



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 191 OF 2013

FRANCIS WAINAINA KIRUNGU

(suing as the personal representative of the

estate of JOHN KARANJA WAINAINA) deceased.....PLAINTIFF

VERUS

ELIJAH OKETCH ADELLAH.....DEFENDANT

RULING

1. The Plaintiff sued the Defendant in this suit seeking recovery of damages from an accident which occurred on 17th August, 2012. On 6th February, 2015, this court, Ougo J, entered judgment in favour of the Plaintiff and awarded KShs. 1,478,655/- as damages.

2. Plaintiff has now filed a notice of motion dated 11th March, 2015 seeking the review of the said judgment and subsequent decree. It is averred in the supporting affidavit of Rose Obaga counsel in conduct of the matter sworn on the same date that there is an arithmetic mistake arising out of an accidental slip in calculation of the damages awarded to the Plaintiff under various heads which error can be corrected by court. The deponent has urged this court to re-calculate the damages as follows:-

Damages under Fatal Accidents Act	KShs. 1,400,000/=
Pain and suffering	KShs. 50,000/=
Special Damages	KShs. 128,655/=
Loss of expectation of life	<u>KShs. 100,000/=</u>
Total	KShs. 1,678,655/=
Less loss of expectation of life	<u>KShs. 100,000/=</u>
Total damages awarded	<u>KShs. 1,578,655/=</u>

3. The application is opposed by the replying affidavit of L.W. Kamau counsel having conduct of the matter on behalf of the Defendant. He contended that there was no arithmetical error since the Plaintiff cannot benefit twice and hence the subtraction of KShs. 100,000/=. It was further contended that the Plaintiff has filed a notice of appeal against the judgment hence the same cannot be subject of

two judicial processes at the same time.

4. This application has been brought under order 45 rule 1 of the Civil Procedure Rules and Section 1A, B, 3A, 80 and 99 of the Civil Procedure Act.

5. A reading of the judgment reveal that the Judge awarded as follows:-

Special damages	KShs. 128,655/=
Loss of expectation of life	KShs. 100,000/=
Pain and suffering	KShs. 50,000/=
Loss of dependency	KShs. 1,400,000/=

The above figures total to KShs. 1,678,655/=. The award under the Fatal Accidents Act i.e ksh.100,000/= was deducted leaving a sum of KShs. 1,578,655/=. In the final part of the judgment however, it has been indicated that the award of KShs. 100,000/= under the Fatal Accidents is deducted from KShs. 1,578,655/=. Having re-calculated the awards granted as herein above stated I find that there was indeed an arithmetical error and that the correct figure after deduction of the award under the Fatal Accidents Act is KShs. 1,578,655/=.

In the final analysis I find the notice of motion dated 11th March 2015 to be well founded. It is allowed as prayed with costs. The judgement should be amended to reflect the finding in this ruling.

Dated, signed and delivered in open court this 15th day of May 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant