



**REPUBLIC OF KENYA**

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

**HIGH COURT CIVIL CASE NO. 411 OF 2011**

**FLORENCE NGINA NYALANDO ACHACHA.....1<sup>ST</sup> PLAINTIFF**

**CYNTIA AKINYI ACHACHA .....2<sup>ND</sup> PLAINTIFF**

**(AS ADMINISTRATORS OF THE ESTATE OF ELISHA NYALANDO ACHACHA)**

**VERSUS**

**DANIEL MUNYUA NJATHII ..... 1<sup>ST</sup> DEFENDANT**

**BUZEKI ENTERPREISES LIMITED..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The plaintiffs are administrators of the estate of the late Elisha Nyalando Achacha who died as a result of a road traffic accident on 12<sup>th</sup> July, 2010. The 1<sup>st</sup> plaintiff is the widow while the 2<sup>nd</sup> plaintiff is the daughter. This suit is for damages following the said accident which was blamed on the defendants.

There was another suit filed by the 1<sup>st</sup> plaintiff, this being HCCC NO. 138 of 2012 which determined the issue of liability. Guided by the said suit, on 23<sup>rd</sup> March, 2016 the parties herein recorded a consent judgment for the plaintiff on liability at the rate of 100% against the 1<sup>st</sup> defendant. Special damages were agreed at Kshs. 267,605/= in favour of the plaintiff against the 1<sup>st</sup> defendant as prayed in the amended plaint dated 18<sup>th</sup> January, 2012, with interest at court rates from the date of filing the suit until payment in full.

What remained in this case was quantum of damages payable to the plaintiffs. The deceased was a Senior Principal of a secondary school. The 1<sup>st</sup> plaintiff gave evidence in this court. She took the court through the earnings of the deceased and also hers alongside the expenditure related thereto. Her capacity as the administrator of her husband's estate is not in doubt.

She produced evidence relating to the deceased which also included circular No. 12 of 2011 issued by the Teachers Service Commission setting out the earnings of School Principals of which the deceased was one. According to that circular, just before he died the salary of the deceased was to be Kshs. 86,095/=. The production of that circular was not opposed.

The 1<sup>st</sup> plaintiff is also a Secondary School Principal of Isiolo Girls High School. She gave details of her responsibilities and that of her late husband to the family in terms of fees, domestic expenditure and servicing of loans.

There are two children in the family namely Peter Carey Achacha currently a form four student at Starehe Boys Centre and Cynthia Akinyi Achacha who has gone through her University studies and now undertaking a diploma course.

From the time her husband died the 1<sup>st</sup> plaintiff has sustained the family on loans and has had to scale down on a number of things. It was her husband's wish that their children had the best in education.

At the time the deceased died the family had a rented house in Nairobi. Whereas the 1<sup>st</sup> plaintiff was running the home the deceased was paying some of the loans, fees for the children and other responsibilities. It was her evidence that the Teachers Service Commission Circular was implemented and backdated to July, 2010. The 1<sup>st</sup> defendant did not call any evidence.

From the evidence on record, the deceased died at the age of 41. The retirement age is 60 years. There is nothing to show that he was in poor health and the teaching profession does not carry many risks that may lead to early termination of life compared to some professions.

Chances are that the appellant would have worked up to 60 years and even beyond had his life not been cut short by the said accident. However, there are unforeseen dangers which more often than not may cut short the life of a person. These include diseases or even accidents such as the one that claimed his life.

Taking that into consideration, I am of the view that the correct multiplier is 16 years. I have no reason to dispute the Teachers Service Commission circular aforesaid. It was to apply to the deceased.

The salary of 86,095/= was however gross and therefore subject to taxation which is 30% PAYE. The net salary would work up to Kshs. 60,226/=. Going by the evidence of the 1<sup>st</sup> plaintiff, I am also persuaded that the deceased used 2/3 of his net salary towards the maintenance of his family. This works out to Kshs. 40,178/=

The loss of dependency therefore, works out to Kshs. 40,178 x 12 x 16 = 7,714,176/= general damages. The plaintiff died soon after the accident and in my judgment I award Kshs. 100,000/= for pain and suffering. Additionally I make an award of Kshs. 100,000/= for loss of expectation of life. However, the award for loss of expectation of life which falls under the Law Reform Act shall be taken into account and deducted accordingly.

In the end there shall be judgment for the plaintiffs against the 1<sup>st</sup> defendant as follows,

- a) Kshs. 7,714,176/= loss of dependency
- b) Kshs. 100,000/= pain and suffering
- c) Kshs. 267,605/= special damages

I apportion the awards as follows,

50% to Peter Carey Achacha

30% to Cynthia Akinyi Achacha

20% to Florence Ngina Nyarando Achacha

The plaintiffs shall also have the costs of the suit and interest at court rates.

Dated and delivered at Nairobi this 25<sup>th</sup> day of July, 2016.

**A.MBOGHOLI MSAGHA**

**JUDGE**