



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO 2453 OF 1976**

**NJERI MWIKA & OTHERS.....APPELLANT**

**VERSUS**

**SAMMY NJOROGE MUGWE .....RESPONDENT**

**EVANSON M NJOROGE.....RESPONDENT**

**JUDGMENT**

Interlocutory judgment in this suit was entered against the defendants pursuant to Order IXA rule 5 of the Civil Procedure Amendment Rules for the liquidated special damages in the sum of Kshs 5,035 together with interest thereon at court rates as from the date of the institution of the suit. The issue of liability was thus settled and I will concern myself with the issue of general damages for loss the plaintiff and the deceased sisters and brothers suffered as a result of the death of her daughter.

The deceased was aged about 22 years when she was killed in a road accident involving the defendant's vehicle. This was on the 26th April, 1975. She left school in 1972 having attained school certificate level. She then worked for a short time as a teacher and was subsequently employed by M/s Amin and Patel, advocates of Nairobi. At the time of her death she was earning Kshs 350 per month.

The plaintiff who is an illiterate old woman gave evidence that the deceased gave her Kshs 150 per month for her support and for the education of the named sisters and brothers of the deceased. She also said that the deceased brought clothes for her named children. The total effect of her evidence was that the deceased was the sole bread winner of the family.

While this evidence stands unchallenged, I must bear in mind that the deceased was earning only Kshs 350 per month. Out of this she had to maintain herself, pay for her rent and other necessities. I do not believe that she was able to afford Kshs 150 per month to go to her mother. She might have paid school fees for those school going children but this would not have been done every month. She might have sent her mother some money but this could not have been regular every month. The maximum she could afford would have been in the region of Kshs 50 per month.

The deceased was 22 years when she died. She was physically fit without any physical impediments. She would have expected to get married within a reasonable time since she was already attaining her majority at the time of her death. Her support to her mother and her brothers and sisters could not have been expected for over 5 years. If she married then she would have been expected to support herself and her family. Her future working ability and opportunities could not be ascertained. She did not possess special educational qualifications.

I notice that interlocutory judgment included loss of profit of Kshs 2,500 from the deceased pyrethrum. As this prospective loss of profit has been included in the item of special damages, I will exclude it in the item of general damages.

As I have said, the deceased could not afford more than Kshs 50 monthly to sent to her mother. Taking into account that the deceased paid school fees for school going sisters and brothers and that she paid spasmodic payments to her mother for their maintenance and support I consider that an average of Kshs 70 per month would be a fair dependency. This works out at Kshs 840 per annum.

The deceased could not be expected to support her mother and brothers for many years as she was bound to get married at some stage if she lived. There was evidence that another girl of her age has since married. I take five years as the period she would have been expected to support her mother, brothers and sisters and I take five years as a reasonable period of purchase in determining the dependency. This works out to Kshs 4,200 and I award this sum as general damages. To this sum will be added the sum of Kshs 5,035 already awarded as special damages making a total of Kshs 9,235.

I enter judgment for the plaintiffs against the defendants jointly and severally in the sum of Kshs 9,235 together with interest thereon at court rates. With regard to the sum awarded as special damages, interest will accrue from the date of the suit and on general damages from to-day. The plaintiffs are entitled to the costs of this suit with interest thereon at the same rate.

It remains for me to apportion the sum I have awarded among the dependents.

To the plaintiff Mrs Njeri Mwika Kshs 2,000

Mr Mage Mwika	Kshs 500
Mr Gichuki Mwika	Kshs 600
Mr Waiyaki Mwika	Kshs 1,000
Mr Kinyanjui Mwka	Kshs 1,000
Ms Nyambura Mwika	Kshs 1,700
Ms Wanjiru Mwika	Kshs 2,435

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Total Kshs 9,235

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The sum due to the plaintiff, Mr Mage Mwika and Mr Gichuki Mwika shall be paid to them absolutely after the sum has been realized. The sums due to the minor children shall be deposited in the usual savings account in the name of the plaintiff as trustee for the minor children. The plaintiff shall have liberty to apply to withdraw sums for the education and maintenance of the minor children.

**Dated and delivered at Nairobi this 29th day of JUNE, 1977**

**M. G MULI.**

**JUDGE**