



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO.296 OF 1991

MOHAMED BAKARI MUUMBO PLAINTIFF

VERSUS

1. PHILIS W/O NJIRU)

2. GACHERI W/O NJIRU) DEFENDANTS

J U D G M E N T

This claim arises out of a road accident, which occurred on the 15th July, 1989 along MAU-MERU ROAD involving a motor vehicle registration No.KYJ 809 in which the deceased JULIANA KAZUNGU was travelling as a fare paying passenger. Liability is not contested and interlocutory judgment had been entered.

The Plaintiff is a madarasa instructor at MERU MUSLIM INSTITUTE and he brought this claim in his capacity as a legal representative of the estate of the deceased Juliana Kazungu on behalf of 3 children of the deceased. Whose names were not given in the plain. However during the hearing the Plaintiff gave the names of the children of the deceased as follows plus their ages:-

1. SAID KAZUNGU - 10 YEARS

2. JOYCE KAZUNGU - 14 YEARS

3. MARIA KAZUNGU - 11 YEARS

The Plaintiff in his evidence told the court that the deceased was the wife of his brother KAZUNGU and that she lived with him at the time she met her death through road accident which occurred on the 17th July, 1989 along Maua-Meru road. He further told the court that as a result of the said accident, he incurred the following expenses: **Shs.19,000/=** funeral expenses, **Shs.100/-** for police abstract and **Shs.90/=** for death certificate. He claimed general damages under the Fatal Accident Act and the Law Reform Act. In respect of loss of dependency he told the court that the deceased was a business woman dealing with mitumba and she earned between **Shs.3000/=** to **Shs.4000/=** per month, but he did not produce any document to support this claim.

Counsel for the defendant submitted that the issue of liability was settled but went on to state that the Plaintiff was not entitled to any damages under the Law Reform Act as at the time he filed this suit he had not obtained letter of administration. Accordingly, he had no cause of action. He referred the court to the celebrated case of **TROUISTIC UNION INTERNATIONAL AND ANOTHER – CIVIL APPEAL NO. 145 OF 1990 (CA)**.

Before the judgment of this appeal by the Court of Appeal, it was in order for one to file a claim for

damages under the Law Reform Act without first obtaining letters of administration and this was the position when this suit was filed. The Plaintiff had not obtained letters of administration. The decision in TROUISTIC UNION case automatically made this suit defective. But this defect was eventually cured when the Plaintiff obtained letters of administration and therefore his claim under the Law Reform Act cannot be dismissed. I accordingly award **Shs.90,000/=** for loss of expectation of life. On the issue of loss of earning counsel for the defendant submitted that since the Plaintiff did not produce any documents to prove that she was in business, the claim must fail.

The deceased came from Mombasa where her body was taken for burial. She died while travelling from Mau to Meru. The Plaintiff states that she was selling second hand clothes. Though there was no documents to prove that she was in business woman, I have no reason to doubt that she was and I assess her income at **Shs.1,500/=** per month and I adopt a multiplier of 20.

This would work out as follows: **(1500 x 12 x 20 = 360,000)** On the issue of special damages for funeral expenses, no receipts were produced. Special damages must be pleaded and proved. But that notwithstanding each case has to be considered on its own merit.

When a person dies and burial takes places, expenses must be incurred and although no receipts are produced, the court must consider to award a reasonable amount.

The deceased died at maua and her body was transported all the way to Mombasa where burial took place. The Plaintiff has claimed **Shs.19,000/=** and I find this a reasonable figure and I award special damages as follows: Funeral expenses **Shs.19,000/=**, Death Certificate, **Shs.90/=** and police abstract – **Shs.100/=**. The figures may be brought forward as follows:-

1. Special damages - Shs. 19,190.00

2. General damages for loss

Expectation of life - Shs. 90,000.00

3. Loss of dependency - Shs.360,000.00

TOTAL - SHS.469,190.00

Accordingly there shall be judgment for the Plaintiff and against the defendants for **Shs.469,190/=** with costs and interest. This claim was brought on behalf of the 3 children of the deceased who are all below 18 years and I make the apportionment as follows:-

1. SAID KAZUNGU - SHS.135,000.00

2. JOYCE KAZUNGU - SHS.155,000.00

3. MARIA KAZUNGU - SHS.179,190.00

Dated and delivered at Meru this 29th day of September, 1999

J.L.A. OSIEMO

JUDGE