



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 123 OF 2011**

**J W K**

**P K K as administrators of the estate of**

**J M K (Deceased).....PLAINTIFF**

**VERSUS**

**GEORGE OMONDI**

**GEOFFREY JAIRO KIMEMIA**

**ACME CONTAINERS LTD.....DEFENDANT**

**JUDGEMENT**

1. The plaintiffs **J W K** and **P K K** sued as representatives of the estate of the deceased **J M K**, who suffered fatal injuries when the second defendant allegedly negligently drove the 1<sup>st</sup> or 2<sup>nd</sup> defendant's motor vehicle registration number KAK 954 C knocking him down while he was cycling on the road.
2. The plaintiff filed this case seeking compensation . When the matter came up for hearing on 26<sup>th</sup> October 2015, the parties entered a consent on liability where they apportioned liability at 70:30% in favour of the plaintiff. The parties further consented to adducing the plaintiff's list of documents and witness statements as evidence, which I have taken into consideration. The parties further filed their respective submissions on quantum and I have perused them.
3. On the head of loss of dependency, the plaintiffs submitted that the deceased was aged 30 years at the time of his death. They averred that he was a businessman who made a living out of burning charcoal for sale where he earned kshs 20,000/= per month. They claimed that he provided for his mother, the 1<sup>st</sup> plaintiff and her child, **M M** aged 14 years. Consequently, they proposed that a multiplicand of kshs 20,000/= be used and a dependency ratio of 2/3 for the benefit of the dependants. They calculated loss of dependency as;  $20,000 \times 12 \times 18 \times \frac{2}{3}$  Which they stated erroneously amounted to a sum of Kshs 3,024,000/= instead of Kshs 2,880,000/=.
4. The defendant in his submissions had no quarrel with the age of the deceased but disputed the claim that the deceased used to earn kshs 20,000/= per month especially given that the plaintiffs

did not produce any documentary evidence to substantiate their claim. He therefore urged this court to use a multiplicand of kshs 5,436.90/= in line with the **Regulation of Wages (Agriculture )(Amendment) Order, 2015**. He referred to the case of **Nyamira Tea Farmers Sacco vs Wilfred Nyambati Kerita & Another Kisii Civil Appeal No. 68 of 2005** , where the court in deciding the multiplicand to use where the deceased who was aged 25 years was operating a salon used the **Regulation of wages (General Amendment Order 2005)** to come up with multiplicand of kshs 4,000/= . He further submitted that the deceased did not have a wife or children and did not state the mothers age. He added that the 14 year old dependant would only have depended on the deceased until he was 18 years. He therefore suggested that 1/3 dependency would be adequate. He suggested that sum of kshs 217,476/= would be fair being  $(5,436.90 \times 12 \times 10 \times 1/3)$ .

5. Indeed, in the absence of proof of earnings amounting to Kshs 20,000/=

I am inclined to agree with the defendant that the just sum to use is as provided in the **Regulation of Wages (Agriculture )(Amendment) Order, 2015** for unskilled employee of kshs 5,436.90 given the nature of the deceased work. This was also decided in the case of **Francis K. Nthiwa V Gregory K. Mwangangi & Another [2009] eKLR**, where the court addressed the issue of lack of evidence of earnings and stated that where there is no proof then Regulation of Wages Order should be considered.

6. On the issue of dependency ratio, it is not in contention that the plaintiff was survived by his mother and brother who is referred to as her child. The plaintiffs did not inform the court of the mothers age but informed the court that the boy was aged 14 years. I believe that the plaintiff must have assisted the mother and the brother in one way or another including in educating his brother. In the premise, I believe that a dependency ratio of 2/3 is appropriate

7. As far as the multiplier is concerned, the defendant submitted that the deceased undertook a hazardous job for a living and would not have worked for long in that nature of work. He proposed a multiplier of 10 years . The plaintiff on the other hand submitted that the deceased would have lived for another 40 years. He proposed a multiplier of 18 years and quoted the case of **Joyce Nyambura Kabera vs Sam Steel Ltd**, where for a deceased who was aged 36 years old, the court used multiplier of 18 years. Despite the nature of the work of the deceased, I believe that he would have lived longer than the 10 years proposed by the defendant. Being a businessman, he would probably have gone into other jobs that are less health harzadous. Therefore, I am inclined to agree with the plaintiff that a multiplier of 18 years is appropriate.

8. Therefore, on this head of loss of dependency, I will award a sum of kshs 782,913.60/= being  $(5,436.90 \times 12 \times 18 \times 2/3)$  for loss of dependency.

#### **Pain and Suffering.**

9. The plaintiff submitted that the sum of kshs 20,000/= should be awarded for pain and suffering. The defendant submitted erroneously that Kshs 100,000/= would be adequate for pain and suffering . I believe he meant that this could be the appropriate sum for loss of expectation of life since he quoted the case of **Lucy Wambui Kihoro vs Elizbeth Njeri Obuong Nairobi Civil Suit No. 237 of 2013** where the court awarded kshs 100,000/= for loss of expectation of life for a 30 years old deceased. The defendant therefore did not submit on this head.

10. Subsequently, I have considered the fact that the accident happened on 7<sup>th</sup> June 2008 according to police abstract and the deceased died 6 days later as per the Death Certificate. I therefore believe that the proposal of kshs 20,000/= for pain and suffering by the plaintiff is adequate.

11. **Loss of Expectation of life.** The plaintiffs submitted that an award of kshs 150,000/= would be adequate for loss of expectation of life. They relied on the case of **Stella Awinja and Another vs Attorney General, HCCC 915 OF 1998** where the court awarded kshs 150,000/= for loss of

expectation of life for the deceased aged 45 years. As I have stated above. The defendant submitted that kshs 100,000/= would be adequate. Given the circumstances of this case and the time aspect including inflationary rates. I believe an award of kshs 150,000/= for loss of expectation of life is fair and I hereby award that much for loss of expectation of life..

12.Special damages. Under this head, the plaintiff submitted that a sum of kshs 18,000/= would be adequate. The defendant did not address this head. I have looked at the receipts adduced in evidence for the hospital bills, mortuary and burial bills, copy of records and the police abstract. I find the Kshs 18,000/= accurate for special damages and I hereby award the same.

13.In summary, I enter judgment on quantum of Kshs. 679,638/92 made up as follows:-

a. General damages for loss of dependency.....Kshs 782,913.60/=

b. General damages for pain and suffering.....Kshs 20,000/=

c. General damages loss of expectation of life...Kshs. 150,000/=

d. Special damages .....Kshs 18,000/=

**Total**  
**Ksh.970,913.6**

Less 30%.....Kshs  
**679,638.92**

14. I hereby award damages amounting to kshs 679,638.92/= .The above sum shall carry interest at court rates from the date hereof till payment in full. The plaintiff shall also have the costs of the suit.

Dated and delivered in open court this 12<sup>th</sup> day of February, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant