

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2370 OF 1995**

**NYOKABI KINYANJUI PLAINTIFF
VERSUS
PAUL KINYANJUI MUTHUMBI 1ST DEFENDANT
ERNEST NJUNGE NJOROGE 2ND DEFENDANT**

JUDGMENT

Only the Plaintiff, gave evidence in this running down case.

She is the mother of the deceased. Her son was employed by the 1st defendant who owned a motor vehicle. The 2nd defendant was a driver of the said vehicle.

The Plaintiff told the court how the deceased fell from a vehicle and died. She later informed the court that she did not witness this nor was she present when the accident occurred.

She had just been told of what occurred. She also stated from the witness box that her son earned Kshs.4,800/-. She had no documentary proof for this.

She nonetheless produced Letters of Administration, police abstract and a P3 form.

The advocate in her opening address stated that the plaintiff will rely on the Law Reform and the Fatal accident Act. In her further submission she said that this court make award for damages for breach of Statutory duties and for loss of earnings.

No evidence as to negligence on the part of the two defendant has been led. The Plaintiff only stated what she knew. The deceased's death. It would have been of great assistance if there was an eye witness to the incident or proof under the Evidence Act by production of proceeding of the lower court case.

Further, the Plaintiff concedes that she had no documentary evidence of the salary of the deceased. All she stated is the defendant was paying her son Kshs.4,800/- per month.

Advocate requested that I take Judicial notice of this.

As there is extremely no proof of evidence in this case, the suit stands dismissed with costs Under the law, I require to compute damages if in event there was proof. The advocate recommended 4,800/- x 20 x 12 = 1,052,000 for loss of further earning. There would have been no guarantee of continued employment. I would have said Kshs.400,000/- to have been reasonable in General Damages.

Workman compensation though pleaded was not proved nor prayed for. No evidence was led to Special Damages. I make no award due to lack of proof/evidence.

The suit is hereby dismissed with costs.

Dated this 30th day of October, 1998.

M.A. ANG'AWA

JUDGE