



IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 91OF 2001

ABDULLAHI IBRAHIM AHMED (Suing as the personal legal representative of

The Estate Of Anisa Sheikh Hassan (Deceased).....**PLAINTIFF**

VERSUS

LEM LEM TEKLUE MUZOLO.....DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit on 22nd January, 2001 against one Nigusu Worde vide a plaint dated 26th July 2000. The Plaintiff filed an amended plaint on 6th July, 2001 and one Simon Kimathi Murugu was enjoined as the 2nd Defendant. Subsequently on 27th June, 2003 the plaint was further amended to reflect the current Defendant, Lem Lem Teklue Muzolo as the only Defendant.

2. The Plaintiff's claim arises out of an accident which occurred on 30th May, 1998 involving motor vehicle registration No. KAA 948L. The Plaintiff blames the accident on the negligent manner that he states the motor vehicle was being driven at the material time. The Defendant is sued as the owner of the motor vehicle.

3. The Defendant did not enter appearance nor filed a defence. A request was made for the entry of interlocutory judgment. The interlocutory judgment was entered on 10th February, 2014 and the case set down for formal proof. However the then trial judge raised the issue of limitation of time under the Limitation of Actions Act Cap 22 Law of Kenya and after hearing counsel for the Plaintiff on the issue, the honourable Judge struck out the suit. The suit the Court of Appeal however in their judgment delivered on 18th October, 2003 reinstated the suit.

4. The Plaintiff, Abdulahi Ahmed Ibrahim (PW1) gave evidence and produced his bundle of documents filed herein as an exhibit. Interlocutory judgment having been entered, I hold the Defendant 100% liable for the accident. The Court of Appeal in **Abdulahi Ibrahim Ahmed v Lem Lem Ahmed CA Nbi No. 278/2005** during the appeal in respect of the orders striking out the suit herein stated as follows:

“Regarding the first principle we can do no better than to repeat what was said by this court in the case of Felix Mathenge v Kenya Power & Lighting Co. Ltd Civil Appeal No 215 of 2002 that:-

“The role of the Court after entering the interlocutory judgment was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to the quantum of damages.”

5. On the assessment of damages, the Plaintiff's evidence is that the deceased who was his granddaughter was 26 years old and a business lady at the time of the accident. That the deceased sustained extensive

injuries in the accident and was admitted at Madina Nursing Home and Mater Hospital for several days before she succumbed to the injuries. It was further stated that the deceased left behind a daughter by the name Fatuma Sheikh Hassan was nine (9) years old at the material time and who was solely dependent on the deceased.

6. The Plaintiff filed written submissions which I have considered. The special damages claim is for Ksh. 239,036.30. This is a liquidated claim. Counsel submitted for an award of Ksh.100,000/= for pain and suffering. The following authorities were relied on:

a) **Sanya Hassan & another v Soma Properties Ltd [2004] eKLR**

b) **David Ndungu v Wesley Kiptalam Kiptoo [2010] eKLR.**

In the case at hand death occurred after almost one week. The proposed award of Ksh.100,000/= on this head is in my view reasonable taking into account similar awards in similar cases and the cases cited above.

7. On the loss of expectation of life, an award of Ksh.100,000/= was proposed. The Plaintiff's counsel referred the court to the case of **Benedeta Wanjiku Kimani v Changwon Cheboi & another [2013] eKLR** where Ksh.100,000/= was awarded. The amount proposed is a conventional figure awarded in similar cases and I award the same.

8. On loss of dependency, the deceased had a child. A dependency ratio of 2/3 is reasonable. The deceased was 26 years old as reflected in the death certificate. Had the life of the deceased not been cut short by the accident, she could have lived probably for another 30 years or more. However taking into account the vicissitudes of life, I think a multiplier of 25 years is reasonable. The Plaintiff has not adduced any evidence to show how much the deceased earned and how much the deceased spent on her family. I have not seen any such evidence in the Plaintiff's statement dated 27th January, 2015 and filed in court on the same day. The *viva voce* evidence adduced in court does not reflect the Plaintiff's earnings either. The sum of Ksh.25,000/= reflected in the written submission is not supported by any evidence. However, the deceased must have been capable of earning at least the minimum wages provided for by the law. The Regulation of Wages and Conditions of Employment Act (Cap 229) which came into effect in the year 1998 provided for a basic minimum daily rate of Kshs 129.65 for a general labourer. In the absence of any evidence on the skills or earnings of the deceased, I adopt the said minimum wage as the earnings of the deceased. $Ksh.129.65 \times 30 = 3889.50$. I will round up the figure to Ksh.4,000/=. Loss of dependency therefore works out as follows:

$$Ksh.4,000 \times 12 \times 25 \times 2/3 = 800,000/=$$

9. The total award working out as follows:

- | | |
|--------------------------------|----------------|
| a) Pain and suffering | Ksh.100,000/= |
| b) Loss of expectation of life | Ksh.100,000/= |
| c) Loss of dependency | Ksh.800,000/= |
| d) Special damages | Ksh.239,036.30 |

Total **Ksh.1,239,036.30**

10. Consequently judgment is hereby entered for the Plaintiff against the Defendant for the sum of Ksh.1,239,036.30 plus the costs and interest.

Dated, signed and delivered at Nairobi this 30th day of March, 2017

B. THURANIRA JADEN

JUDGE