



Amwai ((Suing as the legal representatives and administrator of the Estate of Rachel Lutsilili Amwai (Deceased)) v Coach (Civil Appeal 91 of 2019) [2022] KEHC 17148 (KLR) (21 December 2022) (Ruling)

Neutral citation: [2022] KEHC 17148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 91 OF 2019
PJO OTIENO, J
DECEMBER 21, 2022**

BETWEEN

**RUTH INGASIANI AMWAI APPELLANT
(SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATOR OF
THE ESTATE OF RACHEL LUTSILILI AMWAI (DECEASED)**

AND

WESTERN EXPRESS COACH RESPONDENT

(Being an Appeal from the Judgment of Hon. W. K. Cheruiyot SRM in PM's Court Vihiga in PMCC No. 69 of 2019 delivered on 23rd August 2019)

RULING

1. On the March 3, 2022, the court delivered a judgment on appeal and not only allowed the appeal but equally reassessed damages awarded. That judgment has proved the current notice of motion dated March 24, 2022 which essentially seeks that the judgment be revised or otherwise rectified to expunge a non-party to the proceedings and to clarify or correct the actual sum awarded as loss of dependency.
2. In the judgment, the court delivered itself, at the relevant provisions:-

“Multiplier

The deceased was 20 years old at the time of her death. Given the type of work she was doing and the raised levels of life expectancy and health generally, this court considers that the appropriate multipliers for each of the dependants would be:-

Multiplier for 1st plaintiff – 35 years



Multiplier for 2nd plaintiff – 2 years

Dependency ratio

As to the dependency ratio it is recorded that the deceased was unmarried. She had no children of her own. It is also recorded that she lived in the same home and household as her parents. Therefore more appropriate dependency ration would be 50%.

Special damages

Special damages must be specifically pleaded and thereafter proved. None have been pleaded and therefore none are recoverable.

For the reasons set out above the award of the lower court is replaced with the following:

- (a) Pain and suffering was Kshs 20,000/= now Kshs 200,000/=
- (b) Loss of expectation of life: Kshs 100,000/=
- (c) Loss of dependency – 10,000 x 12 x 2 years for 2nd plaintiff
- (d) Liability - 85:15 by Consent

The plaintiff is awarded costs and interest on the sums outstanding until payment. Award of 2nd plaintiff to be paid into court to be held on trust for his estate.”

3. It is clear to the court that even if the application is expressed to be brought under the court’s jurisdiction to review its judgment on the threshold of an error apparent on the face of the record, the court considers that what is sought is more of correction of clerical and arithmetic mistake as a way of clarifying the purport of the Judgment. That is a jurisdiction vested by section 99 of the [Civil Procedure Act](#).
4. A reading of the Judgment reveals that there was a reference to a second plaintiff who was awarded a multiplier of two (2) years when all the way from the trial court, there was never a second plaintiff. That is an erroneous inclusion of a non-party to the proceedings which convolutes and blurs the true purport and effect of the judgment. It is an evident error that calls for rectification and is hereby rectified by expunging every reference to the 2nd plaintiff whenever it appears in the judgment. in addition, every reference to 1st and 2nd plaintiff is substituted with the word appellant.
5. On the substance of the award made to the appellant otherwise referred to as the 1st plaintiff, now the appellant, a reading of the judgment shows that the decision of the lower court regarding assessment of damages for loss of dependency was set aside and the court chose to assess the damages rather than remitting same to the trial court. Having done so, the judge settled on a multiplier of thirty five years, a multiplicand of 10,000 and a dependency ratio of 50%. Those parameters when subjected to the known mathematical calculations goes:-

$$10,000 \times 35 \times 12 \times \frac{1}{2} = 2,280,000$$

Accordingly, the summary of the aggregate award is as follows:-

Pain and suffering - 200,000



Loss of expectation of life - 100,000

Loss of dependency - 2,280,000

Total - 2,580,000

Less 15% contribution - 387,000

Net due - 2,193,000

6. In effect the judgment dated, read and delivered on the March 3, 2022 is rectified and clarified to entitle the appellant to the sum of Kshs 2,193,000 plus costs and interests. Interest be calculated from the date of the Judgment being the March 3, 2022 till payment in full.
7. Let costs be agreed within thirty (30) days from today and on failure to agree be taxed within one hundred and twenty (120) days from today.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 21ST DAY OF DECEMBER 2022.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

No appearance for the Appellant

No appearance for the Respondent

Court Assistant: Polycap Mukabwa

