



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE. NO. 219 OF 2013**

**N M T** (Suing as administrator of the

estate **F M & L M**).....**PLAINTIFF**

**VERSUS**

**ACACIA CREST ACADEMY**.....**DEFENDANT**

**Consolidated with**

**(HIGH COURT CIVIL CASE NO. 218 OF 2013)**

**JUDGMENT**

1. On or about the 1<sup>st</sup> August, 2012, the Plaintiff's two daughters, L M and F M were involved in a fatal road traffic accident. Through two suits filed on dated 10<sup>th</sup> June, 2013, the Plaintiff claimed damages under the Law Reform Act Cap 26 Laws of Kenya and the Fatal Accidents Act Cap 32 Laws of Kenya. The Plaintiff attributed the accident to the alleged negligent manner in which motor vehicle registration No.KAQ234G was being driven at the material time.
2. The claims were denied as per the statements of defence filed. The Defendant blamed the accident as solely and/or substantially caused by the negligence of motor vehicle registration No. KBA 334W. The Defendant set out the particulars of negligence alleged against the said motor vehicle and put the Plaintiff to strict proof of the particulars of negligence outlined in the plaint.
3. The Plaintiff filed replies to the statements of defence and joined issues with the Defendant. The contents of the plaints were reiterated.
4. On 25<sup>th</sup> November, 2015, the two cases were consolidated and heard as one. The Plaintiff testified and adopted his witness statement as his evidence. He stated that his two daughters were pupils at Acacia Crest Academy in Kitengela in baby class and pre-unit class respectively and used to be picked and dropped by the school bus. He narrated to the court how he received the news of the accident involving the school bus through a telephone call and later obtained the details from the police station.
5. PW2 PC Timothy Kiptoo of Athi River Police Station in his evidence blamed the accident on the driver of the school bus. His evidence was that the school bus which was ferrying school children to their respective homes was being driven from Kitengela direction going towards Nairobi direction while on the outer lane of the duo-carriage Nairobi-Mombasa Road. That the driver made a bid to make a U-turn and thereby cut in front of a matatu registration No. KBA 334 W which was being driven on the inner lane towards Nairobi. That the two vehicles collided and the school bus was pushed into a ditch. That some of the school children died on the spot and many others were critically injured.
6. The Defendant's side closed their case without the calling of any evidence. Subsequently, both parties filed written submissions.
7. The evidence from the Plaintiff's side remains uncontroverted. PW2 produced the police investigations file as an exhibit. It is evident that the investigations carried out blamed the driver of the school bus for the accident and recommended that he be charged with the offence of causing death by dangerous driving. However, the said driver escaped from the accident scene and is still at large according to the evidence of PW2. The police file also reflects that the school bus was inspected and found to have no pre-accident defects.
8. The police abstract reflects the Defendant as the owner of the school bus. The Plaintiff produced a copy of records from Kenya Revenue Authority which reflects the Defendant, Acacia Crest Academy as the owner of the bus registration No. KBA 234G.

9. With the foregoing evidence, I find the school bus was to blame for the accident. Although the Defendant blamed the accident on the matatu, no Third Party proceedings were taken out. I hold the Defendant 100% liable for the accident.

10. The death certificates produced as exhibits reflect that the two minors died on the date of the accident on 1<sup>st</sup> August, 2012. The evidence of the father and PW2 the police officer reflects that the two children died on the spot. The Plaintiff's counsel submitted for an award of Ksh.25,000/= for pain and suffering and ksh.150,000/= for loss of expectation of life. The Defendant's side did not make any submissions on their proposed awards under the said two heads.

11. The minors were aged 4 and 5 years respectively at the time of the accident. The father's evidence is that the two minors were healthy and full of life. His expectation was that they would have lived a full and successful life.

12. I award the conventional sums of Ksh.10,000/= for pain and suffering of and Ksh.100,000/= loss of expectation of life.

