



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL SUIT NO. 250 OF 2012

LEONARD NTURIBI AMBUTU.....1ST PLAINTIFF

CHRISINE KANANA AMBUTU (suing as

Personal Representatives of the Estate of

MONICA MAITHIMA JAKUBU (Deceased)....2ND PLAINTIFF

VERSUS

RUFUS J.K. KIHATO.....1ST DEFENDANT

LYFORD IRERI MUGAMBI.....2ND DEFENDANT

JUDGEMENT

1. By a plaint dated 30th May, 2012 the Plaintiffs herein sued the Defendants jointly and severally for both special and general damages in respect of a road traffic accident which occurred on the 25/5/2011 involving the deceased herein **Monica Maithima Jakubu** who had been travelling as a fare paying passenger in Motor vehicle Registration No. KAA 458 G belonging to the 1st Defendant and being driven by the 2nd Defendant as servant or agent of the 1st Defendant along Magadi Road in Kiserian. The said **Monica Maithima Jakubu** sustained severe bodily injuries from which she died on 3/6/2011. The Plaintiffs therefore brought this suit for the benefit of the estate and on their own behalf.

2. Parties herein on the 13/11/2014 recorded a consent on liability in the ratio of 80% to 20% in favour of the Plaintiffs against the Defendant. Thereafter evidence was tendered by the Plaintiffs on the remaining issue namely assessment of quantum of damages. The first Plaintiff tendered evidence and called an account one Raphael Kinoti Murithi. It was the evidence of the Plaintiff that the deceased who was then aged 49 years before he died was engaged in some private business namely dry cleaning services and that the income was used for the family's upkeep and education of the Children. The Plaintiff confirmed that he himself was a teacher by profession and taught at a public primary school in Meru. The Plaintiff maintained that the death of the deceased who was his wife had robbed the family of a companion and a bread winner. He claimed that he incurred hospital as well as burial expenses in addition to costs in filing for limited letters of grant of administration all totaling Kshs.67,620/=. He also stated that the deceased led a healthy life before she died and that she used to earn a net income per year of about Kshs.93,000/=.

Plaintiff called an Accountant cum auditor M/s Mwirigi Mugambi and Associates who are Certified Public Accountants and who stated that he obtained the books of accounts regarding the deceased's dry

cleaning business and noted that the loss income was Kshs.357,379/= while expenses were Kshs.264,202 which was for the period 31/12/2000 – 31/06/2012 and hence the net profits for the said year was Kshs.93,177/=. He produced the financial report as an exhibit. The Plaintiff prayed for compensation and costs of the suit.

3. Learned counsels for the parties herein filed written submissions on the requisite heads of damages under the Law Reform Act and Fatal Accidents Acts namely pain and suffering, loss of expectation of life and loss on dependency not excluding special damages as well.

4. Learned Counsel for the Plaintiff proposed the sum of Kshs. 150,000/= as damages for loss of expectation of life. On the aspect of pain and suffering the sum of Kshs.80,000/= was proposed since the deceased took about five days before succumbing to the injuries. As regards the amount on loss on dependency a multiplicand of 23,000/= was proposed and a multiplier of 26 years against a dependency ratio of (2/3) worked out as $Kshs.23,000/= \times 12 \times (2/3) = Kshs.4,784,000/=$. The sum of Kshs.67,620/= was proposed as special damages owing to the receipts produced. The following cases were relied upon:-

(i) ***Wilson Mwangi Kabiro (suing as administrator of the Estate of Stephen Irungu Mwangi – deceased =Vs= Charles Nyamumbo Mageto HCCC. No. 200 of 2011 [2015] eKLR*** where a deceased aged 24 years was awarded Kshs.150,000/= for loss of expectation of life.

(ii) ***Caroline Leah Awino =Vs= Stephen Ashikoyo - HCCA. 92 of 2012 [2014] eKLR*** where a deceased aged 75 years was awarded Kshs.150,000/= for loss of expectation of life.

(iii) ***Kenya Power limited =Vs= James Matata & 2 others (suing as the legal representative of the estate of Nyange Masaga – Deceased Civil Appeal No. 20 of 2015 [2016] eKLR*** where a sum of Kshs.80,000/= was awarded for pain and suffering for a deceased who did not die immediately.

(iv) ***Ricarda Njoki Wahome (suing as administrator of the estate of the late Wahome Mutahi – Deceased =Vs= Attorney General & 2 others [2015] eKLR*** where the deceased aged 47 years who was running and court adopted a multiplier of 28 years.

5. On the other hand learned counsel for the Defendant proposed the sum of Kshs.30,000/= as damages for pain and suffering. The sum of Kshs.50,000/= - Kshs.100,000/= being the conventional figure for loss of expectation of life. As regards the damages on loss on dependency a multiplier of 8 years against a dependency ratio of $\frac{1}{2}$ worked out as $Kshs.7,667/90 \times 12 \times 8 \times \frac{1}{2} = Kshs.372,708/=$. On special damages the sum of Kshs.49,290/= was proposed and the others on police abstract and legal fees for filing letters of grant of administration proved. The following cases were relied upon:

(i) ***Stella Mwololo & Another =Vs= Paul Gitonga – HCCC No. 550 of 1996 NBI*** where a sum of Kshs.70,000/= was awarded for loss of expectation of life.

(ii) ***Doris Nyaguthi =Vs= Kariuki Kago – NBI HCCC No. 2152 of 2000*** where a sum of Kshs.70,000/= was awarded for loss of expectation of life.

(iii) ***Jane Wangui & others =Vs= Alice Atandi [2004] eKLR*** where the court adopted a multiplier of 13 years for a deceased who was aged 37 years.

6. I have considered the evidence and the submissions of the learned counsels as well as the authorities cited. It is clear that the issues for determination is on the amount of damages to be awarded for the various heads of damages which comprise pain and suffering, loss of expectation of life, loss on dependency as well as special damages. I shall address each of these as hereunder.

Pain and suffering:

The deceased was involved in the accident on 28/05/2011 and succumbed to her injuries on the 3/06/2011. It is obvious that she must have undergone excruciating pain for almost eight days before

breathing her last. The conventional awards under this head for persons who die immediately range between Kshs.10,000/= - Kshs.20,000/=. I would in the circumstances find an award of Kshs.80,000/= would be reasonable as damages under this head.

Loss of expectation of life:

The deceased was aged 48 years at the time of her death and from the evidence on record had lived a healthy life and providing for her family. It was reported that she was running a dry cleaning business. The certificate of death revealed that the only cause of death was cervical spinal injury due to blunt force trauma due to motor vehicle accident. There was no other cause of death noted thereby implying that she had been in good health prior to her demise. The deceased's husband and children had relied on her a great deal not to forget the husband's loss of consortium. I would find an award of Kshs.100,000/= to be reasonable as damages under this head and which is certainly the conventional sums awarded by the courts.

Loss on dependency:

As noted above, the deceased was aged 48 years old at the time of death and had been in good health. The evidence revealed that she was running a dry cleaning business at the time. The certificate of death did not indicate any other cause apart from the particular road accident and hence it is clear that the deceased had a healthy robust life. Barring the vagaries of life and the high mortality rates in sub-Saharan African, it is likely the deceased might even have lived to old age. I note that the retirement age for civil servants in Kenya is 60 years and as such the deceased who was running relatively a good business would have lived to that age. Indeed majority of Kenyan businessmen and women are in the age bracket of over sixty years. I would in the circumstances adopt a multiplier of 12 years. As regards the multiplicand, I find the evidence of the auditor cum Accountant called by the Plaintiff set the record straight that the deceased's net profits per year was Kshs.93, 177/=. Indeed the auditor's report was produced as an exhibit. This sum will be divided by twelve months so as to arrive at the multiplicand which the auditor put it at Kshs.7,764.75. The Plaintiff's claim that the deceased earned Kshs.23,000/= per month is not convincing in view of the expert's evidence. Hence I shall adopt the sum of Kshs.7,764.75 as the multiplicand. It also transpired from the evidence that the deceased used to provide for the family as there were children in school. The deceased's husband appears to have been earning a monthly net of about Kshs.12,000/= as per the payslip availed. I would therefore find a dependency ration of (2/3) to be reasonable. Hence the damages under this head would be worked out as $Kshs.7,764.00 \times 12 \times 12 \times (2/3) = Kshs.745,416.00$.

Special damages:

The Plaintiff sought for the sum of Kshs.67,620/= as special damages. It is trite law that special damages must not only be specifically pleaded but proved as well. The receipts produced by the Plaintiff only related to hospital mortuary fees of Kshs.20,190/=: Stamer funeral for Kshs.25,000/= and advertisement fees of Kshs.3,600/= all totaling Kshs.49,290/=. The other claims for police abstract, death certificate and letters of administration were not proved as there were no receipts availed. Hence the special damages awarded shall be Kshs.49,290/=.

7. It is noted that one of the damages under the Law Reform Act and Fatal Accidents Act has to be discounted so as to prevent the Plaintiff from getting double compensation from the same cause. In this regard the sums under the Law Reform Act comprising of pain and suffering as well as loss of expectation of life amounting to Kshs.180,000/= will be discounted. The net damages shall thereafter attract 20% contribution.

8. In the result judgement is hereby entered for the Plaintiff against the defendants jointly and severally in the sum of Kshs.635,764.80 made up as follows:-

(a) Pain & sufferingKshs.80,000/=

(b) Loss of expectation of lifeKshs.100,000/=

(c) Loss on Dependency

7,764.75 X 12 X 12 X (2/3)Kshs.745,416/=

(d) Special damagesKshs. 49,290/=

Total Kshs.974,706/=

Less sums discounted on pain

& suffering and loss of

Expectation of lifeKshs.180,000.00

TotalKshs.794,706.00

Less 20% contributionKshs.158,941.20

Grand total**Kshs.635,764.80**

The Plaintiff is awarded the costs of the suit plus interest from the date of filing suit while interest on damages will be from the date of judgement

Orders accordingly.

Dated and delivered at Machakos this 12th day of **April, 2018.**

D.K. KEMEI

JUDGE

In the presence of:-

Kalinga for Wangombe - for the Plaintiff

No appearance for Cheronno the Defendant

Kituva - Court Assistant