



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 4 OF 2010

PATRICK KARIUKI MUIRURI.....1ST PLAINTIFF

RACHEL WANJIRU KARIUKI MUIRURI.....2ND PLAINTIFF

JOHN SABASTIAN MUIRURI.....3RD PLAINTIFF

JACINTA WANGUKI KARIUKI MUIRURI.....4TH PLAINTIFF

(Suing as the personal representative of

DR. JAMES NG'ANG'A KARIUKI MUIRURI (DECEASED)

V E R S U S –

ATTORNEY GENERAL..... RESPONDENT

JUDGEMENT

1) On 24th day of January 2009, the late Dr. James Ng'ang'a Kariuki Muiruri was travelling with his brother aboard motor vehicle registration no. KAT 189E along a public road in Westlands, Nairobi, when the aforesaid motor vehicle was blocked by a vehicle driven by a police officer. The deceased came out of his motor vehicle to inquire on what was happening. A scuffle ensued between him and the police officer together with those who accompanied him. In the process, the police officer fatally shot the deceased. The deceased was immediately rushed to MP Shah Hospital where he was pronounced dead on arrival. The post mortem report on the deceased subsequently revealed that the deceased died as a result of multiple organ injuries due to gunshot wounds.

2) Patrick Kariuki Muiruri, Rachael Wanjiru Kariuki Muiruri, John Sebastian Muiruri and Jacinta Wanjuki Kariuki Muiruri, the legal representatives of the estate of Dr. James Ng'ang'a Kariuki Muiruri, deceased, filed this compensatory suit against the Honourable Attorney General. The plaintiffs and the defendant entered into a consent on 20th June 2016 in which it was agreed that the defendant was wholly liable for the death of the deceased. This judgment therefore is on quantum.

3) In the plaint the plaintiffs sought for judgment as follows:

a) *Special damages of ksh.1,557,730/=*

b) *General damages under the Fatal Accidents Act for the benefit of the deceased's dependant.*

c) *General damages under the Law Reform Act for the benefit of the estate of the deceased.*

d) *Exemplary damages.*

e) *Interest*

f) *Costs of the suit.*

4) The plaintiffs summoned Hon. Patrick Kariuki Muiruri (PW1) to testify in support of their case. PW1 told this court that the deceased died before graduating with a doctorate degree. He stated that while the deceased was in college he used to earn £12,000 per month. PW1 further produced a letter by Prof. Nigel D. White which indicated that had the deceased worked in the United Kingdom, he would have earned a monthly sum of between £38,000/= and £54,000/=. Learned counsels were invited to file written submissions on quantum.

5) I have considered the evidence and the rival submissions. On the head of pain and suffering, the plaintiffs beseeched this court to award them ksh.100,000/= as a reasonable sum taking into account the passage of time. The defendant was in agreement that the proposal is reasonable. On my part, I also find the proposal to be reasonable in view of the fact that the deceased passed away shortly after he was shot. I award on this head the amount prayed for.

6) The plaintiffs also beseeched this court to make an award on loss of expectation of life. They asked this court to award kshs.300,000/=. The defendant on the other hand have asked his court to award the plaintiff ksh.150,000/= instead. It is not in dispute that the deceased was aged 29 years at the time of his death. He obviously suffered loss of expectation of an illustrious life. I have looked at the previous awards made by this court on this head and I think an award of kshs.200,000/= is reasonable.

7) The plaintiffs also claimed for loss of dependency under the Fatal Accidents Act. The plaintiffs stated that had the deceased chosen to serve as a judge in the Judiciary he would have retired at 70 years, therefore a multiplier of 41 years would be applied with an income of £50,000/=. The plaintiffs proposed 2/3 dependency ratio. They proposed that they be awarded as follows:

$$£50,000/= \times 41 \times \frac{2}{3} = £1,366,667/=.$$

8) The defendant is of the view that no multiplicand is ascertainable for the deceased. The defendant dismissed the letter written by Prof. Nigel D. White as of no assistance to the court. The defendant proposed that a global sum of ksh.5,000,000/= was sufficient with a dependency ratio of 1/3.

9) Having taken into account the various proposal presented by the parties, I am inclined to apply the alternative proposal made by the defendant. There is no doubt that the deceased was not in employment at the time of his death. I find the multiplicand of ksh.120,000/= per month proposed by the defendant to be fair and reasonable. I also accept the dependency ratio of 1/3 because there was no evidence that the deceased's family would have heavily depended on him. In any case, the deceased was not married by then. Consequently, I award ksh.12,000,000/= calculated as follows:

$$120,000 \times 12 \times 25 \times \frac{1}{3} = 12,000,000/=$$

10) On special damages, there is no dispute that the plaintiffs tendered evidence showing that the amount claimed as special damage to be ksh.1,557,730/=. I award the plaintiffs the aforesaid amount.

11) On exemplary damages, the plaintiffs asked for ksh.20million.

The defendant urged this court to award the plaintiffs ksh.1,000,000/=. The deceased died as a result of a gunshot fired by a trigger happy police officer. In the circumstances an award for exemplary damages is necessary. On this head, I award the plaintiffs a sum of ksh.2,000,000/=.

12) In the end, judgement is entered in favour of the plaintiffs and against the defendants as follows:

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|---------------------------------|------------------|
| i. Pain and suffering | Ksh.100,000/= |
| ii. Loss of expectation of life | Ksh.200,000/= |
| iii. Loss of dependency | Ksh.12,000,000/= |

iv. Special damages Ksh.1,557,730/=

v. Exemplary damages Ksh.2,000,000/=

Total Ksh.15,857,730/=

vi. Costs

vii. Interest at court rates with effect from the date of judgement until full payment.

Dated, Signed and Delivered in open court this 31st day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant