**Abdullahi v Githinye**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 24 October 1973

**Case Number:** 2029/1972 (43/74)

**Before:** Kneller J

**Sourced by:** LawAfrica

*[1] Damages – Fatal accident – Young child – Probability of pecuniary benefit to be established.*

**JUDGMENT**

**KNELLER J:**

The plaintiff, Abdullahi Mohamed, an M’Bajun, is a motor mechanic employed by Cooper Motor Corporation here in Nairobi. He is about 40 years old. He earns Shs. 600/- each month. His wife is Mrs. Fatuma Abdullahi Mohamed and she works at home looking after the house, her husband and, before this tragedy, their daughter Hadijah. On 28 October 1971 Hadijah, who was about seven and a half years old, was knocked down by the defendant in a Peugeot Saloon vehicle.

The plaint, dated 15 November 1972, was filed the next day, claiming damages under the Fatal Accidents Act (Cap. 32) on behalf of the plaintiff and his wife, Mrs. Fatuma A. Mohamed, the mother of Hadijah, and for their benefit. There was also a claim for Shs. 500/- with interest from the date of the filing of the suit for the expenses of Hadijah’s funeral paid out by the plaintiff and his wife.

[The judge found the defendant to blame for the accident and continued.]

The plaintiff says Hadijah was at the Racecourse Road Primary School, Nairobi and in Standard One.

She was a bright student and her school reports had been very good. She was healthy and she was intelligent. He and his wife planned to scrimp and save and send Hadijah to various schools and colleges until she became a doctor and they hoped she would look after them or contribute to the expenses of their household. She was helping with the house work when she was not at school. He claimed he and his wife had suffered a pecuniary loss by the death of Hadijah.

The court assessed each of the witnesses as people who were speaking the truth. They were restrained and firm in what they said.

The next issue is whether or not the plaintiff and his wife proved they had a reasonable expectation of pecuniary benefit from Hadijah had she lived? She was subject to all the risks of illness, disease, and accident: financially, she would have been a burden to the plaintiff for many years if she had lived. She might never aided her parents at all. She might have proved to be only an expense. Thus far, though

Hadijah was older than the child in *Barnett v. Cohen*, [1921] 2 K.B. 461 the facts are roughly the same.

McCardie, J. also found, however, that the male child in that case was under four years old when he died.

He also found that the boy could not have been expected to help in the house. Moreover, the father was

40 but unhealthy because he suffered from a nervous and dilated heart. His wife was 33 and her health was defective too. It was a point for wonder, he thought, whether or not the father would have survived his son. Finally, the father in 1921 was earning £1,000 a year by his business and might increase it further so, in any event, the son would scarcely in those days have been expected to contribute to the father’s income. McCardie, J. declared the claim had been pressed to extinction by the weight of multiple contingencies and held that the action failed.

Most English authorities on this problem concern actions brought on behalf of the deceased’s parent, or one parent, where the deceased was found to have made contributions to the household expenses in the past or had assured one or both of them he would do so in their old age. The fact that there has been no

actual pecuniary benefit to the infant’s parents during the child’s lifetime does not necessarily bar the

parents’ claim. What must be established, on the balance of probabilities, is that they had a reasonable

expectation of pecuniary benefit if the child had lived. This is a mixed question of fact and law. It must

be more than a possibility of benefit.

No reported case on this in East Africa was laid before the court and my researches have failed to find

one. It is therefore right to look at the English cases on this point in actions brought under the English

Fatal Accidents Act because the Kenya Act was based on it.

One reported decision, *Buckland v. Guildford Gas Light and Coke Co*., [1949] K.B. 410, is in point.

Here Morris, J. found that the deceased was a bright intelligent girl aged 13 and able to look after a younger child of eight. She helped her parents in the home and it was likely that her gifts would later have enabled her to contribute financially as well as by services to the household. He took into account the changes and chances that might have affected the girl and her parents. He noted that there was nothing in her estate which would come to her parents. He then assessed the damages under the Fatal Accidents Act at £500.

Hadijah assisted her parents in the home. Nowadays, an intelligent hardworking M’Bajun girl could become a doctor in due course in this country. There is some risk of her marrying before this was accomplished but again girls with a will steer clear of marriage or if married persist in qualifying ultimately in the career of their choice.

The English authorities can only be used as a guide on quantum because the economic conditions of life in this country are different. The cost of living, rent and the amount of free education differ between the two countries.

This court answers the issue by finding that the plaintiff, on the balance of probabilities, proved that there was a reasonable expectation of pecuniary advantage. How much is the last issue. Using the best judgment I can and taking all the circumstances of this case into account, I award damages under the Fatal Accidents Act of Shs. 8,000/-.

*Judgment accordingly.*

For the plaintiff:

*O Kapila* (instructed by *DV Kapila & Co*, Nairobi)