



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL CASE NO 28 OF 2014

HILDAN WANJIRA KARIGO

(Suing as legal Representative of

Josphat Karigo Wachira, Deceased.....PLAINTIFF

VERSUS

VALUE PAK FOODS LIMITED.....DEFENDANT

J U D G M E N T

1. The Plaintiff's suit is a claim in damages under the *Law Reform Act, Cap 28* and the *Fatal Accidents Act, Cap 32* on account of the death of her husband, **Josphat Karigo Wachira** (hereinafter called the Deceased), from injuries received in a road accident on 18/07/2010 along Sagana-Kenol road. Initially the suit was against four defendants. She subsequently withdrew the suit as against the 1st, 3rd and 4th Defendants. The suit was brought for the benefit of the Plaintiff and her four (4) children with the Deceased whose names appear at paragraph 10 of the plaint dated 17/07/2014.

2. By a consent letter dated 15/04/2016 the Plaintiff and the Defendant agreed on liability. On 28/09/2016 judgment on liability was entered in terms of that consent in favour of the Plaintiff at 50 *per centum*. Hearing therefore proceeded only in respect to quantum of damages. The Plaintiff testified and called no other witness. The Defendant did not lead or call any evidence.

3. The Plaintiff's list of documents dated 17/07/2014 and the documents attached thereto were by consent admitted in evidence and marked as **Exhibit P1**.

4. I have considered the evidence placed before the court. I have also considered the written submissions filed on behalf of the parties. The Plaintiff's submissions were filed on 06/06/2017 while those of the 2nd Defendant were filed on 18/07/2017.

Damages under the Law Reform Act

(a) Pain and suffering

5. The Deceased died after nine (9) days while undergoing treatment. He had to be moved from **Thika Level 5 Hospital** to **Kenyatta National Referral Hospital**. There is no evidence that he was unconscious during his hospitalization; it is therefore safe to assume that he underwent considerable pain while he and his doctor fought to save his life. I will award KShs 150,000/00 under this head.

(b) Loss of Expectation of life

6. The Deceased was middle-aged at 40 years when he died. Without appearing to suggest that a younger life is more valuable than an older one, nevertheless the loss of a person before they have had the time to realize their full potential is greater than that of a person who has lived nearly his full life. I will award KShs 100,000/00 under this head.

Damages under the Fatal Accidents Act

Deceased's income:

7. Although the Deceased was employed as a general worker, there was no evidence of his salary and emoluments tendered. Learned counsels for both sides suggest that the court should have recourse to the ***Regulation of Wages and Conditions of Employment Act*** and the relevant order under that statute. Learned counsel for the 2nd Defendant was specific in this regard and referred to the ***Regulation of Wages (General) (Amendment) Order, 2010 (Legal Notice No 98 of 2010)*** which came into force on 01/05/2010. The minimum monthly wage of a general worker under the Order was KShs 6,221/00. In the absence of any evidence to the contrary I will take that as the Deceased's monthly wage. I believe at that level there were no statutory deductions; in any event there is no evidence before the court in that regard.

Dependency Ratio

8. The Deceased had a wife and four children. He could not have spent less than two-thirds of his income upon his family. I take two-thirds as the dependency ratio.

Multiplier

9. The Deceased was aged 40 years at death. A retirement age of 60 years for his kind of work in a private company would probably be reasonable. But due allowance for the uncertainties and vicissitudes of life must be given; and contrary to the two cases cited in the Plaintiff's submissions, there does not have to be any evidence of uncertainties and vicissitudes of life to give due allowance for them! That is why they are uncertainties and vicissitudes of life!! Balancing this against that and doing the best I can, I will award a multiplier of 15 years.

General Damages

10. The arithmetic works out as follows –

$$\text{KShs } 6,221/00 \times 12 \times 15 \times 2/3 = \text{KShs } 746,520/00$$

That will be the award of damages under the ***Fatal Accidents Act***.

Special Damages

11. There was no proof of the special damages claimed, and none will be awarded.

Summary

12. All the awards above must be reduced by 50% (consent judgment on liability). The specific sums awarded will thus be –

i. Pain and sufferingKShs 75,000/00

ii. Loss of Expectation of LifeKShs 50,000/00

iii. General damagesKShs 373,260/00

All these sums will attract interest at court rates from the date of judgment until payment in full.

13. Damages under the *Fatal Accidents Act* must be apportioned among the Deceased's dependants. I will apportion the same (KShs 373,260/00) as follows –

(i) PlaintiffKShs 253,260/00

(ii) John Warothe Karigo30,000/00

(iii) Dorris Nduiye Karigo30,000/00

(iv) Magdaline Wanjiru Karigo30,000/00

(v) Samuel Wachira Karigo30,000/00

Kshs.373,260/00

14. John Warothe Karigo appears to have attained majority. The other 3 children are still minors. Their respective shares will be invested in interest-earning accounts in the joint names of the Deputy Registrar of the court and the Plaintiff, to be released to each child upon attaining majority.

15. The Plaintiff shall have 50% of her costs of the suit.

16. There will be judgment as variously set out above.

DATED AND SIGNED AT MURANG'A THIS 21ST DAY OF DECEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 22ND DAY OF DECEMBER 2017