

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CIVIL SUIT NO. E001 OF 2021

**GEORGE ANGWENYI NYANYIEMI (suing as the
Representative and Administrator of the estate of Mathew
Aori Angwenyi (Deceased)**

..... **PLAINTIFF**

VERSUS

**PAUL OSORO MOMANYI 1ST
DEFENDANT**

**PETER KIMANI NJAMBI 2ND
DEFENDANT**

J U D G M E N T

1. This matter was instituted through a Plaint dated 2nd March 2021. The Plaintiff sued the Defendants for general and special damages that arose from a road traffic accident on 19th December 2016 along Bomet-Narok Road. The Plaintiff stated that the 2nd Defendant was the registered owner of motor vehicle registration number KCG 763M which was

being driven by the 1st Defendant and the said motor vehicle was involved in a road traffic accident with motor vehicle registration number KBQ 922E which was being driven by the deceased. The Plaintiff claimed negligence on the part of the Defendants.

2. The 1st Defendant filed his Defence on 24th November 2021 and denied the contents contained in the Plaint. The 1st Defendant further stated that the deceased had a life insurance that had already been paid to his estate and the present claim was unjust enrichment. The 1st Defendant stated that if any accident occurred then it was caused by the negligent acts of the deceased.
3. The 1st Defendant stated that a public inquest concerning the deceased's death had been opened in Sotik Criminal Inquest Number 9 of 2018 where the same was closed with a finding that the driver of motor vehicle registration number KCG 763M could not be blamed for causing the accident.

4. The 2nd Defendant filed his Defence on 3rd May 2021 and denied the contents of the Plaintiff. The 2nd Defendant further stated that at the time of the accident he was not the beneficial or legal owner of the motor vehicle and there was no cause of action against him. He further stated that the suit was time barred by the statute of limitations.

The Plaintiff's case

5. George Angwenyi Nyanyiem (PW1) testified that he was the deceased's father. PW1 testified that on the material day, the 1st Defendant was driving motor vehicle registration number KCG 763M carelessly and negligently when he caused it to ram into the deceased's motor vehicle registration number KBQ 922E causing fatal injuries to the deceased.

6. It was PW1's testimony that the deceased was aged 26 years at the time of his death and that he used to support his parents and siblings. It was PW1's further testimony that the deceased worked at Nairobi Hospital where he earned a

monthly wage of Kshs 55,000/=. PW1 blamed the Defendants for causing the accident.

7. Zachary Mose (PW2) testified that he was the deceased's brother and on the material day he was travelling with the deceased in motor vehicle registration number KBQ 922E when the 1st Defendant negligently and carelessly drove motor vehicle registration number KCG 763M causing it to ram into their vehicle. PW2 further testified that he was awake and saw the deceased try to swerve to avoid the crash. PW2 blamed the 1st Defendant for causing the accident.

8. No. 500303 Cpl Meshack Munyendo (PW3) testified that the two motor vehicles (KBQ 922E and KCG 965M) collided head on and the deceased died on the spot. PW3 further testified that an Inquest was opened in Sotik Law Court and closed on 7th August 2018 with a finding that there was no evidence to convict. PW3 further stated that he was not the investigating officer.

The Defendants' case

9. Paul Osoro Momanyi (DW1) testified that he was neither the driver nor owner of motor vehicle registration number KCG 763M at the time of the accident. DW1 further testified that he was not aware of the occurrence of the accident and if any accident occurred then it was caused by the negligence of the deceased who was driving at a high speed, on the wrong side and was drunk.
10. It was DW1's testimony that there was a public Inquest into the deceased's death and the same was closed that the driver of motor vehicle registration number KCG 763M could not be blamed for causing the accident.

Court's determination

Liability

11. In his written submissions dated 5th November 2025, the Plaintiff submitted that the 1st Defendant was solely to blame for the accident. That when the 1st Defendant arrived at

Mosop area, he veered off his lane and rammed into motor vehicle registration number KBQ 922E that was being driven by the deceased, hitting it on the door and the impact caused the deceased fatal injuries. The Plaintiff further submitted that PW2 was an eye witness who was travelling together with the deceased. He relied on **William Kabogo Gitau vs George Thuo & 2 others (2010) eKLR.**

12. It was the Plaintiff's further submission that the 1st Defendant's exhibit was very explicit that PW2's evidence was the only credible evidence during the testimony. It was the Plaintiff's further submission that the 1st Defendant admitted upon cross examination that he was the legal owner of motor vehicle registration number KCG 763M at the time of the accident and sold the motor vehicle to the 2nd Defendant in the year 2020.

13. Through his written submissions dated 30th October 2025, the 1st Defendant submitted that there was no eye witness to

the causation of the accident. He relied on **Sally Kibii & another vs Dr. Francis Ogaro (2012) eKLR**. That the Police Abstract that was produced as evidence did not elaborate the circumstances of the accident and the Police Officer did not have sketch maps of the accident. He relied on **Techard Steam & Power Limited vs Mutio Muli Ngao (2019) eKLR et.al**. That the Plaintiff's evidence on liability was hearsay.

14. It was the 1st Defendant's submission that the Plaintiff's evidence was marred with conflicting accounts. That the Plaintiff failed to establish any negligence on the 1st Defendant's part and it was only fair that the Plaintiff bears full responsibility.

15. I have gone through the evidence and I have noted from the Plaintiff's witnesses, only Zachary Mose (PW2) witnessed the accident. He testified that he was in motor vehicle registration number KCG 763M which the deceased drove when they were involved in the accident. His testimony was

categorical that he blamed the driver of motor vehicle registration number KCG 763M for causing the accident as it veered off its lane. PW2's testimony remained unshaken after cross examination.

16. No. 500303 Cpl Meshack Munyendo (PW3) testified that he was not the investigating officer and did not visit the scene of the accident. He therefore could not testify as to the circumstances that led to the cause of the accident. In any event, any testimony he could give in relation to the circumstances of the accident would have been hearsay.

17. On the other hand, the 1st Defendant's (DW1) testimony was shaky *ab initio*. On one hand, he testified that he was not the registered owner of motor vehicle registration number KCG 763M but upon cross examination, he testified that he was in possession of the said motor vehicle in the year 2016 and sold it to the 2nd Defendant after he had cleared his loan which was after the accident. DW1 further testified that at

the time of the accident, the driver of motor vehicle registration number KCG 763M was Christopher Mogire. DW1 testified that he did not witness the accident.

18. From the above analysis, it was clear that the 2nd Defendant was neither in possession nor was the registered owner of motor vehicle registration number KCG 763M at the time of the accident. No evidence has been led by the Plaintiff to show any link between the 2nd Defendant and the causation of the accident. It is therefore my finding that there was no cause of action established against the 2nd Defendant and the Plaintiff's claim against him falls.

19. In regards to the public Inquest, both parties have admitted to its existence and are in alignment to its conclusion. The proceedings and findings of the Inquest were however not presented to this court as evidence. In my view, the findings of the Inquest as stated by both parties have no probative value in terms of assisting this court determine liability. I

concur with the findings in **Multiple Hauliers (E.A.) Ltd v Everline Osore & 2 others [2014] KEHC 1320 (KLR)**, where the court held: -

“.....For some reason it was only the short ruling that was produced as an exhibit. The ruling, however, was without any reasons. What was placed before the Trial court hearing the running down matter was an opinion of a Court of concurrent jurisdiction. There was no knowing whether the evidence before the Inquest Court had been tested in cross-examination. There was no way the Trial Court could on its own evaluate the material that was placed before the Inquest Court because the proceedings before that Inquest Court were not tendered in evidence. There will be occasion, no doubt, when the proceedings and opinion of an Inquest Court will be of probative value in subsequent civil cases but in the circumstances of this case, the

outcome of the inquest could not be relied on by the Magistrate to find on liability.”

20. With respect to the 1st Defendant, I disagree with his submission that there was no eye witness. The Plaintiff called PW2 who testified that he was in the subject motor vehicle when the accident occurred. PW2 elaborated on the circumstances that led to the accident. As earlier stated, PW2’s testimony remained uncontroverted upon cross examination. The 1st Defendant had the evidentiary burden to dispute or displace PW2’s testimony but failed to do so.

