

QUESTION ONE

You are a newly admitted advocate who has been employed by the firm of Wakili and Company Advocates of Gorofa House, 3rd floor, Moi Avenue, P.O. Box 34031 - 00100 Nairobi. On 31st January, 2017, the Senior Partner in charge of litigation referred Esther Kanunka to you with a request that you take instructions from her.

Esther told you that on the 15th day of January 2015, her late husband Peter Kanunka was driving his motor vehicle registration number KCB 300V along the Kiambu-Nairobi Road. He was with their son John Kanunka who was seated on the front passenger seat. As Peter was approaching the Thika-Nairobi highway, Llyod Musonda, a resident of Nyeri County who was driving motor vehicle registration number KTF 324 from the opposite direction started overtaking the vehicles that were ahead of him without first ascertaining whether it was safe to do so.

As a result, the two vehicles collided head-on and both Peter and John sustained serious injuries. John sustained the following injuries: multiple soft tissue injuries, a fracture of the right upper arm, a fracture of the distal femur right thigh bone, fracture of the pelvis and a fracture of the distal right wrist. He was admitted at the Nairobi Hospital for three weeks and was discharged after his condition improved. Peter was pronounced dead on arrival at the hospital.

Esther gave you the following documents:

A death certificate, a police abstract, a Grant of Letters of Administration in her name, receipts for medical expenses in the sum of Kshs.2,785,459/-, a receipt for fees paid for a medical report in the sum of Kshs.5,000/-, a receipt for fees paid for a police abstract in the sum of Kshs.100/-, a pay-slip indicating that Peter used to earn a net monthly salary of Kshs.560,000/-, receipts for burial expenses in the sum of Kshs.540,000/-, a medical report, a birth certificate for John indicating that he was born on 10th May, 2002, a judgement in a Kiambu Traffic case Number 331 of 2015 indicating that Llyod was convicted of the offence of causing death by dangerous driving and was sentenced to serve two (2) years imprisonment and a letter from her area Chief indicating that the deceased left John and herself as the only dependants surviving him.

Upon perusal of the documents you noticed that:

Llyod Musonda is the registered owner of the motor vehicle registration number KTF 324 and his Postal address is P.O. Box 341 - 10100 Nyeri. Esther's postal address is P.O. Box 415 - 00900 Kiambu. John will require further surgery to remove the metal fixations at a cost of Kshs.3,000,000/- and that Peter was aged 42 years old at the time of his death.

Esther told you that she depended on her husband for the provision of shelter, payment of school fees for their son and other expenses and that by his death, she has suffered loss and damage.

You have discussed the matter with the senior partner and agreed that you draw appropriate pleadings to be filed in court.

Draw the pleadings as agreed, excluding a list of witnesses, witness statements and a list of documents. (20 marks)