



**Muia & another (Suing as the Personal Representatives of the Estate of the Late Simon Muia Kioko) v Seth & another (Civil Suit 9525 of 2019) [2023] KEMC 73 (KLR) (20 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 73 (KLR)

**REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**  
**CIVIL SUIT 9525 OF 2019**  
**JP ADUKE, SRM**  
**MARCH 20, 2023**

**BETWEEN**

**FRANSCISCA KANINI MUIA ..... 1<sup>ST</sup> PLAINTIFF**  
**FRANCIS MUTHIANI MUIA ..... 2<sup>ND</sup> PLAINTIFF**  
**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE SIMON MUIA KIOKO**

**AND**

**SANG PHILIP KIPCHOGE ..... 1<sup>ST</sup> DEFENDANT**  
**FLORENCE MAUREEN SETH ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants as the Personal Representatives of the estate of the late Simon Muia Kioko (hereafter the deceased) after he sustained fatal injuries due to a road accident which occurred on the November 21, 2017. In the plaint on file, the plaintiff avers that the deceased was a pedestrian on duty on Thika Superhighway in Nairobi marking lanes with his colleagues on the highway when the defendants so negligently drove motor vehicle registration number KBM 347N 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 6. 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 filed a statement of defence as such the proceedings progressed defended. The plaintiffs called three witnesses who testified on oath while the Defence elected to close its case without calling any witnesses. Parties filed and exchanged written submissions.
5. The issues for determination before this court are two:
  - 1) Liability;
  - 2) Quantum;

### **Liability**

6. From the testimony on record, the Plaintiffs produced a copy of the Limited Grant of Letters of Administration Ad Litem which confirms that authority to administer the estate of the deceased was vested in the Plaintiffs. I have seen a copy of the Abstract from Police Records confirming further details in respect of the accident victim and the said motor vehicle. I have not seen a copy of the Post Mortem report on record confirming the cause of death of the deceased to be the road traffic accident herein. Nonetheless, I have seen a copy of the Death Certificate confirming the identity of the deceased to be the same as that in the Abstract from the Police Records. Lastly, I have seen a copy of the Motor Vehicle Copy of Records printed on 29<sup>th</sup> June 2018 and a copy of the Proceedings of the Court in Traffic Case 17632 of 2017. This confirmation and chronology from the documents available on the record settles the issue of liability in my view. For the avoidance of doubt, I apportion liability in favour of the Plaintiffs at 100%:0% on a balance of probability.

### **Quantum**

7. With respect to quantum, I will begin with special damages. The Plaintiffs claim KES 291,900 as captured in para 11 of the Plaint on file. I have seen on record receipts for KES 550 from the NTSA on account of motor vehicle copy of records, Receipt dated 01.12.2017 for KES 14,000, Receipt dated 26 Nov 2017 for KES 56,200 and receipt dated 01<sup>st</sup> December 2017 for KES 19,800 and Receipt dated 27.11.2017 for KES 50,000/- and receipts dated 18.5.2018 for KES 55,000 + 10,000 on account of legal fees and disbursements. I note that the Plaintiffs paid Kes 56,200 for tents a day before the deceased died. This is very strange. On a balance of probabilities, I find that this is not a genuine receipt. It is settled principle in law that special damages must be proved and pleaded. I find that KES 149,350/- was pleaded and proved and I award the same.
8. Having seen a copy of the Limited Grant of Letters of Administration ad litem on record, I find that damages under the Law Reform Act are awardable. I award KES 100,000/- on this account (loss of expectation of life).
9. With respect to awards under section 4 of the Fatal Accidents Act, I find that the same are awardable. The deceased was 22 years old at the time of his death. He was not married. He did not have any known children. I have not seen any past payslips from the documents available on file. I have seen a letter dated December 22, 2017 confirming that the deceased was indeed employed. This means that the Plaintiffs should have been able to obtain payslips either from the records of the deceased or from the former employer of the deceased. As at the date of writing this judgment, these records are not on the record. I will proceed to use the gazette minimum wage in force as at the date of death of the deceased being November 21, 2017 (Legal Notice Number 112 of 2017 The Regulation of Wages General Amendment Order 2017). I have assumed the deceased would have worked up to about 60



years of age. 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 of KES 149,350/-
- 3) Damages under the *Law Reform Act*-KES 100,000/-
- 4) Damages under the *Fatal Accidents Act* 12,926 (per month) \* 12 (no of months) \*30yrs\*1/3 =Kes 1,551,120/-
- 5) Costs of the suit.
- 6) Interest on numbers 3,4 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 20<sup>TH</sup> MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 2PM.**

