beneath the motor-vehicle. He blamed the driver of the motor-vehicle for the accident. He blamed the driver for the accident due to his negligence.

6. It was pleaded that the driver of the motor-vehicle was negligent in that she;

Drove the motor-vehicle at an unreasonably high speed in the circumstances; failed to warn the deceased of the eminent danger, flouted the highway code rules and regulations; drove without due care and attention; failed to have any proper look out or at all and failing to brake, swerve, or in any other manner control, manage, and/or drive the said motor vehicle to avert the accident.

7. As a driver, in control of the motor-vehicle she owed a duty of care to other road users. She was expected to drive carefully observing traffic regulations. Having moved off the road without prior warning to PW2 and the deceased was proof of failure to exercise diligence expected of a driver.

In the case of **Kiema Muthutu –vs- Kenya Cargo Handling Services Ltd (1991) 2 KAR 258**

It was held that:

**“There is yet no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence”.**

8. Failing to brake without any explanation such that the cyclist was found beneath the motor-vehicle may be a suggestion that the driver was moving at a high speed. Knocking down a person who is ahead and running over the passenger would be proof of failure to look out. The plaintiff indeed proved negligence on the part of the defendant. Consequently, I hold her 100% liable.

#### 9. QUANTUM

##### **PAIN AND SUFFERING**

**PW1, R K N** testified that she arrived at the scene of the accident after the act. She did not tell the court whether the death occurred instantaneously or not. I award **Kshs 30,000/-** on that head.

#### 10. LOSS OF EXPECTATION OF LIFE

The deceased was 15 years old. His mother stated that he was in good health prior to the accident. He expected to live a long life had it not been for the defendant’s negligence that resulted into his life being cut short. An award of Ksh 100,000 on this head will suffice.

#### 11. LOST YEARS

As a result of the fatal consequences, the deceased died at the age of 15 years. He was a child whose life was shortened by the wrongful act of negligence. His mother and siblings expected to depend on him per the pleadings. He was a standard eight pupil who sat for his Kenya Certificate of Primary Education (KCPE) and performed well. He scored the following grades:

<b>English</b>	-	<b>65</b>	<b>B</b>
<b>Kiswahili</b>	-	<b>56</b>	<b>C+</b>
<b>Maths</b>	-	<b>64</b>	<b>B-</b>
<b>Science</b>	-	<b>64</b>	<b>B-</b>
<b>Social Studies</b>		<b>44</b>	<b>C-</b>
<b>Total</b>	-	<b>295</b>	

He was indeed an average student who could have had a bright future.

12. He expected to be a teacher who could earn Ksh 25,000 per month. It would however be difficult to speculate as to what he would become in future. Therefore, I would treat him as an unskilled worker who would earn approximately **Ksh.11,000/-** per month.
13. He would have been expected to incur expenses associated with livelihood hence remaining with approximately Ksh 8000/- per month. I would therefore determine his earning to be

approximately Ksh 8,000/-.

14. He would have worked comfortably until the age of 50 years. In that regard I will adopt a multiplier of 35 years. Taking into consideration the vicissitudes and uncertainties of life, a multiplicand of 1/3 will be applicable. The multiplication will be as hereunder

$$8000 \times 12 \times 35 \times 1/3 = 1,120,000/-$$

#### 15. SPECIAL DAMAGES

What was specifically proved was Ksh 500/-. The claim for funeral expenses was **Ksh 40,000/-**. Courts have opined that in absence of specific proof for funeral expenses, courts may make reasonable awards on that head.

In the case of **Jacob Ayiga Maruja & another –vs Simeon Obaya (2005) eKLR** the Court of Appeal stated:

**“We agree that the courts have always recognized that a reasonable award ought to be made in respect of reasonable and legitimate funeral expenses. But when such a large sum is claimed for such expenses then there ought to be proof of what the money was spent on”.**

Duly guided by the aforesaid authority I award the sum claimed of Ksh.40,000/-.

16. In the result, I enter judgment on liability for the plaintiff as against the defendant and award her general and special damages as follows:

-Pain and suffering	- 30,000
-Loss of Expectation of life	- 100,000
-Lost years	- 1,120,000
-Special damages	- 40,500
<b>TOTAL</b>	- <b><u>1,290,500</u></b>

Plus costs of the suit.

**DATED** at KITUI this 16<sup>th</sup> day of **November, 2015**

**L. N. MUTENDE**

**JUDGE**

**DELIVERED** at MACHAKOS this 2<sup>nd</sup> day of **December, 2015.**

**P. NYAMWEYA**

**JUDGE**