



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 158 OF 2011

**GEOFFREY OBIERO & MOSES OBIERO (Suing as the personal representatives
of the estate of BENJAMIN OUMA OBIERO-Deceased).....PLAINTIFFS**

-VERSUS-

KENYA POWER & LIGHTING CORPORATION LIMITED.....1ST DEFENDANT

GEORGE MOSE AYARO.....2ND DEFENDANT

JUDGEMENT

1. Geoffrey Obiero & Moses Obiero brought the suit in their capacity as the personal representatives of the estate of BENJAMIN OUMA OBIERO (“*the deceased*”) under the Fatal Accidents Act and the Law Reform Act vide the plaint dated 21st April, 2011 seeking general and special damages in the sum of Kshs.216,611/ plus costs of the suit and interest on the same against the 1st and 2nd defendants.

2. The 1st defendant was sued in its capacity as the owner of the motor vehicle registration number KAR 996L (“*the subject motor vehicle*”) at all material times while the 2nd defendant was said to be the agent of the 1st defendant at all material times and the driver of the subject motor vehicle on the material day.

3. The plaintiffs pleaded in their plaint that sometime on or about the 27th of April, 2008 while the deceased was lawfully walking on a footpath along Jogoo Road near Nairobi Pentecostal Church at about 9.30p.m, the 2nd defendant negligently drove the subject motor vehicle, causing it to fatally knock down the deceased.

4. The plaintiffs set out the particulars of negligence and the injuries sustained in their plaint.

5. It was also pleaded in the plaint that the deceased left behind the following dependants:

- | | |
|---------------------------------|------------|
| a. Beatrice Achieng Obiero | Stepmother |
| b. Geoffrey Odhiambo Obiero | Brother |
| c. Beatrice Obiero | Sister |
| d. Paul Otieno Obiero | Brother |
| e. Moses Onyango Obiero | Brother |
| f. Hanningtone Humphreys Obiero | Brother |
| g. Caroline Achieng Obiero | Sister |
| h. Irene Atieno Obiero | Sister |
| i. Collins Otieno Obiero | Brother |

6. The defendants entered appearance and filed their joint statement of defence denying the appellant's allegations.
7. During the hearing of the suit on 4th June, 2019, the parties recorded a consent on liability in the ratio of 80:20 in favour of the plaintiffs and agreed to file written submissions in addressing quantum. The consent was adopted as an order of the court on the said date.
8. The only written submissions on record are those of the defendants, despite this court's directions for the parties to file and exchange submissions.
9. In that case, I have considered the defendants' submissions.
10. As earlier indicated, the pending issue for my determination is that on quantum. I will therefore address the same under the following heads:
 - a. Pain and suffering
 11. In their plaint, the plaintiffs stated that the deceased died on the date of the accident. This position is supported by the death certificate contained in the plaintiffs' list and bundle of documents.
 12. Furthermore, the 2nd plaintiff who signed the witness statement on 21st April, 2011 asserted that when he was unable to reach or trace the deceased on the date following the accident, he visited various police stations and hospitals, finally finding the deceased's body lying at City Mortuary on 28th April, 2008.
 13. On their part, the defendants urged this court to award Kshs.20,000/ citing the cases of **Edner Gesare Ogega v Aiko Kebiba (Suing as Father and Legal Representative of the Estate of Alice Bochere Aiko-Deceased) [2015] eKLR** and **Kenya Wildlife Services v Geoffrey Gichur Mwaura [2018] eKLR** where similar awards were made.
 14. The evidence on record does not clarify how prolonged the deceased's suffering was prior to his passing. Be that as it may, there is nothing to indicate that the deceased was taken to hospital after the accident. In that case, I am persuaded by the above-cited authorities where the respective deceased persons therein died either immediately or soon after the respective accidents. I will therefore award the sum of Kshs.20,000/ under this head.
 - b. Loss of expectation of life
 15. The evidence on record shows that the deceased died at the young age of 25 years. There is nothing to indicate that he was of ill health.
 16. The courts have been known to grant the conventional sum of Kshs.100,000/ under this head. Moreover, I am guided by the judicial authority of **Alexander Okinda Anagwe (suing as the administrator of the estate of Patricia Kezia Anagwe deceased) v Reuben Muriuki Kahuha, City Hopper Ltd, Michael A. Craig & Rueben Kamande Mburu [2015] eKLR** where the court awarded the sum of Kshs.100,000/ in the instance of a deceased person aged 25 years and in good health.
 17. In the premises, I have no reason to stray from making a similar award of Kshs.100,000/.
 - c. Lost years
 18. Under this head, the defendants proposed a multiplier of 32 years and a multiplicand of Kshs.10,000/ in addition to a dependency ratio of 1/3 totaling Kshs.1,280,000/.
 19. As concerns the multiplier, the evidence on record shows that the deceased was 25 years at the time of his death. The defendants did not avail any comparable multipliers applied in previous cases to support their proposed multiplier.
 20. In that case, this court considered the case of **James Chege Kagia (Suing as the personal representative of the estate of Charles Waturu Njoroge-Deceased) v Fredrick Kimani Gitau & another [2019] eKLR** where the court upheld use of a multiplier of 23 years for the estate of a deceased person who was 25 years old; whereas a similar multiplier was applied in the case of **F M & another v Joseph Njuguna Kuria & another [2016] eKLR** where the deceased was aged 26 years.
 21. From the foregoing, I am persuaded to consider a multiplier of 23 years, taking into account the vagaries of life.
 22. As concerns the dependency ratio, I have looked at the evidence on record and note that nothing was placed before this court to show that the deceased's siblings or stepmother depended on him. In any event, the provisions of Section 4(1) of the Fatal Accidents Act are clear that only the deceased's wife, children and parents are entitled under upon proof of dependency and in the present instance, there was no mention of the deceased either having been married or having children.
 23. Be that as it may, given the society we live in, it is plausible that the deceased supported his dependants during his lifetime, a fact which was acknowledged by the defendants. I would therefore consider a ratio of 1/3.
 24. On the multiplicand, the plaintiffs included in their list and bundle of documents a copy of the letter dated 19th December, 2008 by Infusion Kenya Limited inferring that the deceased was its employee from the period between January, 2002 and 28th February, 2008 when

he left on his own volition.

25. The aforesaid letter goes on to mention that at the time, the deceased worked as a machine operator earning a gross monthly salary of Kshs.15,000/. The plaintiffs made no mention as to whether the deceased worked in the two months preceding his demise.

26. On my part, I note that no evidence was presented to support the indication that the deceased was earning Kshs.15,000/ each month and furthermore, the category in which the deceased worked as a machine operator was not clarified so as to guide this court in applying the minimum wages regulations.

27. In the circumstances, I am convinced that the global approach would be more appropriate as opposed to the multiplier approach. In so finding, I am guided by the case of **Albert Odawa v Gichimu Githenji (2007) eKLR** where the court held thus:

“The multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are known or are knowable without undue speculation; where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

28. In that case, I have considered **Mashua Hassan Msuka (Suing as the administrator of the estate of the late Juma Mohamed Majepo) v John Migwi & another [2018] eKLR** where the court awarded a global sum of Kshs.900,000/ under this head to the estate of a deceased aged 22 as well as the global sum of Kshs.1,000,000/ awarded to the estate of a deceased person aged 29 years in **Put Sarajevo Gen. Eng. Co. Ltd v Esther W. Njeri & Johnson Mwangi Gucha (Suing as the Legal Representative of the Estate of Sylvester Muhia Gucha (Deceased) & 2 others [2014] eKLR**.

29. It is noteworthy that though the deceased in the latter case was slightly older than the one in the present instance, the said case was decided a few years back. That said, I am persuaded to award a global sum of Kshs.1,200,000/ under this head.

d. Special damages

30. In this respect, the defendants urged this court to award the sum of Kshs.148,420/ for the special damages both pleaded and proved.

31. The law is well settled that for an award of special damages to be made, the same must be specifically pleaded and strictly proved.

32. I have considered the evidence tendered before me and I find that the sum of Kshs.189,891/ was pleaded and proved.

33. In the end, I hereby enter judgment in favour of the plaintiffs as follows:

a. General damages

i. Pain and suffering	Kshs.20,000/
ii. Loss of expectation of life	Kshs.100,000/
iii. Lost years	Kshs.1,200,000/

b. Special damages **Kshs.189,891/**

Gross total **Kshs.1,509,891/**

Less 20% contribution **Kshs.301,978/**

Net total **Kshs.1,207,913/**

c. Costs of the suit.

d. Interest on the general damages shall accrue from the date of judgment until payment in full.

e. Interest at court rates on special damages shall accrue from the date of filing the suit until payment in full.

It is hereby ordered.

Dated, Signed and Delivered at Nairobi this 22nd day of November, 2019.

.....

J.K. SERGON

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the Defendants