



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO.434 OF 2011

GRACE NJOKI GAKURU &

PRISCILLAH WANGUI RITHO (suing as personal representative of the estate of

Francis Ritho Mugo (Deceased).....**PLAINTIFF**

-VERSUS-

JOSEPH. N. WANJIKU.....**DEFENDANT**

JUDGMENT

On the 12th of October 2011 the plaintiffs' who are wife and daughter of the deceased Francis Ritho Mugo filed suit against the defendant as dependants and personal representatives of the deceased's estate for their benefit under the Law Reform Act Cap. 26. In their plaint dated the 10th of October 2011, the plaintiffs claim that on or about the 16th of December 2010 the deceased was walking along Jogoo when by reason of negligence on the part of the defendant, his agent or driver in driving managing and/or controlling motor vehicle registration number KAP 406S the defendant permitted the vehicle to lose control veer off the road and hit the deceased thus occasioning fatal injuries to the deceased.

It is stated in the plaint that the deceased was aged 47 years a constructor in a lucrative construction industry, a family man. That he was survived by six (6) dependants, Elizaphan Mugo his father aged 90 years, Priscillar Waithiengari Mother aged 80 years, Grace Njoki Gakuru (widow aged 47 years), Prisciallah Wangui Ritho aged 22 years, Milka Muthoni Ritho aged 19 years and Anastacia Wairimu Ritho aged 13 years. The plaintiff also claim special damages of Kshs. 6,575/- plus general damages under the Fatal Accident Act (Cap 32) and the Law Reform Act (Cap. 26). The plaintiffs seek costs and interest at court rates.

On the 20th of July 2013 interlocutory judgment was entered against the defendant Joseph. N. Wanjiku after he was served with summons by way of substituted service and failed to enter appearance and/or file defense. The suit came up for formal proof on the 19th of November 2013.

Grace Njoki Gakuru the widow of the deceased , one of the plaintiff testified that the deceased Francis Ritho Mugo was hit by a vehicle along Jogoo road on the 16th of December 2010 by vehicle registration number KAP 406S. She did not witness the accident but was called and informed by her niece. She saw the vehicle at the police station. The driver was charged in court in traffic case no. 11600 of 2010. She testified that her late husband was a contractor with Kangu-Rwe Building Construction and was being paid Kshs.16,000/- per week. He was also given other contracts by other companies. They had 4 children

as stated in the plaint all were in school and were staying with them. That his parents were also dependant on him. That currently their daughter Priscillah has finished school, Milka is in college and Anastacia is in form 3 at Rutume High School. That since her husband's death life has been hard.

Mr. Lukorito filed written submission on the 26th of November 2013. I have read his submission. Counsel submitted on the following issues, the locus standi of the plaintiff, the liability for the accident and quantum.

On locus the plaintiffs has exhibited a limited grant ad litem dated the 14th of June 2011, they therefore have the locus to file suit. On the issue of liability in my view that was dealt with when the interlocutory judgment was entered. Once interlocutory judgment was entered the plaintiffs' task was to fix the matter for formal proof, to prove their claim on quantum and special damages. Counsel has submitted that the plaintiff did not specifically plead for funeral expenses and that they do not have the receipts for special damages to confirm the expense incurred. He argued that the court should award Kshs. 30,000/= to account for funeral expenses, for this argument the plaintiffs relied on the case of **HCCC No. 116 of 2004 Wesley Kipkoech Kendagor (suing as the legal representative of the estate of the late Geoffrey Kipngetich Langat)-vs-Unistar Transport Ltd** and the case of **Jane Katumbu Mwanzia -vs-Republic HCCC No. 3177 of 1977** where Justice Kimaru awarded Kshs. 30,000/- even though funeral expenses were not specially pleaded.

