



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 1227 OF 1998

BEATRICE WANJIKU MUNDIA ..... PLAINTIFF

VERSUS

THAMBA NGOMBE LTD ..... DEFENDANT

**JUDGMENT**

This is a running down case.

The Plaintiff a widow of the deceased one Sammy Mudia Muriuki brings this suit on behalf of herself and the estate for the wrongful death of her husband due to a road traffic accident.

She sued, according to her prayers, for General Damages under the Fatal Accident act and the Law Reform Act.

The defendants, a Limited liability Company and owner of Motor vehicle registration KAE 066C Isuzu lorry that caused the said accident were duly served. They failed to enter appearance failed to fill defence. Judgement was entered against them on the 18th of February, 1999.

The suit came up for assessment of damages.

The Plaintiffs task was to show this court that her husband estate is entitled to the prayers by way of quantum.

In her evidence she said that her husband ran a business of buying cattle and selling the meat at his butchery. She was most certain that he earned Ksh.15,000/- a month from this business.

She further stated that her husband ran the coffee farm and the tea farm whereby he obtained proceeds amounting to Ksh.3000/- to Ksh.4,000/- for for coffee and 800/- for the tea - respectively. She produced a savings account book (Exh. P4) for the coffee. She produced advice slips for the tea Ext.P5.

MFI 3 is a receipt showing Kshs.12,000/-. This appears to be rent for the butchery business and other rooms.

The advocate for the plaintiff gave submission on both the Law Reform and Fatal Accidents.

He conceded that under the Law Reform Act there was no proof as to the exact time the Plaintiff died. He relied on two decision of:-

Stephen I. Njuguna v Attorney General.

where there was instant death a sum of Ksh 3,000/- was awarded.

Decision of:-

Hccc 4696/90

H.O. Omolo v. Ngatia Mwatha

whereby ksh.7,500/- was awarded where the deceased died two days later.

I decline to make any award under this heading on the simple reason that NO proof had been adduced as to the exact time the deceased died.

In the above authorities those exact times are known.

As to the Loss of expectation of life the advocate recommends Ksh.100,000/- as reasonable. He relied on the case of Njuguna Vs AG CA 55/97.

The court of appeal had no proof of earning save a figure of Ksh.10,000/- per month. They awarded 100,000/-. This seems to be an average figure from the authorities. I believe in this case the accused was supporting and earning some income.

The advocate for the plaintiff stated that it should be computed to Ksh.5000/- the multiplier be at 15 years.

He thus prayed for Ksh.900,000/- to be awarded.

I find that there is no documentary proof for this on the issue of income and would dismiss this head of claim.

I would award Ksh.100,000/- for loss of expectancy of life.

I am required to quantify my findings in this case if I found that there would have been proof.

Under the Fatal Accidents act I would have computed for Loss of dependency Ksh.2000/- being a reasonable deduction of net income. I would have used a multiplier of 13 years giving a total of Ksh.312,000/-.

This amount approved amongst the dependency would have given .

Betrice W. Mudia -	wife -	Ksh.112,000/-
Pricilla Wangari -	1985	ksh. 50,000/-
Eunice Nyaguthii -	1986	Ksh. 50,000/-
John Muriuki -	1987	Ksh. 50,000/-
Ann Nyawira -	1992	<u>Ksh. 50,000/-</u>
	Total	<u>Ksh 312,000/-</u>

As to the law Reform Commission Pain, Suffering & Loss of Amenities to generally awarded a sum of Ksh.10,000/-.

As to Special damages the case of Coast Bus Service Ltd V. Sisco E. Murunga Ndanja & Another CA 192 of 1992 court of Appeal.

It must be specifically pleaded and strictly proved.

I note a receipt for a coffin for Ksh.5,000/- has been tendered in evidence. I shall accept this expenditure.

In summary I award for:-

General Damages.

for loss of Expectation of Life Ksh.100,000/-

Special Damages                      Ksh.5,000/-

I award costs of this suit together with interest on General Damages at Court rates from to-day and at filing of this suit interest on Special Damages

Dated this 5th day of May, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE