



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1550 OF 2005

**ALEXANDER OKINDA ANAGWE (suing as the administrator of the estate
of PATRICIA KEZIA ANAGWE deceased-----PLAINTIFF**

-VERSUS-

REUBEN MURIUKI KAHUHA-----1ST DEFEDANT

CITY HOPPER LTD----- 2ND DEFENDANT

AND

MICHAEL A. CRAIG-----1ST THIRD PARTY

RUEBEN KAMANDE MBURU-----2ND THIRD PARTY

JUDGMENT

1. The plaintiff claims as against the defendants for special and general damages for an accident that occurred on or about 14th May 2005. The plaintiff filed an amended plaint on the 17th July 2006. The plaintiff's daughter Patricia Kezia Anangwe (deceased) was a pedestrian walking along Mbagathi way when the first defendant's driver and/ or servant and or agent and/or with authority of and or knowledge and consent of the 2nd defendant so negligently drove or managed and or controlled Motor Vehicle Registration Number KAR 487Y that the same was involved in an accident as a result of which the said that the same was involved in an accident as a result of which the said Patricia Kezia Anangwe sustained fatal injuries from which she died.

2. The defendants in their joint amended defence denied the plaintiff's allegations as raised in the plaintiff's plaint adding that if such accident occurred then the same was solely caused substantially contributed to by the collective negligence of the deceased and driver of motor vehicle registration number KAM 038R.

Evidence

3. PW1 No. 35281 P.C Oremo Ombui testified that he was currently attached at Makupa police station handling traffic matters. That between 2005 and 2007 he was attached at Langata police station. He recalled that the accident occurred on 14th May 2005 along Mbagathi road between a vehicle KAR 487Y a Nissan City Hopper driven by Reuben Muriuki Kuhuha and a pedestrian Kezia Anangwe and the same was reported to Kilimani police station and the motor vehicle was detained at the station. He charged the driver with causing death by dangerous driving contrary to section 46 and failing to report the accident.

During his investigations he found that the driver of KAR 487Y entered the road from the bus stop all of a sudden without exercising due care he hit a range rover KAM 038B causing it to hit the pedestrian. The driver of KAR 487Y fled the scene of the accident. He was found guilty and fined Kshs. 200,000/- and was disqualified from driving for a year. On cross examination and re-examination he reiterated his examination in chief adding that the vehicle KAM 038B was on the outer lane and had right of way.

4. On 3rd February 2011 parties recorded a consent on liability in the ratio of 20:80 in favour of the plaintiff and admitted the evidence of Alexander Okunda and Jennifer K. Okunda filed on 19/3/2012 without the two witnesses giving evidence. They also agreed to admit the list of documents filed by the plaintiff without calling the makers. The issue for consideration in this judgment is on quantum only. Parties filed written submissions which I will proceed to analyze.

5. Plaintiff's submissions

The plaintiff submits that they have proved the claim of special damages of Kshs. 228,209/- through the annexed receipts.

Under the head of Pain and suffering it's submitted that; the plaintiff died on arrival at Kenyatta National Hospital and that the death was not instantaneous but the lady was calling for help and as such the plaintiff underwent a lot of pain before she died. On this the plaintiff relied on the case of ***Benedict Ogutu Makhu LO & Ano -vs- Suleiman Abdi Karim & Ano (NRB HCCC No. 2381 of 1996)*** where the court awarded a sum of Kshs. 100,000/- for pain and suffering. On loss of expectation of life he relied on the case of ***Jane G. Achieng Kinda -vs- Charles Mageto (NRB HCCC No. 1209 of 1999)*** where the court awarded a sum of Kshs. 200,000/-, he proposed a sum of Kshs. 300,000/-.

Under Fatal Accident Act it was submitted that the deceased died at the early age of 25 years, was educated and her life was cut short by the accident. On this they proposed a multiplier of 35 years and relied on the following cases; the case of ***Jane G. A. Akinda (supra)*** the deceased who died at 41 years the court used a multiplier of 10 years; the case of ***Douglas Leonard Oduory & 2 Others vs. Stephen Wachira Kariuki*** the deceased died at the age of 36 the court used a multiplier of 18 years. The plaintiffs submitted that the deceased was earning a net monthly salary of Kshs.45,411.95/- per month as evidenced by the attached pay slip. In this regard the plaintiff submitted that under dependency the plaintiff should be awarded, $Kshs.45,411.95 \times 35 \times 12 \times \frac{2}{3} = 12,715,346/-$. The summary given was as follows;

Pain and suffering –Kshs.200, 000/-

Loss of expectation- Kshs.300, 000/-

Loss of dependency –Kshs. 12,715,346/-

Less 20% liability – Kshs. 3, 643,064/-

Add Specials – Kshs. 228,209/-

The plaintiff sought awards damages under the Law reform Act and Fatal Accidents Act as prayed in the plaint.

