



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 932 OF 2000

JULIAN NJERI MURIITHI.....PLAINTIFF

VERSUS

VERONICA NJERI KARANJA.....1ST DEFENDANT

DANIEL NJOROGE.....2ND DEFENDANT

J U D G M E N T

The Plaintiff is the administrator of the estate of Stephen Mureithi Warama, deceased who was involved in a road accident on 10th July 1997 along Eldoret Nakuru Road near Dolaraine farm. She filed proceedings in this court against the representative of the estate of the late Peter Karanja Chege.

The Plaintiff case is that at the material time the deceased, Peter Karanja Chege was the registered owner and the driver of motor vehicle registration number KAA 916L. Stephen Mureithi Warama was traveling in motor vehicle KAE 821K when motor vehicle registration KAA 916L rammed into the rear of motor vehicle KAE 821K as a result the vehicle lost control and overturned and Stephen Mureithi Warama lost his life in the accident. The Plaintiff blamed Peter Karanja Chege for the accident and sought damages under Fatal Accident Act and Law Reform Act against his estate.

The Defendants failed to enter appearance defence despite service of the Plaint upon them. There is an affidavit of service filed in court on 6th May 2005 and sworn on 4th May 2005 by Martin Muia Mutua, a process server, who deponed that he accompanied the Plaintiff to effect service of the summons, plaint and verifying affidavit on the Defendants. That the 1st Defendant accepted service on her own behalf and for the 2nd Defendant and that the same was witnessed by the area Chief. That at the lapse of the prescribed time within which to file a defence, the Plaintiff requested for judgment in default of defence. The request was granted on 6th May 2005 and the Plaintiff was directed to set the suit down for formal proof hearing.

The matter came up for formal proof on 8th July 2014. The Plaintiff who testified as **PW1**, told the court that the deceased was her husband and she brought the proceedings as a representative of his estate. She produced the letters of administration issued on 16th June 1998 as **EXH1**. She also produced a death certificate as **EXH No. 2**, a marriage certificate as **EXH 3**. She testified that she had three (3) children, Anthony Warama Muritho, Alex Ndungu Muriithi and Max Njeru Muruthi . She produced their birth certificates as **EXH 4**.

She also testified that the deceased was a business man who was dealing in animal and animal products. That he held two bank accounts at Barclays Bank, Queens Way Branch No. 484011 and No. 6518190.

That at the time of his death Account No. 484011 had Kshs.125,403.80 and Account No. 6518190 had Kshs.432,663.50. The bank statements were produced as **EXH 5 a, b**. she also told the court that the deceased kept a record in a black book which was produced as EXH 6, the book showed that his income was Kshs.14,000/= per week. She also produced a motor vehicle search document marked **EXH 6** showing that the motor vehicle number KAA 916L was registered under the name of Peter Karanja Chege who also passed on in the same accident. His estate was represented by Veronica Njeri Karanja and Daniel Njoroge as shown by the letters of Administration marked as **EXH 8**.

The Plaintiff testified that she was seeking General damages for (1) loss of dependency, (2) loss of life Expectancy and (3) Pain and suffering. She also stated that the deceased survived the accident for 3 days before dying. She also informed the court that special damages were awarded to her in the interlocutory judgment.

Having stated the Plaintiff's case as above, the only issue for determination is ***whether the Plaintiff has proved the award of damages under the Fatal Accident Act and under the Law reform Act.***

Under the fatal accident Act, the Plaintiff is seeking compensation for the Loss of dependency. To properly assess damages under the Fatal Accidents Act it is necessary to determine the Deceased's **income**, the **dependency ratio** of his dependants and the **multiplier** to be used. In the instant case the Plaintiff has proved that the deceased income was Kshs.16,000/= per week which may not be constant. An average of Ksh.10,000/- per week and thereof Ksh.40,000/- per month is allowed. It is also not disputed that the deceased was survived by a widow and three children. I will adopt the proposed dependency ratio of 2/3. The Plaintiff submitted that at the time of the accident the deceased was aged 38 years and as a business man he would have worked at least until the age of 70 years had his life not been instantly shortened. I agree that the deceased was a business person and therefore he was not limited to the normal retirement age. That notwithstanding, the court has to consider the uncertainties of life. Everything being equal, he should have been able to carry on the business probably into his late 70's. I will award a **multiplier of 30 years**. **In my view** Damages under the Fatal Accidents Act will work out as follows: -

Ksh 40,000 x 12 X 30 x 2/3= Kshs.9,600,000/-.

Under the Law Reform Act, the Plaintiff is seeking general damages for pain and suffering and loss of expectation of life. The Plaintiff testified that the deceased died after three days, I have no doubt that the deceased underwent serious pain before he passed on. I will therefore award Kshs.200,000/-. I draw support from the case of **Damaris Wanjiru Muhoro Vs Joseph Kamau Njoroge & Another [2011] eKLR** where Emukule J in 2011 awarded the Plaintiff Kshs.150,000/= for pain and suffering in a case where death occurred after 3 days.

For the loss of life Expectancy, the Plaintiff in her submissions proposed Kshs.100,000. The deceased was 38 years old at the time of his death. There is no evidence that he was ailing. The deceased was in the middle of his life. I will award the Plaintiff Kshs.100,000/=.

The damages which are awardable to the Plaintiff are accordingly as follows: -

1. Pain and suffering	Kshs. 200,000.00
2. Loss of expectation of life	Kshs. 100,000.00
3. Loss of dependency	Kshs. 9,600,000.00
4. Special Damages	Kshs. 20,050.00

The total sum awarded is **Ksh.9,920,050/-** with interest at court rate on special damages from the date of filing of the suit and on general damages from the date of this judgment. Costs are to the Plaintiff. Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2015.

D A ONYANCHA

JUDGE