



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, TUNOI & OWUOR, J.J.A.
CIVIL APPEAL NO. 279 OF 2000**

BETWEEN

REHEMA ADHIAMBO MARJANAPPELLANT

AND

FANUEL ABWARO

AKAMBA PUBLIC ROAD SERVICES RESPONDENTS

**(Appeal from the judgment of the High Court of Kenya at
Nairobi (Ang'awa J) dated 27th April, 1999**

in

H.C.C.C. NO. 1225 OF 1993)

JUDGMENT OF THE COURT

This is an appeal from the decision of the High Court of Kenya, Ang'awa, J. in **Civil Case No. 1225 of 1993**, delivered on 27th April, 1999, whereby the learned Judge dismissed with costs the Plaintiff's suit because according to her, the suit was not proved "beyond a balance of probability".

When counsel for the plaintiff, Mr Omangi, had rested his submissions, Mr Chacha Odera, for the respondents, informed the Court that he could not resist the appeal and that he was conceding it. He admitted that the accident which caused the death of the husband of the Plaintiff occurred in the circumstances described in the plaint and that the first respondent, the driver of the motor vehicle which occasioned the accident had been charged with and convicted of causing the death of the deceased by dangerous driving. Mr Odera asked us to allow the appeal since liability was admitted by the respondents. As for the general damages, he thought that the award of Shs.600,000/= decreed by the learned Judge, if the claim had succeeded, was reasonable in the circumstances and the same could be made for the plaintiff. So, too, were the special damages of Shs.57,548/= for the funeral expenses. Mr Omangi, concurred.

The brief facts leading to the claim are as follows. The deceased Marjan Abdul, then aged about 30 years old, owned a mini bus registration number KAA 733C which he used as a "matatu". It plied regularly along Kisumu - Nairobi road. On the fateful day, 12th September, 1990, at about 9 p.m. a bus registration number KUH 232 driven by the first respondent and owned by the second respondent violently collided head-on with the matatu near Ahero Market. The deceased sustained severe injuries of which he succumbed to. The plaintiff then brought action under the Fatal Accidents Act and the Law

Reform Act. During the trial the claim under the latter Act was abandoned because Letters of Administration of the estate of the deceased had not been obtained before the suit was filed.

In the result, we allow the appeal and set aside the judgment of the superior court. We enter judgment for the plaintiff as follows:

Special damages Shs. 57,548/=

General damages under the Fatal Accidents Act Shs.600,000/=

These awards will bear interest at Court rates. The plaintiff shall have costs both here and in the court below.

Dated and delivered at Nairobi this 13th day of July, 2001.

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR