

Summons to Enter Appearance
O.5.r.2 (1)



REPUBLIC OF KENYA



IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. 2388 OF 2019

PATRICIA KANINI MBINDA
AMOS MUNYOLI NGUMU
C/O J. MALUKI & COMPANY ADVOCATES

-Versus-

KENYA PLANT HEALTH
INSPECTORATE SERVICES
CLEOPHAS IGADWA JISSI

} 1st Plaintiff
} 2nd Plaintiff

} 1st Defendant
} 2nd Defendant

o: KENYA PLANT HEALTH
INSPECTORATE SERVICES,
P.O BOX 42024-00100
NAIROBI

WHEREAS the above-named Plaintiffs have instituted a suit against you upon the claim, the particulars of which are set out in the copy plaint with annexure attached hereto.

YOU ARE HEREBY REQUIRED within **15 (FIFTEEN)** days from the date of service hereof to enter an appearance in the said suit.

Should you fail to enter an appearance within the time mentioned above, the plaintiff may proceed to the suit and judgment may be given in your absence.

Given and issued under my hand and the Seal of Court this 27th day
of NOV, 2019



IMPORTANT NOTICE

You may appear in this suit by entering an appearance either personally, or by duly appointed advocate
NAIROBI..... Appearance can be entered by filing with the court Memo. Of Appearance (forms are obtainable from Court at 30 cents each) in duplicate, showing the defendant's address for service. A copy of Memo. of Appearance should be sent to the Plaintiff or his advocate, if any. **J. MALUKI & COMPANY ADVOCATES, P.O BOX 12328-00100, NAIROBI**

You may enter an appearance through the Post by sending the following to the CHIEF.....
Magistrate (Civil), P.O. Box 30420 NAIROBI

- (i) Memorandum of Appearance and a copy.
- (ii) Notice of Appearance and a copy.
- (iii) Two envelopes each sufficiently stamped; one addressed to the plaintiff or his advocate at the address for service and the other addressed to yourself.

(1) If you admit the claim the total sum now due is:-

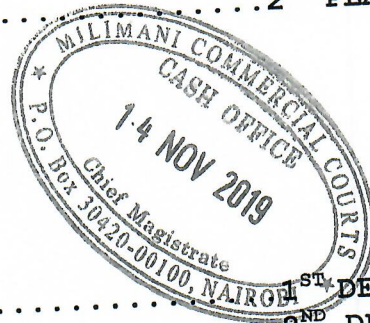
Sum claimed in plaint.....	} See Plaintiff
Advocate's costs	
Court fees	
Court collection fee.....	
TOTAL.....	

(3) If payment is made direct to the plaintiff no court Collection fee is payable. Cheques cannot be accepted. Remittances must be by coin, bank-notes or postal orders.

THE REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. 8388 OF 2019
FAST TRACK

PATRICIA KANINI MBINDA 1ST PLAINTIFF
AMOS MUNYOLI NGUMU 2ND PLAINTIFF

(Both suing as Administrator and
Legal Representative of the
Estate of the late BENSON MUTUA
WAMBUA (Deceased) .



-VERSUS-

KENYA PLANT HEALTH
INSPECTORATE SERVICES 1ST DEFENDANT
CLEOPHAS IGADWA JISSI 2ND DEFENDANT

PLAINT

1. THE 1st Plaintiff is a female adult of sound mind, residing and working for gain in Nairobi within the Republic of Kenya and one of two Administrators of the Estate of the late BENSON MUTUA WAMBUA (Deceased). Her address of service for the purposes of this suit is care of **J. MALUKI & COMPANY ADVOCATES, MAMA NGINA STREET, VEDIC HOUSE, 7TH FLOOR, P O BOX 12328-00100, NAIROBI.**
2. THE 2nd Plaintiff is a male adult of sound mind, residing and working for gain in Nairobi within the Republic of Kenya and one of two Administrators of the Estate of the late BENSON MUTUA WAMBUA (Deceased). His address of service for the purposes of this suit is care of **J. MALUKI & COMPANY ADVOCATES, MAMA NGINA STREET, VEDIC HOUSE, 7TH FLOOR, P O BOX 12328-00100, NAIROBI.**
3. THE Plaintiffs brings this suit in their capacity as the Administrators and Legal Representatives of the Estate of the late BENSON MUTUA WAMBUA (Deceased) for compensation of his Estate under The Law Reform Act, (cap 26) Laws of Kenya and compensation for the late BENSON MUTUA WAMBUA (Deceased) dependants under the Fatal Accidents Act, (cap 32) Laws of Kenya.
4. THE 1st Defendant is a body corporate and a parastatal of the government of the Republic of Kenya established under **section 3 of the Kenya Plant Health Inspectorate Service Act (No. 54 of 2012)**. Service of Summons to be effected through the Plaintiff's Advocates' office.

5. THE 2nd Defendant is a male adult of sound mind residing and working for gain within the republic of Kenya. Service and summons to be effected through the Plaintiffs' advocates' office.
6. At all material times relevant to this suit, the 1st Defendant was the registered and/or beneficial owner of motor vehicle registration number KAJ 589 S a Mitsubishi saloon car and the 2nd Defendant was its authorized driver, servant, employee and/ or agent.
7. THE 1st Defendant is sued vicariously for the acts and/or omissions of the 2nd Defendant who was its authorised driver, servant, employee and/ or agent on the material date of the accident.
8. On or about 22ND September, 2011, the deceased was a lawful pedestrian crossing Mombasa road near Neak Motors within Nairobi County when motor vehicle registration number KAJ 589 S owned by the 1st Defendant was so negligently, recklessly and/or carelessly driven at a high speed without any due care, regard and/or attention by the 2nd Defendant that it knocked down the deceased who sustained serious injuries to his person to which he succumbed.

**PARTICULARS OF NEGLIGENCE OF THE 1ST AND 2ND DEFENDANTS,
DRIVER AND/OR SERVANT AND/OR AGENT AND/OR EMPLOYEE**

- a. Driving motor vehicle registration number KAJ 589 S at an excessive speed in the circumstances;
 - b. Failing to stop, swerve, slow down, and/or in anyway control the said motor vehicle so as to avoid knocking down the deceased.
 - c. Failing to keep any proper lookout or to have sufficient regard for pedestrians.
 - d. Driving motor vehicle registration number KAJ 589 S in a careless and negligent manner.
 - e. Driving a defective motor vehicle.
 - f. Failing to adhere to the provisions of the Traffic Act and the High way code.
 - g. Failing to adhere and observe traffic rules.
 - h. Causing an accident.
 - i. Driving a defective motor vehicle
9. As a result of the accident in question, BENSON MUTUA WAMBUA (Deceased) sustained fatal injuries from which he

died on the same day and the 1st and 2nd Defendants are liable.

10. THAT Nairobi Milimani Inquest Number 14 of 2012 was conducted to establish the circumstances of the deceased's death.
11. THAT the Court delivered its finding in Nairobi Milimani Inquest Number 14 of 2012 on 15th November, 2016 vide a Ruling of an even date wherein it found the 2nd Defendant liable for the death of the deceased herein and recommended that he be charged with the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act.

PARTICULARS PURSUANT TO STATUTE

12. The Plaintiff brings this action for and on behalf of the Estate of the Deceased and his Dependents namely:-

a) Patricia Kanini Mbinda-	40 Years (Wife)
b) Ndumi Mutua-	20 Years (Daughter)
c) Minoo Mutua-	17 Years (Daughter)
d) Mumo Mutua -	14 Years (Son)
e) Mutheu Mutua-	11 Years (Daughter)
f) Mwongeli Mutua-	6 Years (Son)
g) Ndululu Wambua Ndivo-	71 Years (Mother)

13. The nature of the claim in respect of which damages are sought is as follows: the Deceased sustained fatal injuries and died on the same day. Furthermore, at the time of his death, the deceased was 36 years and full of life; He enjoyed good health and had a vigorous and happy life. His estate has suffered loss and damage.

14. Further, the Plaintiffs aver that the Deceased was employed by Bia Bora Distributors Limited in Nairobi as a Sales Assistant earning **Kshs. 10,451.00** per month and was inter alia supporting his dependants.

15. **PARTICULARS OF SPECIAL DAMAGES**

(a) Funeral Expenses.....	(To be supplied)
(b) Copy of Records.....	Kshs. 550.00
(c) Cost of obtaining limited Grant of letters of Administration.....	Kshs. 36,435.00

TOTAL..... Kshs. 36,985.00

And the Plaintiff claims damages

16. Despite demand and Notice of Intention to sue having been given, the Defendants have refused failed and/or neglected to admit liability and persist in such refusal hence necessitating the filing of this suit.
17. There is no other suit pending, and/or have there been any previous proceedings between the Plaintiff and the Defendants over the subject matter herein.
18. The cause of action arose within the Jurisdiction of this Honourable Court.

REASONS WHEREFORE the Plaintiff prays for judgment against the Defendant for:-

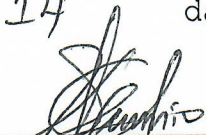
- a) General damages under the Fatal Accident Act and the Law Reform Act;
- b) Special Damages Kshs. **Kshs. 36,985.00;**
- c) Costs of this suit;
- d) Interest at Court rates;
- e) Any other or further relief that this Honourable Court may deem fit to grant.

DATED at Nairobi this

14TH

day of NOVEMBER,

2019


J. MALUKI & COMPANY

ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY

ADVOCATES,

MAMA NGINA STREET,

VEDIC HOUSE, 7TH FLOOR

P O BOX 12328 - 00100

NAIROBI (Our Ref: JMM/634/1)

TEL: 020-3317408/0715 056 974

EMAIL: advocates@malukicompany.com

TO BE SERVED UPON:-

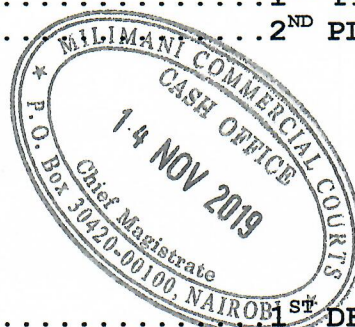
1. KENYA PLANT HEALTH
INSPECTORATE SERVICES,
KEPHIS HEADQUARTERS
P.O BOX 42024-00100
NAIROBI

2. MR. CLEOPHAS IGADWA JISSI
P.O. Box 49592-00100
NAIROBI.

THE REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. _____ OF 2019

FAST TRACK

PATRICIA KANINI MBINDA.....1ST PLAINTIFF
AMOS MUNYOLI NGUMU2ND PLAINTIFF
*(Both suing as Administrator and
 Legal Representative of the
 Estate of the late BENSON MUTUA
 WAMBUA (Deceased) .*



-VERSUS-

**KENYA PLANT HEALTH
 INSPECTORATE SERVICES**.....1ST DEFENDANT
CLEOPHAS IGADWA JISSI.....2ND DEFENDANT

VERIFYING AFFIDAVIT

I, PATRICIA KANINI MBINDA of Post office Box Number 32, Yoani do hereby make oath and state as follows:-

1. **THAT** I am an adult female of sound mind and the 1st Plaintiff herein and one of two administrator and legal representative of the Estate of the late BENSON MUTUA WAMBUA (Deceased) hence competent to swear this Affidavit.
2. **THAT** I have instructed the firm of **J. MALUKI & COMPANY ADVOCATES** to file the suit herein on behalf of the Estate of the deceased.
3. **THAT** the contents of the Plaint herein are true, correct and in accordance with my instructions.
4. **THAT** what is deponed to herein is true to the best of my knowledge and belief.

SWORN by the said

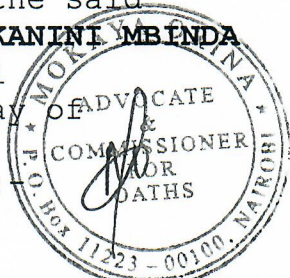
PATRICIA KANINI MBINDA

At Nairobi

This day of _____ 2019

BEFORE ME:

COMMISSIONER FOR OATHS



D E P O N E N T

DRAWN & FILED BY:-

J. MALUKI & COMPANY

ADVOCATES,

MAMA NGINA STREET,

VEDIC HOUSE, 7TH FLOOR

P O BOX 12328 - 00100

NAIROBI (Our Ref: JMM/634/1)

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TO BE SERVED UPON:-

1. KENYA PLANT HEALTH
INSPECTORATE SERVICES,
KEPHIS HEADQUARTERS
P.O BOX 42024-00100

NAIROBI

2. MR. CLEOPHAS IGADWA JISSI
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NAIROBI.

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CIVIL SUIT NO. _____ OF 2019

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PATRICIA KANINI MBINDA.....1ST PLAINTIFF

AMOS MUNYOLI NGUMU2ND PLAINTIFF

(Both suing as Administrator and
Legal Representative of the
Estate of the late BENSON MUTUA
WAMBUA (Deceased) .

-VERSUS-

KENYA PLANT HEALTH

INSPECTORATE SERVICES.....

CLEOPHAS IGADWA JISSI.....2ND DEFENDANT



AUTHORITY TO ACT

(UNDER Order 4 Rule 1(3) of the Civil Procedure Rules, 2010)

TAKE NOTICE that I, **AMOS MUNYOLI NGUMU** of P O Box 32, Yoani and a Co-Plaintiff in this matter do **HEREBY** give authority to the said **PATRICIA KANINI MBINDA** to sign the Verifying Affidavit in this suit and such other documents and/or pleadings as may be required from time to time and as the case by be.

DATED AT NAIROBI THIS _____ DAY OF _____ 2019.

SIGNED

AMOS MUNYOLI NGUMU


J. MALUKI & COMPANY
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY

ADVOCATES

MAMA NGINA STREET,

VEDIC HOUSE, 7TH FLOOR

P O BOX 12328 - 00100

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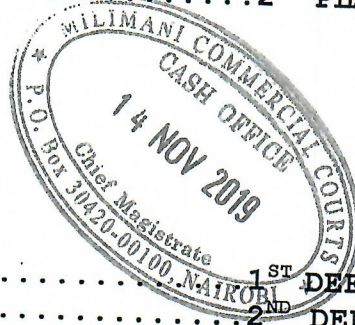
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(Both suing as Administrator and
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Estate of the late BENSON MUTUA
WAMBUA (Deceased)).

-VERSUS-

KENYA PLANT HEALTH
INSPECTORATE SERVICES.....1ST DEFENDANT
CLEOPHAS IGADWA JISSI.....2ND DEFENDANT

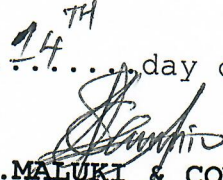


PLAINTIFFS LIST OF WITNESSES

The Plaintiffs shall at the hearing hereof call all or any of the following witnesses:-

1. PATRICIA KANINI MBINDA
2. AMOS MUNYOLI NGUMU
3. POLICE OFFICER
4. ANY OTHER WITNESSES TO BE CALLED AT THE HEARING HEREOF.

DATED at NAIROBI this.....¹⁴.....day of.....NOVEMBER.....2019


J. MALUKI & COMPANY
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY
ADVOCATES,
MAMA NGINA STREET,
VEDIC HOUSE, 7TH FLOOR
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AMOS MUNYOLI NGUMU2ND PLAINTIFF

*(Both suing as Administrator and
Legal Representative of the
Estate of the late BENSON MUTUA
WAMBUA (Deceased)).*

-VERSUS-

KENYA PLANT HEALTH

INSPECTORATE SERVICES.....

CLEOPHAS IGADWA JISSI.....

1ST DEFENDANT
2ND DEFENDANT

WITNESS STATEMENT

NAME: PATRICIA KANINI MBINDA

ID NO: 14636694

ADDRESS: P.O BOX 32, YOANI

I, **PATRICIA KANINI MBINDA** holding the above mentioned particulars and address state as hereunder:-

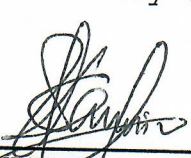
1. That I am the 1st Plaintiff herein well versed with the facts of the suit herein hence competent to make this statement.
2. That the late BENSON MUTUA WAMBUA (Deceased) was my husband.
3. That the deceased died on 22nd September, 2011 as a result of a road accident along Mombasa Road near Neak Motors involving the deceased and motor vehicle registration number KAJ 589 S.
4. That an inquest being Nairobi Milimani Chief Magistrate's Inquest Number 14 of 2012 was conducted to determine the cause of death of the deceased. I testified in the inquest as PW 2.
5. That the Court delivered its finding in Nairobi Milimani Chief Magistrate's Inquest Number 14 of 2012 on 15th November, 2016 vide a Ruling of an even date wherein it found the 2nd Defendant liable for the death of the deceased herein and recommended that he be charged with the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act.

6. That the deceased was aged 36 years at the time of his death. He enjoyed good health and had a vigorous and happy life. His estate has suffered loss and damage as a result of his untimely death.
7. That the Deceased was employed by Bia Bora Distributors Limited in Nairobi as a Sales Assistant earning **Kshs. 10,451.00** per month and was inter alia supporting his dependants.
8. That the deceased left behind several Dependants namely:-
- a) Patricia Kanini Mbinda- 40 Years (Wife)
 - b) Ndumi Mutua- 20 Years (Daughter)
 - c) Minoos Mutua- 17 Years (Daughter)
 - d) Mumo Mutua - 14 Years (Son)
 - e) Mutheu Mutua- 11 Years (Daughter)
 - f) Mwongeli Mutua- 6 Years (Son)
 - g) Ndululu Wambua Ndivo- 71 Years (Mother)
9. That I incurred funeral expenses and legal charges for obtaining a grant and other documents necessary for filing this suit which I claim from the dependants.
10. That I beseech the Court to grant the prayers in the Plaint filed herein.
11. That is all I have to say.

Sign..... Date.....

NAME:.....

DATED at Nairobi this^{24TH}..... day ofNOVEMBER..... 2019.



J. MALUKI & COMPANY
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY

ADVOCATES,

MAMA NGINA STREET,

VEDIC HOUSE 7TH FLOOR

P O BOX 40328 - 00100

NAIROBI (Our Ref: JMM/634/1)

TEL: 020-3317408/0715 056 974

EMAIL: advocates@malukicompany.com

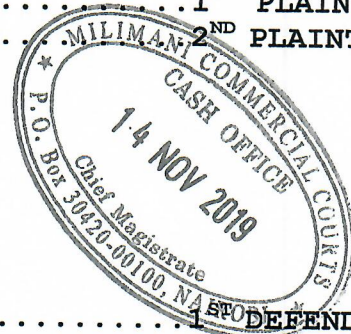
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P.O BOX 42024-00100
NAIROBI

2. MR. CLEOPHAS IGADWA JISSI
P.O. Box 49592-00100
NAIROBI.

THE REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
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CIVIL SUIT NO. _____ OF 2019
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PATRICIA KANINI MBINDA.....1ST PLAINTIFF
AMOS MUNYOLI NGUMU2ND PLAINTIFF
(Both suing as Administrator and
Legal Representative of the
Estate of the late BENSON MUTUA
WAMBUA (Deceased) .



-VERSUS-

KENYA PLANT HEALTH
INSPECTORATE SERVICES.....1ST DEFENDANT
CLEOPHAS IGADWA JISSI.....2ND DEFENDANT

WITNESS STATEMENT

NAME: AMOS MUNYOLI NGUMU

ID NO: 227221993

ADDRESS: P.O BOX 32, YOANI

I, **AMOS MUNYOLI NGUMU** holding the above mentioned particulars and address state as hereunder:-

1. That I am the 2nd Plaintiff herein well versed with the facts of the suit herein hence competent to make this statement.
2. That the late BENSON MUTUA WAMBUA (Deceased) was my nephew.
3. That the deceased died on 22nd September, 2011 as a result of a road accident along Mombasa Road near Neak Motors involving the deceased and motor vehicle registration number KAJ 589 S.
4. That an inquest being Nairobi Milimani Chief Magistrate's Inquest Number 14 of 2012 was conducted to determine the cause of death of the deceased. I testified in the inquest as PW 1.
5. That the Court delivered its finding in Nairobi Milimani Chief Magistrate's Inquest Number 14 of 2012 on 15th November, 2016 vide a Ruling of an even date wherein it found the 2nd Defendant liable for the death of the deceased herein and recommended that he be charged with the offence of causing

death by dangerous driving contrary to section 46 of the Traffic Act.

6. That the deceased was aged 36 years at the time of his death. He enjoyed good health and had a vigorous and happy life. His estate has suffered loss and damage as a result of his untimely death.
7. That the Deceased was employed by Bia Bora Distributors Limited in Nairobi as a Sales Assistant earning **Kshs. 10,451.00** per month and was inter alia supporting his dependants.
8. That the deceased left behind several Dependants namely:-
 - a) Patricia Kanini Mbinda- 40 Years (Wife)
 - b) Ndumi Mutua- 20 Years (Daughter)
 - c) Mino Mutua- 17 Years (Daughter)
 - d) Mumo Mutua - 14 Years (Son)
 - e) Mutheu Mutua- 11 Years (Daughter)
 - f) Mwongeli Mutua- 6 Years (Son)
 - g) Ndululu Wambua Ndivo- 71 Years (Mother)
9. That the deceased's wife incurred funeral expenses and legal charges for obtaining a grant and other documents necessary for filing this suit which I claim from the dependants.
10. That I beseech the Court to grant the prayers in the Plaint filed herein.
11. That is all I have to say.

Sign..... Date.....

NAME:.....

DATED at Nairobi this ^{14TH} day of NOVEMBER 2019.


J. MALUKI & COMPANY
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY
ADVOCATES,

MAMA NGINA STREET,
VEDIC HOUSE, 7TH FLOOR

P O BOX 10328 - 00100

NAIROBI (Our Ref: JMM/634/1)

TEL: 020-3617408/0715 056 974

EMAIL: advocates@malukicompany.com

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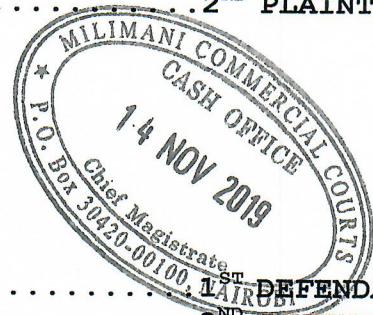
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-VERSUS-

KENYA PLANT HEALTH
INSPECTORATE SERVICES.....1ST DEFENDANT
CLEOPHAS IGADWA JISSI.....2ND DEFENDANT

PLAINTIFFS' LIST OF DOCUMENTS

THE Plaintiffs shall during the hearing/trial hereof rely on the following documents:-

1. Copy of Police abstract dated 6th May, 2013;
2. Copy of Ruling in Nairobi Milimani Chief Magistrate's inquest No. 14 of 2012;
3. Copy of death certificate;
4. Copy of Limited Grant Of Administration Ad Litem dated 29th May, 2019;
5. Copy of Letter from Chief dated 3rd May, 2013;
6. Copies of National Identification cards of the Plaintiffs.
7. Copy of Deceased's Payslip for June, 2011;
8. Receipt by J. Maluki dated 16th December, 2016;
9. Court Revenue receipt in Tawa SRMSC No. 10 of 2018;
10. Demand letters dated 25th October, 2018; and
11. Statutory Notice.

DATED at NAIROBI this.....14TH.....day of...NOVEMBER.....2019



J. MALUKI & COMPANY
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

J. MALUKI & COMPANY

ADVOCATES,

MAMA NGINA STREET,

VEDIC HOUSE 7TH FLOOR

P O BOX 42328 - 00100

NAIROBI (Mr Ref: JMM/634/1)

TEL: 020-3317408/0715 056 974

EMAIL: advocates@malukicompany.com

TO BE SERVED UPON:-

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INSPECTORATE SERVICES,

KEPHIS HEADQUARTERS

P.O BOX 42024-00100

NAIROBI

2. MR. CLEOPHAS IGADWA JISSI

P.O. Box 49592-00100

NAIROBI.

REPUBLIC OF KENYA

THE KENYA POLICE

ABSTRACT FROM POLICE ON A ROAD ACCIDENT

To: The officer I/c LIWALI NG'ARAA Division: 6/5/2013
P.O. Box 46782 Our ref: ---
NAT 2031 Police ref: ---
I/we understand that your Police Station received a report of an accident involving KAT 5895
DRIVEN BY CHEOPAI ILGADWA CIVIL
of (address) BOX 49592 - 0105 NAT 2031
Which occurred on (date) 22/09/2013 at (time and place) 10:00 PM
MOMBASA ROAD NEAR KENYAN AIRPORT
Involving vehicle(s) Reg. No. KAT 5895 make MITRA
and PEDESTRIAN make ---
Name of police station where accident reported NAT 2031 LIWALI
From the record could you please furnish us with the following information:
1. (a) Name and address of the owner of the vehicle Reg. No. KAT 5895
KEPHIS BOX 49592 NAT 2031
(b) Name of the Insurance Company FIDELITY SHIELD INCORPORATED
2. Has the investigation been completed? Yes/No. (delete as appropriate) NO
If so, has anyone been charged? Yes/No. NO
If this case is still under investigation is there any likelihood of either party being prosecuted? Yes/No. NO
3. If it is intended to prefer charges, state:
(a) Name of driver/cyclist/pedestrian ---
(b) Vehicle registration No. ---
4. Name of charge ---
5. Court Case File No. ---
6. Name of Investigation Officer ---
7. Result of investigations or prosecutions (if known) ---
8. Accident Register/OB Number ---
9. Persons Injured Name BENSON MUKUNA M Class of Person --- Address Box 13412 Nature of Injury DECEASED
NAT 2031
10. Name of Witnesses ---
SET MARI
PL MOMBASA
Date 6/5/2013

(Signed)

Addresses
Box 46782 NB
Box 46782 NB
Date 6/5/2013
Office-In-Charge
Police Station
Box 40782, NAROK

11. When completed, this form is to be returned to:
Name and address of Insurance Company ---

OR

Legal Representative or other Interested party stating Interest and/or connection with the accident. ---

PATRICIA KANINI
M.BINDA

Kanini
Signature of Person/Company
Applying for the abstract

Note: - when applying forward in triplicate to officer I/c Division.

INS NO C 7746358
P/NO C 3031029 P/84/comp
Comm L9/5/2011
EXP 18/5/2012
INS: FIDELITY SHIELD

6/5/2013
Bew

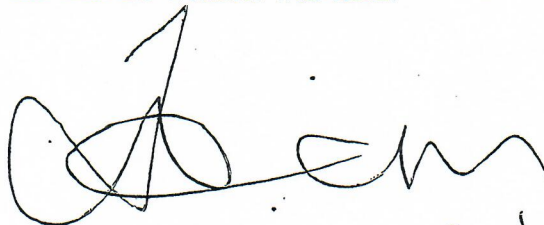
REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S CRIMINAL COURT
AT NAIROBI-MILIMANI
INQUEST NO. 14 OF 2012

*IN THE MATTER OF PUBLIC INQUEST INTO THE DEATH OF MR. BENSON MUTUA
WAMBUA*

Ruling

Brief facts

1. This ruling relates to a public inquest held to inquire into the death of Mr. Benson Mutua Wambua, who died as a result of a fatal accident that occurred along Mombasa Road Nairobi on the 22nd day of September, 2011.
2. The court heard from a total of eight witnesses who gave their account of what transpired on the fateful day and thereafter. PW4, Mr. Cleophas Igadwa was the driver of the car, KAJ 589S, a Mitsubishi Saloon car that caused the accident. The car belonged to a parastatal, Kenya Plant Health Inspectorate Services, KEPHIS. According to PW4, on the material day, while he was in the course of his official duty as driver taking PW3 Evans Kichamu, to an official assignment Mombasa road when the accident occurred. He said that the road had three lanes and he was in the third lane. He told the court that the weather was clear, thus he could see clearly. The road was also straight. He told the court that suddenly, the deceased appeared from the right side of the road and crossed to the third lane where he was driving as a result he was hit by the motor vehicle. He testified that he had not seen the deceased before the accident as there were vehicles which included a Canter on his left that blocked his view. The deceased was hit, fell on the bonnet of the car, then fell down about ten metres from the point of impact. PW4 managed to stop his motor vehicle about ten metres away. He then helped to remove the body from the road. A police officer who was in a bus alighted and called traffic officers and an ambulance. The body was then taken to the mortuary.
3. PW3, Evans, who was the passenger in PW1's car, gave an almost similar account as that of PW4. He said that the deceased had crossed the road while he was in a hurry hence was hit by the car that was being driven by PW1. He also confirmed that the road at the scene was clear and that the weather was clear.

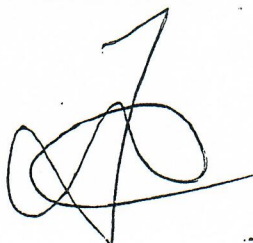


15.11.16

4. PW1 – Amos Ngumu and PW2 Patricia Mbinda, the uncle and wife of the deceased respectively, went and identified the body of the deceased at the mortuary.
5. PW5, Inspector Peterson Sagwe, a motor vehicle inspector, inspected the motor vehicle registration number KAJ 589 S, Mitsubishi Saloon. His inspection revealed after-accident damages of the front bumper, the grill, the bonnet, offside front wing panel, shattered windscreen, dismantled offside front lamps. He said that the car had pre-accident defects which included a worn out rear tyre. He produced a certificate of examination and motor vehicle test as P Exhibit 3 and 4. In his opinion the motor vehicle was being driven at a moderate speed at the time of accident as the damages were not extensive.
6. PW6 PC Elias Ndumba, a traffic officer, visited the scene of the accident immediately the accident occurred. He said he did not find any other independent witness apart from PW1 and PW2. He was in the company of PC Muinde PW7 who drew a sketch map of the scene. The maps were produced as P exhibits 1 (a) and (b) by PW7. PW7 in his testimony said that the motor vehicle had been on the middle lane at the time of accident and that he was able to know this was the point of impact as there was debris there. He did not find skid marks at the point of impact but they were after the point of impact which according to PW7 was a bid by the driver to avoid running over the victim. They took the body to the mortuary. They searched the body and found the deceased's ID card. The car had stopped about 8 meters from the point of impact.
7. Dr. Dorothy Njeru, a pathologist testified as PW8. She told the court that when she examined the body of the deceased, she found that the body externally had a fractured right ankle, dislocated left shoulder, bruises on the back, scalp and left shoulder. Internally there was bleeding into the chest and abdominal cavity and tears on the liver, bleeding on the scalp, fractures on the scalp and bruising on the brain substance. She concluded that the deceased had died as a result of multiple injuries due to a trauma caused by a blunt force trauma that was consistent with a motor vehicle accident. She produced her report as P exhibit 4.

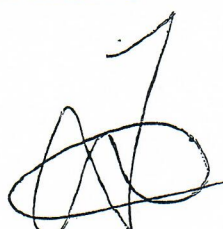
Analysis and recommendations

I have paid due regard to the evidence and testimonies made in this inquest. At this point, am required to direct myself to that evidence and make recommendations based on my findings on how Mr. Benson Wambua died.



15.11.16

8. To begin with, it was PW4 who was driving the car that caused the accident, leading to the death of the deceased. PW4 was carrying PW3 as a passenger in that vehicle. The question here is whether PW4 could have reasonably avoided the accident given the conditions of the road and the traffic. PW4, PW3 and PW6 have told this inquest that the road was clear, there was no corner at the scene and that the weather was clear that the driver could see around him. PW4 further told this court that he was on the second lane, and cars around him on the first and third lane could not permit him to see on his sides so he could not see the deceased cross the road. There is a contradiction on this assertion. When PW3 was testifying, he told the inquest that he saw the man was in hurry and that he saw him go past two cars before he encountered their car. If one could see a pedestrian cross two lanes before getting to their lane, what would prevented PW4 from stopping?
9. Since the road was straight, the driver should have seen the pedestrian coming and should have done all within his powers to avoid hitting the pedestrian. PW7 told the court that the driver stopped about eight metres from the point of the impact. PW3 and PW4 said that the body fell from the bonnet of the car to about 20 metres from the point of the impact and that he stooped about 10 metres thereafter the body had fallen off. PW7 also testified that there were no skid marks at the point of impact. This to me shows that the driver did not do anything to try to avoid hitting the pedestrian. This can mean two things; either the driver was not careful while driving or that the car was on such a high speed that he could not break or swerve it to avoiding hitting the pedestrian. If this is true, then it contradicts the account of PW4 that he was driving at a moderate speed of 50-60 kph.
10. PW5, who examined the car, said that the car was defective even before it got an accident. It had worn out rear tyres as well as worn out offside wing panel. First of, it is unlawful to drive defective cars on the road as this endangers other road users and secondly, this court is inclined towards believing that it was due to these defects that the driver could not control it well enough to avoid hitting the deceased and that is also why the driver stopped about thirty metres from the point to impact.
11. It is from the foregoing going that this court concludes that though Mr. Bensosn Wambua died as a result of the road accident, and even though no foul play can be established

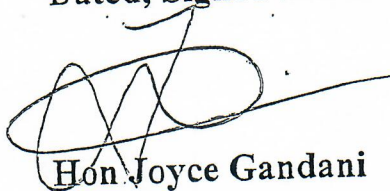
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against the driver of KAJ 589 S, the death could not have occurred if PW4 had been more careful and alert on the road and had tried to avoid hitting the deceased.

12. From the foregoing therefore, I recommend that

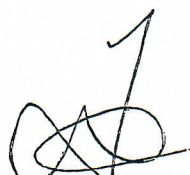
- a) PW4, Mr. Cleophas Igadwa Jissi be arrested and charged with the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act.
- b) The inquest is now ordered closed.

Dated, Signed and delivered in Nairobi this 15 Day of Nov 2016



Hon. Joyce Gandani

Chief Magistrate

 cm
15.11.16

SIGN HERE

REPUBLIC OF KENYA

No 157039

CERTIFICATE OF DEATH

Death in the Nairobi		District in the Nairobi		Province	
Entry No.	261118875	Name and Surname of Deceased	Benson Mutua Wambua		
Sex	Male	Age	36 yrs	Occupation	Sales Assistant
Date of Death	22/9/2011	Place of Death	Mombasa Road	Residence	Mbooni
Cause of Death	Multiple injuries due to blunt trauma consistent with motor vehicle accident.				
Name and Description of Informant	Dr. Njeru	Name of Registering Officer	J.Y. Sinoyia	Date of Registration	2/11/2011

District/Assistant

J.N. Wamalwa

I, Nairobi District, hereby certify that this certificate is compiled from an entry/return in the Register of Deaths in the District.

District/Assistant Registrar

Ca. 14513/A of 20/12/11

Given under the Seal of the Director of Civil Registration on the 28 day of Dec 2011

This certificate is issued in pursuance of the Births and Deaths Registration Act (Cap. 149) which provides that a certified copy of any entry in any register or return purporting to be sealed or stamped with the Seal of the Director of Civil Registration shall be received as evidence of the dates and facts therein contained without any or other proof of such entry.

WI

GPK 5065-1m-2/2011

for
Public
Nairobi

REPUBLIC OF KENYA

PROBATE AND ADMINISTRATION

MISCELLANEOUS APPL. NO.10.... OF2018.....

IN THE MATTER OF THE ESTATE OF BENSON MUTUA WAMBUA..
(DECEASED)

LIMITED GRANT OF LETTERS OF ADMINISTRATION
AD LITEM

Be it known that letters of administration *ad litem* of all the estate of the above-named BENSON MUTUA WAMBUA... who died domiciled in Kenya on the ...22ND SEPTEMBER 2011., which devolves to and vests in his Personal Representatives but limited to the purposes only for filing suit, and until further representation were granted by this Court to ...PATRICIA KANINI MBINDA AND AMOS MUNYOLI NGUMU..., them having undertaken to administer such estate according to law (limited as aforesaid) and until further representation be granted and render a true and just account thereof whenever required by law to do.

Issued by the Senior Resident Magistrate's Court through the registry at TAWA



this 29TH day of MAY..... 2018.....

.....
JUDGE /MAGISTRATE OF THE HIGH COURT

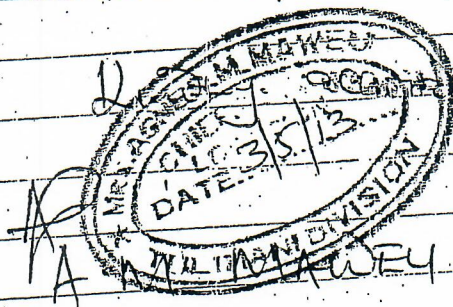
OFFICE OF THE PRESIDENT

CHIEF'S OFFICE
KALAWANI LOC
3rd May 2013

KAL/ADM/DE/VOL 2

TO WHOM IT MAY CONCERN
RE: LATE BENSON MUTUA WAMBUA
The above mentioned hailed from Kalawani
Location, Mwinundu sublocation and passed
away on 22/9/2011 as per death certificate
entry no 26118875. He left behind only
one wife and five children.
Below please find the rightful heirs

NAME	AGE	SEX	RELATIONSHIP
1. PATRICIA KANINI MBINDA	37 yrs	F	WIFE
2. NDUMI MUTUA	17 yrs	F	DAUGHTER
3. MINOO MUTUA	14 yrs	F	DAUGHTER
4. MUMO MUTUA	11 yrs	M	SON
5. MUTHEU MUTUA	8 yrs	F	DAUGHTER
6. MUONGELA MUTUA	3 yrs	M	SON
7. NDULULU WAMBUA NDIVO	71 yrs	F	MOTHER



CHIEF
KALAWANI LOC

the necessary assistance

