



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 73 OF 2012

**ELIUD MUCHURU RUGA (Suing as personal
representative of the estate of the deceased**

EPHANTUS MBUGUA.....PLAINTIFF

- V E R S U S -

NDUNGU JOHN.....1ST DEFENDANT

JAMES KIMANI NDUNGU.....2ND DEFENDANT

JUDGEMENT

1) Eliud Muchuru Ruga, the plaintiff herein, filed an action in his capacity as the personal representative of Ephantus Mbugua, deceased, his son, against Ndung'u John and James Kimani Ndung'u, the 1st and 2nd defendants respectively. The plaintiff vide the plaint dated 15th February 2012, alleged that the deceased was hit and ran over by motor vehicle registration no. KAY 901F while alighting from the aforesaid matatu along Kayole road, near Soweto in Nairobi where he was a fare paying passenger and sustained fatal injuries.

2) The defendants filed their joint statement of defence on 7th May 2012 and denied the plaintiff's claim. When the suit came up for hearing the plaintiff testified and summoned the evidence of one other witness, while the defendants did not summon any witnesses in support of their defence.

3) Eliud Muchuru Ruga, PW1 stated that on 20/08/2010 he was called by his son (deceased) while in great pain informing him that he had been ran over by a matatu and taken to Mama Lucy hospital in Kayole where he was rushed after the accident. The deceased was later transferred from Mama Lucy hospital to Kenyatta National Hospital(K.N.H). PW1 reported the incident at Kayole Police Station and obtained a police abstract which he produced as PExh 1. PW1 said he did an official search of the accident motor vehicle registration no. KAY 901F which search (PExh. 2) revealed that the aforesaid motor vehicle was registered in the name of John Ndungu. The deceased was aged 20 years, working with Beliwa Auto spares as a salesman and was earning ksh.25,000/= per month and renewable after every 3 months.The letter of appointment from Beliwa Auto spares was produced as PExh 3.

4) PW1 stated that the deceased used to pay for his food and rent because he was very sick with no other income and also paid for school fees of his siblings (Joyce and Dennis). The deceased was also saving to pay for his university education. The deceased was admitted at KNH and died after 6 days.The death

certificate was produced as PEXh 4. PW1 obtained limited letters of administration which he tendered in evidence as PEXh 6. PW1 further stated that the deceased used to spend about kshs.14,000/= on his family. PW1 had the contract of employment of the deceased.

5) Martin Ruga Muchiri PW2 stated that he is the deceased's younger brother. PW2 stated before this court that the deceased called him telling him he was aboard motor vehicle registration no. KAY 901F plying the Nairobi to Kayole and PW2 was to wait for him at the Mashimba bus stage in Kayole on 21.8.2010. PW1 stated that when the motor vehicle arrived, passengers alighted and that he saw the deceased get off as the last passenger and while alighting, the driver drove off causing the deceased to fall off and was ran over by the said matatu. PW2 further said he fainted upon witnessing the accident and upon regaining in consciousness he was told that the deceased had been taken to Mama Lucy Hospital in Kayole for treatment. PW2 stated that the deceased was taken to KNH where he was taken to the theatre. PW2 said the deceased was in the ICU for 6 days before succumbing to his injuries. The deceased was employed earning kshs.25,000/=per month. PW2 also stated that the driver of the matatu drove off without confirming that all passengers had alighted.

6) At the close of the evidence learned counsels appearing in this matter were invited to file and exchange submissions. There is no doubt that at the conclusion of this case this court was left to determine the issue of quantum.

7) On liability, the parties recorded a consent on the 31st August 2010 whereby liability was apportioned at 70%:30% in favour of the plaintiff.

8) On quantum it is the plaintiff's submission that;

The deceased died five days after the accident and must have suffered extreme pain prior to his death. The plaintiff proposed a sum of ksh.3,000,000/= for pain and suffering. The plaintiff cited the case of **Hassan and another –vs- Suma Properties Ltd (2004) eKLR** where the deceased was 12 years old and was awarded ksh.1,000,000/= in the year 2004 .

The plaintiff submits that the deceased died at 20 years of age, hence his life was cut off prematurely. The deceased had high prospects of life and would have joined university to pursue a career in electrical engineering. His current salary was ksh.25,000/= per month renewable upwards after every 3 months. Considering the shuttered dreams of the deceased, this court should award ksh.1,000,000/= for loss of expectation of life. The plaintiff cited the case of **Daniel Kuria Ng'ang'a –vs- Nairobi City Council (2013) eKLR** where the deceased died at the age of 14 years and an award of ksh.3,000,000/= was given.

The estate of the deceased has lost the dependency of their son.

In African culture and practice, children are seen as the security and insurance of their aging parents. The deceased used to provide for the family (rent and food and pay school fees for his sister Joyce and brother Dennis). The parents lost their dependant and should be compensated and the case of **sheikh Mushtar Hassan –vs- Nathan Mwangi Kamau Transporters and others (1982-88) IKAR 946** was cited in which it was held that parents look onto their children for financial assistance in their old age. Such that when their children known to be supporting their parents die, the financial support extinguished, should be compensated.

The plaintiff submits that a multiplier of 45 years should be adopted, dependency ratio of 2/3 translating to 25,000 (monthly salary)x12x45(multiplier) x 2/3dependency ratio=ksh.9,000,000/= final proposal by the plaintiff is as follows:

- | | |
|--------------------------------|-----------------|
| a) Pain and suffering | ksh.3,000,000/= |
| b) Loss of expectation of life | ksh.1,000,000/= |

c) Loss of dependency 25,000x12x45x2/3	ksh.9,000,000/=
d) Total	ksh.13,000,000/=
Less 30% contribution	<u>ksh.3,900,000/=</u>
Total	ksh.9,100,000/=

9) The defendants have submitted as follows:

Pain and suffering

The figure of ksh.20,000/= is reasonable and cited the case of **Nairobi HCCA no. 749 of 2001, Samuel Njoroge Karanja –vs- Lucy Wambui Kibe**, where the deceased died 3 days after the accident and the court awarded ksh.10,000/=.

Loss of expectation of life

The defendant proposed a global figure of ksh.70,000/=.

Loss of dependency

The defendants did not submit under this head and awarded a nil award.

Special damages

The defendant submits that the same was not pleaded nor proved thus not awardable.

The defendants final proposal is

a. Pain and suffering	ksh.20,000/=
b. Loss of expectation of life	ksh.70,000/=
c. Loss of dependency	Nil
d. Special damages	Nil
Total	ksh.90,000/=
Less 30% concession	<u>ksh.27,000/=</u>
Total	ksh.63,000/=

10) It is not in dispute that the deceased endured great pain before he passed on. In the circumstances of this case I am satisfied that the plaintiff should be awarded ksh.200,000/= for pain and suffering.

11) On loss of expectation of life, I have taken into account the various authorities which indicate that this court has previously awarded an average sum of between ksh.70,000/= and 100,000/=. In the circumstances of this case I am convinced a sum of kshs.100,000/= is reasonable on this head.

12) The plaintiff obtained letters of administration on 20th December 2010, Ephantus Mbugua the deceased died aged 20 years as seen in the death certificate on record. PW1 stated that the deceased was supporting him because of his two siblings Joyce and Dennis. According to the letter from the assistant chief, Mwiki sub location, Kasarani location, dated 21st September 2010, dependants were stated as the

plaintiff and father to the deceased aged 49 years, mother to the deceased aged 44 years, PW2 25 years brother to the deceased and sibling Joyce Mugure Muchuru aged 16 years. I find that the parents of the deceased had future expectation of financial support from their deceased son. The letter of appointment for the deceased from Beliwa Auto spares states that he drew a monthly salary of 25,000/= to be reviewed annually. Given the uncertainties of life the deceased would have worked upto the age of 60 years. A multiplicand of 40 years is acceptable. A loss of dependency ratio of 1/3 be adopted.

The final computation will be; $25,000 \times 40 \times \frac{1}{3} = 4,000,000/=$

13) In the end, I enter judgement in favour of the plaintiff and against the defendants jointly and severally as follows:

i. General damages for pain & suffering	ksh.200,000/=
ii. Damages for loss of expectation of life	ksh.100,000/=
iii. Damages for loss of dependency	ksh.4,000,000/=
Gross total	Ksh.4,300,000/=
Less 30% contribution	<u>ksh.1,290,000/=</u>
Net Total	<u>ksh.3,010,000/=</u>
iv. Cost of the suit	
v. Interest at court rates from the date of judgement until full payment.	

Dated, Signed and Delivered in open court this 23rd day of February, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendants