



**Mutua & another (Suing as the personal representatives of the Estate of the Late Samuel Mulinge Mutinga) v Mutoro & 4 others (Civil Suit E10087 of 2021) [2023] KEMC 84 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 84 (KLR)

**REPUBLIC OF KENYA**  
**IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**  
**CIVIL SUIT E10087 OF 2021**  
**JP ADUKE, SRM**  
**MARCH 23, 2023**

**BETWEEN**

**ESTHER MBULA MUTUA ..... 1<sup>ST</sup> PLAINTIFF**

**PETER MUTINGA MUNDO ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE SAMUEL MULINGE MUTINGA)**

**AND**

**GEOFFREY WACHEPA MUTORO & 4 OTHERS ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants as the Personal Representatives of the estate of the late Samuel Mulinge Mutinga (hereafter the deceased) after he sustained fatal injuries due to a road accident which occurred on the 21<sup>st</sup> February 2021. In the plaint on file, the plaintiff avers that the deceased was a pedestrian along Councilor Opuedo Road in Nairobi when the defendants so negligently drove motor vehicle registration number KCE 073A causing the same to knock down the deceased to his demise.
2. The plaintiffs blame the defendants and their authorized agents for causing the accident. The plaintiff further avers that the accident was caused solely by the negligence of the defendants.
3. The particulars of the alleged negligence are captured in paragraph 10. The plaintiffs prays for general damages under the *Fatal Accidents Act* and the *Law Reform Act*, special damages, costs of the suit and interest.
4. Return of service on records shows that the defendants were served with the suit papers. The Defendants neither entered appearance nor filed a defence. As a result, interlocutory judgment was



entered against all five defendants on 11<sup>th</sup> October 2022 and the matter proceeded to formal proof hearing. The plaintiffs called one witness who testified on oath. Parties filed written submissions.

5. The issues for determination before this court are two:

1. Liability;
2. Quantum;

### **Liability**

6. I find that liability was settled with the interlocutory judgement that I saw on record.

### **Quantum**

7. With respect to quantum, I will begin with special damages. The Plaintiffs claim KES 249,730 as captured in para 14 of the Plaint on file. As at the date of writing this judgment, I have not seen on record any receipts attesting to this. I have also checked the CTS Portal and note that there are no receipts on record. While I appreciate that the judiciary CTS system has been experiencing some challenges lately, I am unable to proceed to give any awards in the absence of receipts. It is settled principle in law that special damages must be proved and pleaded. I find that KES 249, 730/- was pleaded and not proved and I make no awards on this.

8. I have not seen a copy of the Limited Grant of Letters of Administration ad litem on record confirming that the Plaintiffs in this suit have the authority to file this suit on behalf of the estate of the deceased. Again, the same is not available on CTS Portal as at the date of writing this judgment. In the absence of this, I find that damages under the Law Reform Act are not awardable.

9. With respect to awards under section 4 of the Fatal Accidents Act, I find that the same are awardable. The deceased was 41 years old at the time of his death. He was married, and had dependents. I have not seen any past payslips or proof of earnings from the documents available on file. In the absence of this information, I will proceed to use the gazetted minimum wage in force as at the date of death of the deceased being 2021. (Legal Notice Number 2 of 2018 The Regulation of Wages General Amendment Order 2018). I have assumed the deceased would have worked up to about 49 years of age seeing as he was a mechanic and it is practically rare to find a mechanic older than 50 years of age due to the intense nature of the trade. I have relied on the reasoning of the court in *Evanson Ndungu Mukunya vs JNM & MWAN* (Suing as the legal representatives of the estate of JMN)[2022] eKLR

10. In summary, I enter judgment in favour of the Plaintiffs on the following terms:

1. Liability at 100%;
2. Special damages –NIL
3. Damages under the Law Reform Act-NIL
4. Damages under the Fatal Accidents Act 17,561 (per month) \* 12 (no of months) \*8yrs\*2/3 =KES 1,123,904/-
5. Costs of the suit.
6. Interest on numbers 4 and 5 above at court rates from the date of judgment until payment in full.

**ADUKE JEAL PRAXADES ATIENO**



**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED AND DELIVERED THIS 23RD MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 8.45 Am**

In the presence of :

Court Assistant: ...Benjamin Kombe

(Name, Signature, Date)

Counsel for the Plaintiff- .....N/A.....

(Name, Signature, Date)

For the Defence: .....N/A.....

(Name, Signature, Date)