6. Defendant's submissions

The defendant submitted that the deceased according to her death certificate dated 18th August 2005 died at the age of 25. Her pay slip dated April 2005 indicated that she was earning Kshs. 51,522/- with Kshs. 11,868/- total deductions making the net income to Kshs.39,645/- and had an outstanding HELB loan of Kshs. 169,569/- . That though the plaintiffs claim that the deceased was supporting them they have not adduced any financial status to support the same. He urged the court to take judicial notice of lack of evidence and proposes to adopt a dependence ration of 1/3.

7. On quantum it was submitted that principles established by authorities for assessment of damages in personal injuries is fairness, reasonableness, moderation and *stare decisis*. The defendant relied on the case of **West (H) and Son Ltd –vs- Shepherd (1964) AC 326**, where it was held that, "*But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation.*"

8. That the said case was used in the case of **Cecilia W. Mwangi & Another –vs- Ruth Mwangi (C.A. No. 251 of 1996)** but sought to distinguish the same in that the deceased was unmarried with a relatively well paying job and supporting her family back home. He added that the deceased's father is approaching 90 and his age should be put into consideration.

9. On damages under the Law Reform Act it was submitted that the deceased died after being taken to hospital the same day of the accident. Under this head the defendants proposed an award of Kshs. 10,000/-. On this they relied on the case of **Grace Wanjiru Gichuki –vs- Peter Gateru Macharia HCCC NO.1 of 1999** where the court awarded a minimal sum of Kshs.10,000/- for pain and suffering as the deceased did not die instantaneously but died on arrival to Tenwek Mission Hospital and the case of **Fredrick Gataka Mungai –vs- George N. Kibunyi and Anor HCCC No. 1993 of 1990** where Kshs 10,000/- was awarded.

10. On Loss of Expectation of life it was submitted that in principle the deceased has been deprived of normal expectation of life due to a wrong act or Tort feasor and the same varies depending on the deceased's time of death. The defendants relied on the case of **Kemfro Africa Ltd –vs- Meru Express Services Gathogo Karini V. A M. Lubia (1992-1988-1KAR 727** where it was held that when people that are entitled to the deceased's estate are the same for whose benefit the action under the Fatal accident's Act is brought the same is deductible. Under this head they proposed an award of Kshs. 50,000/-. They relied on the case of Jackson **Magata Kuritu –vs- Charles Cheruyot Keter Nakuru HCCC No. 437 of 1996** the court awarded Kshs. 160,000/- where the deceased was aged 16 years at the time of death and the case of **Betty Ngatia(Administrator of the estate of Gladys Waithira –vs- Samuel Kinuthia**, where the court awarded Kshs.100,000/- where the deceased was aged 18 years at the time of death.

11. On Fatal Accident Act the defendants submitted that the deceased earned a net of Kshs. 39,645/- and had a HELB loan plus other liabilities such as rent food and transport and as such could have earned a net of Kshs. 20,000/- per month and they propose the same to be adopted as the multiplicand. It was submitted that deceased died at the age of 25 years and they proposed a multiplier of 8 years. Under this head they relied on the case of **Julias Mokuwa Ongera –vs- Esther Njoki Gichari (2006) eKLR** where the deceased was aged 22 years at the time of her demise the court adopted the multiplier of 20 years. In view that there was no guarantee that the deceased could have lived to a ripe age of 55 years putting into consideration incidences of poverty, AIDs pandemic and other diseases that could have reduced the average life expectancy. In the case of **Robina Mabeya & Others -vs- Evanson Ngungi and Another HCCC No. 1409 of 1984** where the court adopted 20 years where the deceased died at the age of 23 years. That the deceased would have gotten married in 5 years and as such her support to her parents would have reduced. The plaintiff's father is 70 years in the circumstances and as such a multiplier of 8 years would be fair and reasonable.

12. On Special Damages it was submitted that the plaintiff was not the payee of the amount pleaded since all receipts are in the names of third parties who are not party to the suit and proposed that the matter be settled as follows;

Pain and suffering Kshs.10,000/-

Loss of expectation of life Kshs. 50,000/-

Fatal Accident Act

Lost years

Kshs.20,000 x 12 x 8 years

Kshs.1,920,000/-

Loss of dependence 1,920,000 x 1/3 = Kshs. 640,000/-

Add award under Law Reform Act

Kshs. 640,000/- +10,000/- +50,000/-

Total Kshs. 700,000/-

Less 20% liability Kshs. 140,000/-

Net total Kshs. 560,000/-

13. I have also read the 1st Third Party's submissions however I note that the plaintiff and defendant entered a consent on liability.

