



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1260 OF 2003

IRENE WAMBUI MUTHIKE.....PLAINTIFF

VERSUS

KONZA MERCHANT LTD.....DEFENDANT

JAMES MURAGURI KIHUHA.....3RD PARTY

J U D G M E N T

1. This suit is brought by the Plaintiff as the Administratrix of the estate of the late Lawrence Mutugi Mugo who died in a road traffic accident which occurred on 14th July, 2003. On the material date, the deceased was travelling as a passenger in a matatu Registration No. KAP 512H along Sagana-Makutano Road when the said vehicle was involved in an accident with a Mercedes Benz Registration No. KTK 369 belonging to the 1st Defendant. The occurrence of that accident was attributed to the negligence of the driver of the Defendant's motor vehicle.
2. In the premises the Plaintiff who is the widow of the deceased brought the instant suit on her own behalf and on behalf of the estate of the deceased. The suit was brought both under the Fatal Accidents Act and the Law Reform Act. The deceased was at the time of his demise aged 31 years, a graduate teacher employed by the Teachers Service Commission and earning a monthly salary of KShs. 38,165/-. He was in good health and took care of his wife, the Plaintiff and his young son Morris Mugo Mutugi then aged one year and two (2) months.
3. On 4th November, 2014, the parties recorded a consent as follows:-

- | | |
|-----------------------------------|-----------------|
| a. Special damages | KShs. 15,000/- |
| b. Damages under Law Reform Act:- | |
| i. Pain and suffering | KShs. 10,000/- |
| ii. Loss of expectation of life | KShs. 100,000/- |
| Total | KShs. 110,000/- |

- c. Damages under the Fatal Accidents Act:-

- i. Multiplier of 18 years
- ii. Dependency rate $\frac{2}{3}$

4. The parties agreed that the court do assess the multiplicand and enter judgment accordingly. It was submitted on behalf of the Plaintiff that according to the letter dated 29th August, 2003 by the deceased's employer, the deceased total salary at the time of his demise was KShs. 38,165/- per

- month. That the only statutory deductions were KShs. 5,909/-. The rest of the deductions were loan repayments which meant that the nett salary would be KShs. 32,256/- per month. It was also submitted that according to the Teachers Service Commission's circular No. 21 of 2012 dated 1st October, 2012, the deceased should have been earning KShs. 58,840/- as at July, 2012. The figure of KShs. 58,840/- was suggested as the multiplicand.
5. On behalf of the Defendant, it was submitted that upon several deductions, the deceased's nett pay was KShs. 22,279/-. That the loan being a liability to the deceased's estate and ought to be paid, it should be taken into consideration. The Defendant, further submitted that the loss of dependency should be discounted by 20% since there is a possibility of the plaintiff being remarried considering that she was widowed at the age of 25 years. The Defendant on this point relied on the case of **Mrs. P.F. Hayes & others v. C.J. Patel & another (1961) 1EA 129 (SCK) at page 133** and **Hellen Mohonja Maina v. Peter Kinagi Gituka, HCCC No. 3723 of 1990**.
 6. The courts have held different views in calculation of multiplicand. A vast number of them from which I am fortified have held that the living expenses i.e. loans and advances ought to be taken into account in calculating the multiplicand considering that they were for the benefit of the deceased's family. See the cases of **Dainty v. Haji & another., Civil Appeal No. 59 of 2004, Kenya Horticultural Exporters Ltd v. Julius Munguti Maweu., Civil Appeal No. 9 of 2004, Kenya Bus Services Ltd v. Dina Kawira Humphrey C.A. 295 of 2000** and **Simeon Kiplimo Murey & 3 others v. Kenya Bus Management Services Ltd & 4 others (2014) e KLR**.
 7. I have considered the Parties submissions and the decided cases, I decline to apply the Plaintiff's suggested mode of assessing the multiplicand as the amount to be considered is the income at the time of the deceased's demise and not futuristic. In the circumstances and considering that the actual nett pay for the deceased at the time of his demise was KShs. 32,256/-. I assess the multiplicand at KShs. 32,000/-.
 8. In this regard, the Loss of dependency will be as follows:-

$$32,000 \times \frac{2}{3} \times 12 \times 18 = \text{KShs. 4,608,000/-}$$

9. As regards the submissions that the amount be subjected to a reduction on the basis of the possibility of the Plaintiff being married, I am unable to do so. In the case of **Mrs. P.F. Hayes & Others v. C.J. Patel & Anor** (supra), the widow had been engaged. No such evidence was produced before me in this case. However, because of the accelerated payment, I will subject the award to a 10% reduction.

Accordingly, judgment is entered for the Plaintiff as follows:-

- | | |
|-------------------------------------|-------------------|
| a. Special damages | KShs. 15,000/- |
| b. Damages under the Law Reform Act | |
| i. Pain and suffering | KShs. 10,000/- |
| ii. Loss of expectation of life | KShs. 100,000/- |
| c. Damages under Fatal Accident Act | KShs. 4,608,000/- |
| Less | |
| i. Award under Law Reform Act | KShs. 110,000/- |
| | KShs. 4,498,000/- |
| Less 40% contribution | KShs. 1,799,200/- |
| | KShs. 2,698,800/- |
| Less 10% Accelerated payment | KShs. 269,880/- |

KShs.2, 428,920/-

Total amount payable

KShs.2,443,920/-

10.I also award the costs of the suit and interest on the damages and costs from the date of judgment until payment in full.

It is so decree.

Dated and Delivered at Nairobi this 23rd day of January, 2015

A MABEYA

JUDGE