21. Flowing from the above and after considering the evidence tendered by both parties, it is my finding that the Plaintiff proved that the 1st Defendant caused the accident. It is my further finding that the 1st Defendant was 100% liable for causing the accident.

Quantum

22. In regard to the pain and suffering and loss of expectation of life, the court in **Mercy Muriuki & another v Samuel Mwangi Nduati & Anor (Suing as the Legal**

Administrators of the Estate of the late Robert Mwangi) [2019] KEHC 9014 (KLR), stated: -

“The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Kshs 100,000 while for pain and suffering the awards range from Kshs 10,000 to Kshs 100,000 with higher damages being awarded if the pain and suffering was prolonged before death”.

23. The Plaintiff proposed an award of Kshs 100,000/= for pain and suffering and Kshs 200,000/= for loss of expectation of life. On the other hand, the 1st Defendant proposed an award of Kshs 10,000/= for pain and suffering and Kshs 80,000/= for loss of expectation of life. I have considered the accompanying authorities from both parties.

24. George Angwenyi (PW1) and Zachary Mose (PW2) testified that the deceased died on the spot. PW1 produced a Death Certificate and Post Mortem Report as **P. Exh 2** and **P. Exh 5** respectively. The exhibits indicated that the deceased died on the material day (19th December 2016). From the above, it is my finding that the deceased died on the same day and did not suffer prolonged pain. In the circumstances, I award Kshs 50,000/= for pain and suffering and Kshs 150,000/= as loss of expectation of life.

25. Under the head of loss of dependency, **Section 4 of the Fatal Accidents Act** provides as follows: -

Every action brought by virtue of the provisions of this act shall be for the benefit of the wife, husband, parents and the child if the person, whose death so caused and shall , subject to the provisions of section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it

may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the cost not recovered from the defendant shall be divided amongst those persons in such shares as the court by its judgment shall find and direct.

26. Under this head, the Plaintiff submitted that the deceased earned Kshs 55,000/= and would have worked for 34 more years. The Plaintiff proposed an award of Kshs 14,960,000/= under this head. On the other hand, the 1st Defendant submitted that there was no payslip produced by the Plaintiff. The 1st Defendant proposed use of Kshs 9,000/= as the monthly wage. That the deceased was not married and had no children and that he would have worked for 30 more years. He proposed an award of Kshs 1,080,000/= under this head.

27. George Angwenyi (PW1) produced the deceased's letter of appointment and payslip as **P. Exh 7** and **8** respectively. The exhibits indicated that the deceased was employed by Nairobi Hospital as a Biomedical Technologist III who would earn a salary of Kshs 55,000/=. This is the same amount that the Plaintiff pleaded in the Plaint. However, the payslip (P. Exh 8) indicated that the deceased earned a basic salary of Kshs 37,104.65/=. Of the two exhibits, I find the payslip to be of more probative value and accurate in terms of the deceased's monthly salary.

28. In terms of the multiplier, the Death Certificate (P. Exh 2) indicated that the deceased died aged 26 years. I agree with the Plaintiff that the deceased would have worked until he was 60 years. Therefore, the multiplier would be 34 years. In terms of the dependency ratio, the Plaint stated that the deceased's dependants were his parents and siblings. It is my finding that the ratio of 1/3 would be sufficient.

29. Flowing from the above, the loss of dependency is calculated as Kshs 37,104.65 x 34 x12 x 1/3= Kshs 5,046,232.40/=.

30. On funeral expenses, the Plaintiff proposed an award of Kshs 150,000/= while the 1st Defendant submitted that the same was not pleaded or proved.

31. **Section 6 of the Fatal Accidents Act** makes provision for funeral expenses as follows: -

In an action brought by virtue of the provisions of this Act the court may award, in addition to any damages awarded under the provisions of subsection (1) of section 4, damages in respect of the funeral expenses of the deceased person, if those expenses have been incurred by the parties for whom and for whose benefit the action is brought.

32. The Court of Appeal, in **Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited** [2016] KECA 56 (KLR) stated that: -

“We do not discern from our reading of this decision a departure from the time-tested principle that special damages should not only be specifically pleaded but must also be strictly proved ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc. ...”

33. Guided by the above authority, I award Kshs 100,000/= as funeral expenses.

