

REPUBLIC OF KENYA

Nzioki v Kenya Bus Service

High Court, at Nairobi July 25, 1985

Mbaya J

Civil Case No 1883 of 1982

Statutes

Law Reform Act (cap 26)

Fatal Accident Act (cap 32)

July 25, 1985, Mbaya J delivered the following Judgment.

John Nzioki Kilea died on June 20, 1979 in the Eastleigh Bus Refueling Depot which belongs to the defendant company. He was an employee of the defendant company and was run over by a bus belonging to the defendant company. He was on duty at the depot.

When he died he was the father of 4 children who are now suing as 1st, 2nd, 3rd and 4th plaintiffs, and who were at the time of filing the plaint on June 12, 1982 aged 12, 9, 6, and 4 respectively. The four plaintiffs are suing the defendant company by their next friend who is their mother, one Joyce Mbula Kilea, the 5th plaintiff. In their plaint the plaintiffs claim special damages; and general damages under the Law Reform Act (cap 26) and the Fatal Accident Act (cap 32) along with interest and the costs of the suit.

The eye witness to the fatal accident was Osodo Madewe, DW 1 who works as a driver with the defendant company. He testified that he arrived on duty at about 7 pm at the Eastleigh Bus Depot. He got into the seat of his bus to commence driving to town. Ahead of him were other buses. Ahead also, about 20 yards, he could see a person standing facing his (DW 1's) bus.

The person was the deceased. Behind the deceased, 6 yards from him, was one of the defendant company's buses, which was being driven by one Lucas Kagundi Kanyinyo.

As it happened to be, DW 1 suddenly saw the bus behind the deceased reversing. The witness shouted in vain as the bus proceeded to run over and kill the deceased. The witness testified that the depot was well lit, but was extremely noisy because of the hooting and movement of the many buses which refuel at any time. When he was knocked down the deceased was directly behind the bus in question. The driver of the bus did not have the assistance of a bus conductor to guide him during the process of reversing.

I think and I am satisfied that there is no dispute over the fact that the deceased was knocked down by a bus belonging to the defendant company. The only issue is whether the deceased was solely to blame for the accident or was in the alternative guilty of contributory negligence. In my own assessment of the entire evidence, I am of the view that it was the driver of the defendant company's bus who was entirely to blame for the accident. He reversed his bus without due care and regard for the workers at the depot.

The deceased was entitled to be anywhere in the depot. He could not have been expected to guard against any reversing bus, unless he was facing the bus, since the depot is so noisy that one cannot hear the hooting of a particular bus. There is evidence that, when he reversed, the driver of the defendant company had no opportunity to discern the presence of the deceased who was directly behind the offending bus. Accordingly I enter judgment for the plaintiff in the sum of Kshs 90,000 plus Kshs 300 special damages (incurred for radio announcement of the funeral, receipt (Exh 4). Total damages total 90,000. The plaintiff will also receive interest on the sum from the date of filing suit, and the costs of the suit.