



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 399 OF 2012

MILKAH WANJIKU MUTHEAPLAINTIFF

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. The court found that the defendants thereof were wholly to blame for the accident and judgment was thus entered against both defendants jointly and severally.

2. On *quantum* of damages, the plaintiffs **Milkah Wanjiku Muthua** and **James Wairugi Mwangi** being administrators of the Estate of the deceased **Antony Maina Mwangi** produced the following documents in support of the claim.

1. **Letters of Administration *Adlitem* dated 2nd May 2012**
2. **Death Certificate of the deceased**
3. **Payslip from deceased's employer**
4. **Children Birth Certificates**
5. **Receipts in respect of funeral expenses, mortuary charges, transport.**

Milkah Wanjiku testified that she was the wife of the deceased then 30 years old with whom they had two issues aged 10 and 2½ years. That he used to take care of the family including their aged mother and father 66 and 62 years respectively. Her late husband was 33 years when he died; and was employed at **Netsol Kenya Ltd** earning a Gross salary of Kshs.50,000/= per month and Net of Ksh.40,608/= after statutory deduction she testified that he was hard working and in good health and would have worked till and after retirement save for the accident.

3. In his submissions, Mr. Kiania Njau Advocate for the Plaintiffs submitted that a sum of Kshs.6,193,169.60 would be reasonable compensation. He applied a multiplier of 32 years, and

dependency ration of $\frac{2}{3}$ against a salary of Kshs.30,108.60/= while computing damages under the **Fatal Accidents Act**. Under **Law Reform Act**, he proposed a sum of Ksh.150,000/= being damages for loss of expectation of life.

He did not submit on the special damages as pleaded or otherwise.

4. I have considered the documents produced and listed above. The deceased's death certificate shows that he was 33 years at the date of death. The birth certificates confirms that he left behind two young children, aged 10 and $2\frac{1}{2}$ years.

The deceased last payslip for the month of March 2011 shows that his gross monthly salary was Kshs.50,000/= and a sum of Ksh.40,608/= as the NET salary after deductions of NSSF – Ksh.300, PAYE Kshs.10,033/40 and NHIF Kshs.320/=. I have considered that the deceased would have worked to official retirement age of 60 years and even beyond; thus 17 years were left to reach retirement age. He was in good health.

5. Guided by authorities appearing here below, I shall assess damages as follows:

1. **Under The Law Reform Act.**

For loss of expectation of life, I allow Kshs.100,000/=. It has not been indicated when the deceased died after the accident. For pain and suffering, I shall assess **NIL** damages.

2. **Under the Fatal Accidents Act (Loss of Dependency).**

A salary of Ksh.40,608/= shall be adopted as the NET salary. I am satisfied that a multiplier of 20 years and a multiplicand of $\frac{2}{3}$ will be reasonable. This works out as follows:

$$\text{Kshs.40,608} \times 12 \times 20 \times \frac{2}{3} = \text{Kshs.6,497,280/=}$$

In adopting the above figures, I am guided by the fact that life is uncertain and the deceased may have not lived to the retirement age, or may have lived even upto 100 years. He may also have lost employment, or even got a better employment or enter into business. In arriving at the above, I am guided by the following authorities.

In **Oyugi Judith and Another -vs- Fredrick Odhiambo & 3 Others (2014), KLR, Justice Majanja sitting at the high Court at Homabay held that:**

“---- the multiplier approach is just a method of assessing damages. It is not a principle of law or a 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 alter of methodology something a court justice should never do.”

7. I have applied the above principles and approach to reach the multiplier of 20 years. The salary of the deceased was known but the future could not be ascertained.

As stated elsewhere, the amount awarded under the law Reform Act ought be deducted from the amount awarded on loss of dependency – See **Kemfro -vs- A.M. Lubia (1982-1988) KAR 727**.

Thus, the **NET** award under the two statutes would be;

Ksh.6,497,280/=

Less Kshs. 100,000/= that is

=Kshs.6,397,280/=

8. The plaintiff's pleaded a sum of Ksh.52,700/= as special damages. The plaintiff produced receipts from various institutions. I have considered the said receipts. They are not revenue stamped as required under the Stamp Duty Act. It is trite that the deceased's family must have spent money towards funeral expenses in transporting the body from Nakuru Provincial Hospital mortuary to its burial place and other related expenses. 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 of Appeal 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.52,700/= 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.6,397,280/=** damages under the **Fatal Accidents Act** and a sum of **Kshs.52,700/=** 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 in the sum of **Kshs.6,397,280/=** shall accrue from the date of this judgment.

It so ordered.

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

JANET MULWA

JUDGE