



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 19 OF 2013**

**ROSE MWIKALI KYALO (Suing as Legal Representative of the Estate of  
MICHAEL KYALO KATUMO – DECEASED) ..... PLAINTIFF**

**VERSUS**

**1. DANROSE KENYA LTD.  
2. DAVID MAINA MURIUKI ..... DEFENDANTS**

**J U D G M E N T**

1. By a plaint dated 6/5/2013, the Plaintiff **Rose Mwikali Kyalo** filed this suit as the Legal Representative of the estate of the Late **Michael Kyalo Katumo** (Deceased). The Defendants were sued as the owner and driver respectively of motor vehicle **Reg. No. KAZ 596G/ZB 7572**.
2. The Plaintiff's case is that on 18/12/2013, the deceased was lawfully driving motor vehicle **Reg. No. KBQ 855 B** along **Mombasa – Nairobi road** near **Maanzoni** when he was involved in an accident with the Defendants' motor vehicle. The deceased sustained fatal injuries in the accident. The Plaintiff blamed the accident on the negligent manner that the Defendants' motor vehicle was alleged to have been driven at the material time. The Plaintiff prayed for judgment against the Defendants jointly and severally as follows:-
  - a. **Special damages of Kshs.488,550/=.**
  - b. **General damages under the Fatal Accident Act and the Law Reform Act.**
  - c. **Costs of the suit and interest.**
  - d. **Any other relief the court may deem fit and just.**
3. The Defendants in their statement of defence denied the Plaintiff's claim. The defence blamed the deceased entirely and/or substantially for the accident. A reply to the defence was filed denying any negligence by the deceased.
4. By the consent of the parties entered on 29/9/14, liability was agreed at 10% against the Plaintiff and 90% against the Defendants. The case proceeded for assessment of damages.
5. The Plaintiff (PW1) gave evidence that she is the widow to the deceased. That following the accident the deceased was admitted at **Karen Hospital** for eight (8) days. That prior to his death the deceased was working as an **Economist** with the **Ministry of Planning and National Development and Vision 2030**. That the deceased earned Kshs.176, 270/= as gross pay and Kshs.98,602 net pay. A certified copy of the payslip was produced as an exhibit. That the couple was blessed with three children who are in both secondary and primary schools. The Birth Certificates were produced as exhibits.

6. It was the Plaintiff's evidence that they have suffered loss of dependency as the deceased used to give her about Kshs.70,000/= for her maintenance and the children's maintenance. The Plaintiff produced a bundle of receipts for the burial expenses totaling Kshs. 488,550/=. During cross-examination, the Plaintiff explained that although she works as a Nurse earning about Kshs.32,000/= basic pay, she used to spend her salary on herself in addition to the financial support from the deceased. The Plaintiff further explained that the deceased was expected to retire at the age of 60 years. She also explained that the purchases reflected in the receipts from the hardware shop were materials used in preparing the grave.
7. The Defendants closed their case without calling any witnesses. The Plaintiff's evidence therefore remains uncontroverted. The parties then filed written submissions which I have duly considered.
8. On special damages, the Defendant had no issue with the bundle of receipts produced except the cost of obtaining the limited grant of letters of Administration at Kshs.60,000/=. The **Advocates Remuneration Order 2009** provides for the instruction fees payable in Probate and Administration cases on party and party costs. The limited grant was uncontested. The Kshs.10,000/= suggested by the Defendant is reasonable. The amount of Kshs.60,000/= claimed by the Plaintiff is on the high side. I therefore award Kshs.438,550/= as special damages.
9. Under the heading of pain and suffering, the evidence on record is that the deceased died after eight days. The Plaintiff's counsel submitted for an award of Kshs.200,000/= while the Defendants' counsel submitted for a sum of Kshs.50,000/=. Although there is no medical evidence on the extent of the pain and suffering, taking into account comparable authorities, I award a sum of Kshs.100,000/= on this head. (See for example **Benedeta Wanjuhi Kimani –vs- Changwon Cheboi & Another 2013 e KLR.**)
10. On loss of expectation of life, the deceased was 46 years old. The Plaintiff's counsel submitted for a sum of Kshs.150,000/= while the Defendants submitted for a sum of Kshs.70,000/=. I award a conventional sum of Kshs.100,000/=. I will take this amount into account in making the award for dependency. (See for example **South Nyanza Sugar Co. Ltd. –vs- James Martin Matoke C.A. Kisumu 91 of 1997.**)
11. On dependency, the deceased was 46 years old. The deceased was a permanent and pensionable employee according to the entries in the pay slip. The retirement age in the **Public Service in Kenya** is 60 years. The Plaintiff's evidence is that the deceased was earning a net pay of Kshs.98,602.35. The copy of the payslip was produced as an exhibit. The Plaintiff's evidence is that the deceased used to spend Kshs.70,000/= per month on his family. The Plaintiff's counsel submitted for a dependency ratio of 2/3, a multiplicand of 98,602 and a multiplier of 14 years (98,602 x 12 x 14 x 2/3). The following authorities were relied on:-
  1. **“South Nyanza Sugar Co. Ltd. –vs- James Martin Matoke – (supra).**
  2. **Nelson Ndawa Kioko & Ano. –vs- Mombasa Liners.”**
12. On the other hand, the Defendants' counsel submitted for dependency ratio of 1/3, multiplicand of 98,602 and a multiplier of 4 years (9,602 x 12 x 4 x 1/3). He relied on the following authorities:-
  1. **“Kericho HCCC No. 88 of 2003 – Betsy Chebet (suing as Personal Representative of the Estate of Kenneth Kipkoeh Langat –vs- Premier Dairy Limited & Another.**
2. **Mombasa HCCC No. 98 of 1999 – Jacob Mutahi Githaiga –vs- Said K. Mesellen (2005) e KLR.”**
13. However, taking guidance from the cited authorities and other comparable authorities and taking into account the preponderancies of life, a multiplier of ten (10) years is reasonable. The argument that the Plaintiff had not lost dependency because she was working does not hold any water. The Plaintiff gave evidence that established loss of dependency. The deceased had a wife and children. I adopt a dependency ratio of 2/3. This works out as follows:-

Kshs. 98,602 x 12 x 10 x 2/3 =7,888,160/=

The total award is subject to 10% contribution. (See for example the BOG **Ekalakala Secondary School –vs- Shadrack Kyalo Mwanja 20 e KLR.**)

14. With the foregoing, I enter judgment for the Plaintiff against the Defendants jointly and severally as follows:-

- |                                  |                                 |
|----------------------------------|---------------------------------|
| a. Pain and suffering -          | Kshs. 100,000/=                 |
| b. Loss of expectation of life – | Kshs. 100,000/=                 |
| c. Loss of dependency –          | Kshs. 7,888,160/=               |
| d. Special damages –             | Kshs. 438,550/=                 |
| Sub Total                        | <u>Kshs. 8,526,710/=</u>        |
| e. Less 10% contribution         | Kshs. 852,671/=                 |
| Total                            | <b><u>Kshs. 7,674,039/=</u></b> |
| f. Costs and interest.           |                                 |

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this 20<sup>th</sup> day of **March** 2015.

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**B. THURANIRA JADEN**

**JUDGE**