



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NUMBER 400 OF 2012

JOSEPH NDICHU KARIRI.....PLAINTIFF

VERSUS

1. DANIEL KIPKIRONG TARUS.....1ST DEFENDANT

2. DAVID KIBET RONO.....2ND DEFENDANT

JUDGMENT

1. Judgment on liability in the lead case **Nakuru HCCC No 398 of 2012** shall be adopted in this case as agreed by the parties. In the said case, the court made a finding that the dependents were wholly to blame for the accident and judgment was accordingly entered against both defendants jointly and severally.

2. On *quantum* of damages, the plaintiff, **Joseph Ndichu Kariri** testified that he was the administrator for the estate of the late **Jospeter Chege Ndichu**. He produced the following document in support of the claim:

- **The Limited Grant of Letters of Administration**
- **Death certificates**
- **Payslip of the deceased from employer**

It was his evidence that his late son died at the age of 22 years and was in robust health with a very bright future. That he was employed as a technician by **Nestol Kenya Limited** and was earning a salary of Kshs.44,200/= per month, and was helping him and his mother to pay school fees for his younger siblings. He stated that his son had not married and he spend over a sum of Kshs.44,200/= in funeral expenses and produced receipts that he could get to prove the claim. He urged the court to award him compensation for the loss of life of his late son and loss and loss of dependency.

3. In his submission, Learned Advocate for the plaintiff, Mr. Kiaria Njau submitted that a total sum under both the **Law Reform Act and the Fatal Accidents Act** of Kshs.10,598,501/60 – would be reasonable. In his assessment, he adopted a monthly salary of Kshs.40,608/= a multiplier of 32 years and a dependency ratio of $\frac{2}{3}$. On **Law Reform**, he adopted a sum of Kshs.150,000/= for loss of expectation of life.

4. I have considered the documents produced by the Plaintiff.

The death certificate confirms that the deceased was 22 years when he met the untimely death. He

was employed and a payslip from **Netsol Kenya Limited** showed his gross salary as Kshs.35,000/= and a NET salary of Kshs.30,108.60 after statutory deductions NSSFS Kshs.200/=, NHIF Kshs.320/= and PAYE Kshs.4,533.40 I have considered that the deceased, would have worked upto and beyond retirement age of 60 years save for the uncertainties of the future whereby the could have met an early death through natural causes or even lose the employment. Incidentally the court was not informed of the academic qualifications of the deceased. He could also have moved up the employment ladder or venture into business. Taking the above into consideration, and doing the best I can, I shall proceed to assess damages awardable to the Estate of the deceased.

At 22 years the deceased would have worked for 38 years to get to the official retirement age. I shall adopt his net salary as evidenced in his payslip for March 2011, a month before his death, of Kshs.30,108/=.

The deceased was single but as stated by his father was helping him and his mother in paying school fees for his younger siblings as he was the eldest son.

5. Doing the best I can, I shall apply a multiplier of 33 and a multiplicand of $\frac{1}{3}$.

Thus damages under the **Fatal Accidents Act**, loss of dependency works out as follows:

$$\text{Kshs.30,108} \times 12 \times 33 \times \frac{1}{3}$$

Kshs.3,974,256/=

As to loss of expectation of life under the **Law Reform Act**, I shall award the global sum of Kshs.100,000/=, which shall be deducted from the award under the **Fatal Accidents Act** to avoid double benefit by the plaintiff See **Kemfro -vs- A.M. Lubia (1982-1988) KAR 727**.

I am guided by the authorities

Oyugi Judith & Another -vs- Fredrick Odhiambo & 3 Others (2014) KLR where Justice Majanja in Homabay stated:

“..... the multiplier approach is joint method of assessment of damages. It is not a principle of law or dogma. It can, and must be abandoned where the facts do not facilitate its application. It is a useful and practical method where factors such as age of the deceased, the amount of annual or monthly dependency and expected length of dependency are known ---- to insist on multiplier approach would be to sacrifice justice on the altar of methodology something a court of justice should never do.”

6. Applying the above approach, I arrived at the multiplier above in respect of the young man who died at age 22, and whose future looked very bright.

I have also sought guidance from the case **Nakuru HCCC No. 404 of 1998 Sospeter Ndungu Kamau -vs- Charles Mageto, & Another, (2006) KLR** where judge -

quoting from the Case of **Sheikh Mushtag Hassan -vs- Nathan Mwangi Kamau & Another (1982)-88) Vol KAR**, the Court of Appeal held:

“the financial assistance relative to the ability of the deceased which is normally expected and readily provided obligated by death.

The cost of bringing up the deceased and the expense of his/her education are lost, never to be redeemed. All the benefits that would accrue to the parents, and where it applies, the younger brothers and sisters of the deceased as the deceased matured

physically and materially, are extinguished now --- it is reasonable to consider that the deceased would have worked up to 55 years and it is reasonable in the circumstances to adopt a multiplier of 30 years --- it is reasonable to consider that the deceased would have used $\frac{1}{3}$ of his salary to support the plaintiff.”

7. The above is the tough reality in one Kenyan situation where parents while bringing up and educating their younger children have a real expectation that once they are mature and working, they would in turn assist them with their younger siblings.

I have no reason whatsoever to depart from the Learned Judges holding.

8. The Plaintiff pleaded a sum of Ksh.44,400/= as special damages. A bundle of receipts was produced. They represent funeral expenses including mortuary fees, transport of the deceased body from Nakuru Provincial Hospital mortuary to Kitale for burial other related services.

The plaintiff's pleaded a sum of Kshs.44,400/= as special damages, being principally funeral expenses. A bundle of receipts was produced to represent the said sum (See PExb 7). All the receipts have no revenue stamp to comply with the **Stamp Duty Act, Cap 480 Laws of Kenya**.

However, that in my considered opinion, is not to say that the deceased family did not spend money, in say mortuary expenses, transport of the body to its burial site at Kitale from Nakuru County and so on.

The defence did not object to the production and admission for the said bundle of receipts. Under the **Stamp Duty Act Cap 480 Laws of Kenya**, it is not specifically provided that payment receipts in respect of services rendered must be stamped. **Section 88 of the Act** in my opinion, it is the duty of the receiver of payment who is under a duty to affix revenue stamps on the payment receipt, not the payee who should not be penalised for omissions of the receiver. I am guided by the cases **Benedetta Wanjiku Kimani -vs- Changow Cheboi & another HCCC No. 373 of 2008** and **Irene Ngombo Mshingo -vs- Miriam Kadogo (2000) KLR** where the learned judges held that a document does not cease to be admissible for lack of affixation of a revenue stamp. In the latter case, the court proceeded to admit payment receipts from Kenyatta National Hospital without revenue stamps affixed thereon.

I shall allow the plaintiff's special damages pleaded at Kshs.44,400/= as reasonably fair expenditure towards funeral expenses.

9. Consequently and based on the above findings, the plaintiffs case is allowed as prayed in the following terms:

- (a) The defendants are held wholly to blame for the accident jointly and severally.
- (b) The plaintiffs are awarded a sum of **Kshs.3,874,256/=** damages under the **Fatal Accidents Act** and a sum of **Kshs.44,400/=** is allowed as special damages.
- (c) The plaintiffs shall have the costs of the suit. Interest on special damages shall accrue from the date of filing of the suit at court rates, while interest on general damages shall accrue from the date of this judgment.

Dated, signed and delivered in open court this 12th day of November 2015

JANET MULWA

JUDGE