On general damages under the Law Reform Act and Fatal Accidents Act, under the head of pain and suffering the plaintiffs have sought to be awarded Kshs. 80,000/= and relied on the case of **Sospeter Ndungu Kamau (suing as the legal representatives of the late son)Arthur Nderitu Ndungu -vs-Charles Mageto & Douglas Ochwang Oachi HCCC No. 404 of 1998.**

For loss of expectation of life the plaintiffs propose a sum of Kshs. 100,000/= to be awarded. The plaintiffs relied on the case of **Irene W. Kagondy & Mary Wandia Kagondy (suing as the legal representative and administrators of the estate of the late Patrick Mwangi Kagondy) -vs- W. K. Tilley (Muthaiga) Ltd & Walter Juma Opondi.**

For loss of dependence the plaintiffs submitted that a multiplier of 23 years be adopted, Counsel was guided by the following cases.;**HCCC No. 124 of 2004, Elizabeth Ngina Muthoka (suing as the administratrix of the estate of Prof. Paul Muthoka Musau -vs- Martin Musila Kombo & another and HCCC No. 451 of 2000 the case of Hannah Njeri Mwangi-vs- Mayanja Abdu & A. K. Transporters.** The plaintiffs proposed that the loss of dependence be calculated as follows; Kshs. $64,000 \times 28 \times 12 \times \frac{2}{3}$ which totals Kshs. 14,425,600/.

As already stated the issue of liability was dealt with when interlocutory judgment was entered, my task now is to award general damages under the Fatal Accidents Act Cap.32 and the Law Reform Act Cap. 26 and special damages.

On special damages the plaintiffs are claiming Kshs. 6,575/=. The only receipt produced for this claim is the one for motor vehicle search of Kshs 500/=. the receipt for filing the letters of administration was not produced. It is trite law that special damages must not only be pleaded and proved, in the absence of the receipt am unable to award the sum of Kshs. 6,075/=. The plaintiffs through their Counsel in their submissions claim funeral expenses of Kshs. 30,000/- . This is a specific claim that should have been specifically pleaded. The plaintiff did not even mention this expense in her evidence or statement, even though I do recognize that the family did incur funeral expenses but a claim for funeral expenses cannot be sought by way of submission, it has to be pleaded. It is not clear whether in the cases cited the plaintiffs had pleaded the claim but not proved it.

The plaintiffs have sought Kshs. 80000/- for pain and suffering, it was the 1st plaintiffs' evidence that the deceased died at the scene of accident the same day I therefore award Kshs. 50,000/- under this heading.

On loss of expectation of life the sum proposed of Kshs. 100,000/- is reasonable.

On loss of dependence it was the 1st plaintiff's evidence that the deceased earned Kshs. 16,000/-. There is a letter from Kangu-Rwe Building Construction to support the fact that the deceased earned Kshs. 16,000/- weekly and that at the time of his death he was still their employee, there is also a letter that he was sub-contracted by a company whose director is Suraj Jeram, though the said letter does not state what he earned from the said work. The deceased had dependants his wife, 4 children and parents who are still alive. Had he lived he would have continued to take care of his dependants. As per the death certificate he was 47 years at the time of his death. The plaintiffs' have asked that a multiplier of 23 years be adopted, being 47 years old, and with the kind of work he did I find that a multiplier of 18 is reasonable. It is also reasonable to consider that he could have used 2/3 of his salary on his dependants. He earned Kshs.16,000/= per week, and therefore in a month he earned Kshs. 64,000/-. Thus general damages will be $64,000 \times 18 \times 12 \times \frac{2}{3} = \text{Kshs.}9,216,000/=$

This is the Court's judgment . The plaintiff is therefore awarded Kshs. 50,000/= for pain and suffering, Kshs. 100,000/= for loss of expectation of life, general damages of Kshs. 9,216,000/- and special damages of Kshs. 500/-. Total is Kshs. 9,366,500/=.

The plaintiffs shall have the letters of administration confirmed. The amount awarded shall be divided as follows;

1. Grace Njoki Gakuru (Widow) Kshs..... Kshs.4,366,500/-.
2. Priscillah Wangui Ritho (adult daughter).....Kshs. 1,000,000/-
3. Milka Muthoni Ritho (adult daughter)Kshs. 1,000,000/-
4. Anastacia Wairimu Ritho (minor daughter).....Kshs. 2,000,000/-
5. Elizaphan Mugo and Priscillar Waithiengari (parents).....Kshs. 1,000,000/-

The plaintiffs shall have costs of the suit.

Orders accordingly.

Dated, signed and delivered this 20th day of February 2014.

R. E. OUGO

JUDGE

In the presence of ;

.....For the Plaintiff

.....For the Defendant

.....Court clerk