14. Determination

Law reform Act

Pain and suffering

The evidence that has been tendered was that the plaintiff sustained fatal injuries but did not die instantaneously but died on arrival at Kenyatta National Hospital. The Plaintiff sought an award of Kshs. 300,000/= under this head. While the defendant proposed a sum of Kshs. 10,000/=. The plaintiff must have undergone some pain. I find that a sum of Kshs. 100,000/- is adequate for the plaintiff under this head.

Loss of Expectation of Life

The Deceased was aged 25 years old at the time of her death. She was a young lady in good health I will award Kshs. 100,000/- for loss of expectation of life.

Lost years

On this am guided by the Court of Appeal decision of **Hassan -vs- Nathan Mwangi Kamau Transporters & 4 others [2008] 1 KLR (G&F) 90**, where it was held that;

“My summary of their relevant principles is this:

(i) A parent cannot insure the life of his child,

(ii) The death of the victim of the negligence does not increase or reduce the damages for the lost years,

(iii) The sum to be awarded is never a conventional one but compensation for a pecuniary loss,

(iv) It must be assessed justly and with moderation,

(v) The complaints of insurance companies at the size of such awards should be ignored,

(vi) *Disregard remote inscrutable speculative claims,*

(vii) *Deduct the victim's living expenses during 'the lost years' for they would not form part of the estate,*

(viii) *A young child's present or future earning in most cases would be nil,*

(ix) *An adolescent's would usually be real, assessable and small,*

(x) *The amount will vary greatly from case to case for it depends on the facts of each one including the victim's station in life,*

(xi) *Calculate the annual gross loss,*

(xii) *Apply the multiplier (the estimated number of 'lost working years') accepted as reasonable in each case,*

(xiii) *Deduct the victim's probable living expenses of a reasonably satisfying enjoyable life for him or her; and*

(xiv) *Living expenses include the reasonable cost of housing, heating, food, clothing, insurance, travelling, holidays, entertainment, social activity and so forth. "*

15. The deceased was 25 years old at the time of her death. In determining the multiplicand, the important figure is the net earnings of the deceased. The Court should then multiply the multiplicand by a reasonable figure representing so many years the plaintiff would have worked bearing in mind the expectation of earning life of the deceased and also the vicissitudes of life. The deceased at the time of her death was 25 years old and was in formal employment at KEMRI Wellcome Trust Research. Should she have worked until retirement she would have worked for a further 35 years but putting into consideration the vicissitudes of life I adopt 32 years. The deceased at the time of her death was earning a net salary of Kshs. 42,112/- after statutory deductions. I also note that the deceased was not married and was survived by her father and mother. Probably she could have spent part of her salary to support her parents. I therefore compute lost years as follows:

Kshs. 45,412 /- (multiplicand) x 32 years (multiplier) x 12 months x 1/3 = Kshs. 5,812,736/-.

Special damages

The Plaintiff pleaded special damages of Kshs. 228,209/- as follows- It was trite law that all special damages must be specifically pleaded and proved. The plaintiff annexed various receipts aimed to support the said claim. From the receipt annexed. I find that the specials pleaded have been proved.

CONCLUSION

The Plaintiff's award against the Defendants as follows;

- | | |
|---|------------------|
| (a) General damages for pain and suffering | Kshs. 100,000/= |
| (b) General damages for lost years | Kshs. 5,812,736/ |
| (c) General damages for loss of expectation of life | Kshs. 100,000/= |
| (d) Funeral expenses | Kshs. 228,209/- |

Kshs. 6,240,945/-

The plaintiff bears 20 % liability from the sum awarded a sum of Kshs. 100,000/- is deducted being an award under the Fatal Accident Act. I therefore enter judgment for the plaintiff against the defendant in the sum of Kshs. 4,912,756/- the said sum shall carry interest at court rates from the date of judgment until payment in full. Interests on the special damages shall be calculated from the date the suit was filed. The plaintiff shall also have the costs herein and apportioned likewise. The suit against the 1st Third Party is dismissed. The defendants shall pay the 1st Third Party's costs. It is so ordered.

Dated, signed and delivered this **29th** day of **May** 2015.

R. E. OUGO

JUDGE

In the presence of:

.....**Plaintiff**

.....**Defendant**

.....**1st Third party**

Charity Court Clerk.