



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 43 OF 2000

PAUL MUBEA TAITI

JANE MUBEA TAITI(Both suing as the legal representatives

of the Estate of DAVID MUBEA TAITI.....PLAINTIFFS

VERSUS

JAMES MAINA KAMAU1ST DEFENDANT

BERRY FARMS LIMITED.....2ND DEFENDANT

PAUL KIRUI BARMEN.....3RD DEFENDANT

JUDGMENT

1. The plaintiffs are the administrators of the Estate of the deceased David Mubea Taiti by virtue of Letters of Administration *Ad Litem* issued to them through **Nakuru High Court Succession Cause No.118 of 1998** on the 14th August 1998(PExt 1).

2. The deceased was on the 1st February 1998 a fare paying passenger in motor vehicle Registration Number KSB 084 a *matatu*, registered in the 1st Defendant's name who was also the driver. This vehicle collided with motor vehicle registration Number KAG 547 G Isuzu van, the property of the 3rd defendant that was being driven by the 2nd Defendant along Nakuru-Eldoret road. As a result of the accident the deceased suffered fatal injuries. The administrators sued both the owners and drivers of the respective vehicles for loss and damages, alleging negligence by their respective drivers.

3. By their plaint dated 4th March 1998 the plaintiffs sought damages under the Law Reform Act and the Fatal Accidents Act.

Particulars of negligence are pleaded against both drivers and also particulars pursuant to the Fatal Accidents Act.

4. In his statement of defence dated 29th March 1999, the 1st defendant denied occurrence of the accident, and without prejudice to the denial attributed negligence to the driver of the 3rd defendants vehicle.

Likewise the 2nd and 3rd defendant denied negligence in their joint defence dated 16th April 1999 and blamed the 1st defendants vehicle for the accident.

5. Among cases filed arising from the same accident was **Nakuru HCCC No. 309 of 1998 – David Njoroge Muchiri -vs- Berry Farms Ltd and 3 Others** – which case was heard and **judgment delivered on the 24th November 2006. The Hon. Judge, Martha Koome (as she then was) apportioned liability equally to the two motor vehicles. This suit was selected as a TEST suit.**

Judgment on liability at 50:50 basis therefore applies to this suit.

6. My duty is now to assess the *quantum* of damages awardable to the estate of the deceased, upon the evidence and documents provided.

The deceased died at the age of 33 years – death certificate PExt 2. The Letters of Administration *Ad Litem* were duly produced PExt 1. A police abstract was also produced (PExt 3) as well as the judgment in the test suit **HCCC No 309 of 1998 – (PExt 4).**

7. At the time of death, the deceased was employed as a sales assistant at Yako Limited earning a salary of Kshs.3,689/= per month –

payslips for the months of January to December 1997 produced (PExt.6).

He left behind his wife and three children besides his two parents who depended on him for their upkeep and welfare.

No evidence was adduced that the deceased was unhealthy. Indeed the defendants did not tender any evidence though served with the hearing notice, and the 3rd defendants advocates being present in court, but opted not to participate in the proceedings.

8. Damages under the Law Reform Act.

In his written submissions, the plaintiffs Advocate, Mr. Kisila Gor urged the court to award a sum of Kshs.20,000/= for pain and suffering and relied on the case. **In the matter of the Estate of Eva Mayaa Manase (2012) e KLR** where a similar award was awarded.

He further proposed Kshs.150,000/= for loss of expectation of life citing the case **Benedetta Wanjiku Kimani -vs- Chagwon Cheboi & Another (2013) e KLR** where a similar sum was awarded.

I have considered the authorities cited. I shall award Kshs.20,000/= and Kshs.150,000/= in respect of pain and suffering and loss of expectation of life. These awards are moderate, reasonable and in line with current precedent.

9. Damages under the Fatal Accidents Act

Multiplier and Multiplicand

The principles upon which the awards ought to be granted were stated in the case **Beatrice Wangui Thairu -vs- Hon. Ezekiel Bargetuny & Another (Nbi HCCC No 1438 of 1998)** by the Hon. Ringera J (as he then was) and followed in many other decisions. I am guided by the said principles, which have stood the test of time.

In determining the multiplier, the age of the deceased and the balance of earning life, the age of the dependants, the life expectancy, length of the dependency, the vicissitudes of life and the factor of accelerated payment in lump are all factors to be considered.

The deceased was 33 years old at date of death. His children were minors. All things being equal, and taking into account life's servitudes He would have worked to reach retirement age of 60 years and beyond in the informal and private sector. His payslips showed total earnings of Kshs.3,689/=. That would have increased with time in the same job or in better pastures, which is a factor to be considered.

10. I have been urged to adopt a multiplier of 22 years against a multiplicand of Kshs.6,000/=. In the case **Rachael Irasha Igunza -vs- Nyenjeri Kamau HCCC No. 340 of 1993** and cited in **Board of Governors of Kangubiri Girls High School (2014) e KLR**, multipliers of 22 and 25 were adopted.

Considering that the deceased was healthy, and considering the uncertainties of life itself, I am persuaded that the multiplier of 22 years proposed is reasonable. I shall adopt the same.

The deceased's children, wife and parents lost the support they used to get from the deceased. A 2/3 dependency ratio is in order. It is adopted.

See **Benedeta Wanjiki Kimani** Case Above.

11. As to the multiplicand, the deceased's NET salary going by the payslip was Kshs.3,549/= after deductions-Pay as You Earn(PAYE), National Social Security Fund(NSSF) and National Hospital Insurance Fund(NHIF). No basis has been established for adoption of Kshs.6,000/= as the NET income as proposed.

However, and as I have stated above, the salary of the deceased would have continued to increase even as a casual labourer or in the informal sector. The Government Wages Guidelines for the period would be applicable in the situation. But as the deceased was employed, his salary would be the guiding factor. Thus, loss of dependency is calculated as follows:

$$\text{Kshs.3549} \times 12 \times 22 \times 2/3 = \text{Kshs.624,624/}=\text{.}$$

12. Special Damages were pleaded at Kshs.21,410/= but not proved by evidence.

These include funeral expenses, fees for obtaining Letters of Administration and police abstract.

In circumstances of mourning, parties are not humanly expected to keep all receipts for expenses incurred towards the funeral and other incidentals.

See **Peter Kibogoro Wanjohi -vs- Christine Wakuthi Muriuki & Another (2009) e KLR** and **Hellen Waruguru Waweru & Another -vs- Kiarie Shoe Stores Ltd Civil Appeal No. 22 of 2014 (2015) e KLR**.

Reasonable expenses are expected to be spent and ought to be allowed without strict proof. The amount pleaded of Kshs.21,410/= is very modest. It is allowed.

13. In line with the Court of Appeal holding in **Hellen Waruguru Waweru & Another -vs- Kiarie shoes Stores (Supra)**, I have taken into account the awards I have granted under the Law Reform Act, and shall not deduct the same from the award under the Fatal Accidents Act.

See **Section 2(5) of the Law Reform Act, (Cap 26)**. A party is entitled to sue under both awards, and benefit from awards of both.

Section 4(2) Fatal Accidents Act states what should be taken into account and not necessarily deducted.

The Court of Appeal in the **Hellen Waruguru Waweru** case (above) held that there is no requirement in law or otherwise for mathematical deductions, suffice that the award under the Law Reform Act has been taken into account while considering the award under the Fatal Accidents Act. That forms the basis that I have not deducted the award under the Law Reform Act.

14. Consequently, there shall be judgment for the plaintiffs against the defendants jointly and severally and specifically the **1st and 3rd defendants** as follows:

1. Liability - **50:50 basis against the 1st and 3rd defendants**

2. Pain and suffering - **Kshs. 20,000/=**

3. Loss of Expectation of life - **Kshs.150,000/=**

4. Loss of Dependency

• **Multiplicand** - **Kshs. 3,549/=**

• **Multiplier** - **22 years.**

= **Kshs.624,624/=**

5. Special damages - **Kshs. 21,410/=**

Total - **Kshs.816,034/=**

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Less 50% apportionment of - **Kshs.408,017/=**

liability

15. The costs of the suit shall be to the plaintiffs, and shall be borne by the 1st and 3rd defendants, jointly and severally.

Dated, Signed and Delivered this 21st Day of September 2017.

J.N. MULWA

JUDGE