



Tsuma (Suing as administrator of the estate Felicia Murunga and Lisa Murunga) v Acacia Crest Academy (Civil Case 218 of 2013) [2017] KEHC 8340 (KLR) (Civ) (26 September 2017) (Judgment)

Neutral citation: [2017] KEHC 8340 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 218 OF 2013
BT JADEN, J
SEPTEMBER 26, 2017

BETWEEN

NICK MURUNGA TSUMA PLAINTIFF
SUING AS ADMINISTRATOR OF THE ESTATE FELICIA MURUNGA AND LISA MURUNGA

AND

ACACIA CREST ACADEMY DEFENDANT

JUDGMENT

1. On or about August 1, 2012, the plaintiff's two daughters, Lisa Murunga and Felicia Murunga were involved in a fatal road traffic accident. Through two suits filed on dated June 10, 2013, the plaintiff claimed damages under the *Law Reform Act* cap 26 Laws of Kenya and the *Fatal Accident 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 defense 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 defense and joined issues with the defendant. The contents of the plaints were reiterated.
4. On November 25, 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 334W 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 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 KAQ 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 August 1, 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 kshs 10,000/= for pain and suffering of and kshs 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 kshs 800,000/= general damages award per child for loss of dependency based on a multiplicand of kshs 5,000/= and a multiplier of 20 years on a 1/3 dependency ratio (kshs 5000 x 12 x 20 x 1/3). Counsel relied on the case of *Stephen Maina Mwangi v Peter Muguro Waweru (Suing on behalf of Bereta Njeri Muguro (dead))* [2013] eKLR where the award of general damages made was kshs 640,000/= (kshs 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 kshs 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 kshs 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 // *Mesback Kamu v Edraws Gathandi & another*// wherein an award of kshs 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] e KLR where an award of kshs 1,000,000/= was made as loss of dependency for the death of a nine year old primary school pupil.
- b. *V Zena Roses Ltd & another* [2015] e KLR Where an award of kshs 300,000/= loss of dependency for death of a 6 year old kindergarten pupil.
16. I award the sum of kshs 500,000/= per child for loss of dependency herein. In arriving at the said lump sum 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 kshs 2,000/=
- b. Post mortem kshs 20,000/=
- c. Coffin kshs 40,000/=
- d. Vehicle plus accessories kshs 130,000/=
- e. Hearse kshs 5,000/=
- f. Morgue kshs 2,000/=
- g. Hall hiring kshs 14,500/=
- h. Nation advertisement kshs 37,350/=
- i. Cows kshs 30,200/=
- j. Chicken kshs 12,600/=
- k. Electric items kshs 21,345/=
- l. Catering, tents, chairs, food kshs 190,000/=
- m. Grant of letters of administration kshs 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 kshs 502,995/=. The plaintiff explained in his evidence that in accordance with the traditions and customs of the Luyha 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:

Lisa Murunga



Pain and suffering kshs 10,000/=

Loss of expectation of life kshs 100,000/=

Loss of dependency kshs 500,000/=

Felica Murunga

Pain and suffering kshs 10,000/=

Loss of expectation of life kshs 100,000/=

Loss of dependency kshs 500,000/=

Special damages kshs 502,995/=

Grand Total kshs 1,722,995/=

20. Consequently, I enter judgement in favour of the plaintiff against the defendant for the sum of kshs 1,722,995/= interest and costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPT ,2017.

B THURANIRA

JUDGE