13. The Plaintiff's evidence was that the minors were brilliant in class and aspired to be teachers. The Plaintiff's counsel submitted for an award of Ksh.800,000/= general damages award per child for loss of dependency based on a multiplicand of Ksh.5,000/= and a multiplier of 20 years on a 1/3 dependency ratio (Ksh.5,000x12 x 20 x 1/3). Counsel relied on the case of **Stephen Maina Mwangi v Peter Muguro Waweru (Suig on behalf of Bereta Njeri Muguro (dead) [2013] eKLR** where the award of general damages made was Ksh.640,000/= (Ksh.4,000 x 12 x 20 x 1/3) for 3 ½ year old child.

14. On the other hand, the Defendant's counsel submitted for a lumpsum award of Ksh.200,000/= per child. He relied on the following cases:

a) **Nairobi – HCCC No. 50/1981 Miriti v Firoze Construction Ltd** where an award of Ksh.70,000/= was made for loss of dependency in respect of the death of a 5 ½ year old child.

b) **Nairobi – HCCA No. 346/06 Meshack Kamu v Edraws Gathandi & another** wherein an award of Ksh.100,000/= was made for loss of dependency for a deceased child aged 5 ½ years

15. I have also looked at the following other authorities:

a) **Daniel Mwangi Kimemi & 2 others v J. G. M & another (the personal representatives of the estates of N K (DCD) [2016] eKLR** where an award of Ksh.1,000,000/= was made as loss of dependency for the death of a nine year old primary school pupil.

b) **P V v Zena Roses Ltd & another [2015] eKLR** Where an award of Ksh.300,000/= loss of dependency for a death of a 6 year old kindergarten pupil.

16. I award the sum of Ksh.500,000/= per child for loss of dependency herein. In arriving at the said lumpsum awards, I have taken into account the tender ages of the two children. It is difficult to ascertain their career growth without being speculative. However, it was a reasonable expectation by the parents that their children would have provided for them in the future.

17. The Plaintiff's evidence was that the burial ceremony for the two girls was combined. The claim for special damages in that respect covers both suits. The special damages were claimed as follows:

a. Police abstract	Ksh. 2,000/=
b. Post mortem	Ksh.20,000/=
c. Coffin	Ksh.40,000/=
d. Vehicle plus accessories	Ksh.130,000/=
e. Hearse	Ksh.5,000/=
f. Morgue	Ksh.2,000/=
g. Hall hiring	Ksh.14,500/=
h. Nation advertisement	Ksh.37,350/=
i. Cows	Ksh.30,200/=
m. Chicken	Ksh.12,600/=
n. Electric items	Ksh.21,345/=
o. Catering, tents, chairs, food	Ksh.190,000/=

p. Grant of letters of administration Ksh.1,095/=

18. The claim for special damages was specifically proved as per the receipts produced except for the police abstract and Grant of letters of Administration where no receipts were produced. The total comes to Ksh. 502,995/=. The Plaintiff explained in his evidence that in accordance with the traditions and customs of the Luhya community, there was an overnight vigil at the parent's Mlolongo home before the bodies were transported to Kakamega for burial. He further testified that according to their customs there was another overnight stay and the mourners had to be fed and that the burial ceremony was well attended. The expenses claimed were therefore reasonable in the circumstances of this case.

19. The final award is as follows

**LM**

Pain and suffering	Ksh.10,000/=
Loss of expectation of life	Ksh.100,000/=
Loss of dependency	Ksh.500,000/=

**FM**

Pain and suffering	Ksh.10,000/=
Loss of expectation of life	Ksh.100,000/=
Loss of dependency	Ksh.500,000/=
Special damages	<u>Ksh.502,995/=</u>

**Grand Total** **Ksh.1,722,995/=**

20. Consequently, I enter judgment in favour of the Plaintiff against the Defendant for the sum of Ksh.1,722,995/= interest and costs.

**Dated, signed and delivered at Nairobi this 26<sup>th</sup> day of Sept, 2018**

**B. THURANIRA JADEN**

**JUDGE**