



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO.63 OF 2010

JOSEPH KAHIGA GATHII & PAUL MATHAIYA KAHIGA (Suing as the administrators of the estate

of the late **LYDIA WANJIKU KAHIGA** and **ELIZABETH MURUGI KAHIGA** both **deceased**).....**PLAINTIFFS**

-VERSUS-

WORLD VISION KENYA**1ST DEFENDANT**

GODWIN HILATIMAYO.....**2ND DEFENDANT**

MARTIN MUNYUA NDUNGU.....**3RD DEFENDANT**

JUDGMENT

1. The plaintiffs filed this suit as the administrators of the estate of Lydia Wanjiku Kahiga and Elizabeth Murugi Kahiga “the deceased” who died on 23rd June 2008. They filed the suit on behalf of the estates of the deceased and on their own behalf as the dependants of the deceased and pursuant to the Law Reform Act Cap 26 and the Fatal Accidents Act Cap 32 laws of Kenya.
2. The plaintiffs alleges that on 23rd June 2008, the deceased were lawfully and carefully walking along Waiyaki way in Nairobi when the 2nd defendant so carelessly and negligently drove and or controlled motor vehicle registration number KAZ 662V causing it to collide with motor vehicle registration number KBA 203H as a result of which the motor vehicle registration number KBA 203H veered off the road and knocked down the deceased.
3. Parties recorded a consent on liability as follows;1st and 2nd defendant liability 70%,3rd defendant 10% and Plaintiff 20%.On 16th May 2014 parties recorded a further consent on specials in the sum of Kshs. 98,596/-. Consent on liability having been entered the only issue pending determination is the issue of quantum.
4. The plaintiffs’ counsel submitted that Lydia Wanjiku Kahiga died at the age of 57. She was a retired teacher earning a pension of Kshs. 12909/-and was also a farmer and earning income from other farming activities and that at the time of her death her account had over Kshs. 500,000/- showing that she had generated income from her farming activities; that she was a mother of 5 children and was supporting their education and other requirements. On loss of dependency the plaintiffs argued that the retirement age for civil servants was 60 years and at the time of her death she was in private business and as such may have remained in active engagement for a period of another 10 years. Counsel proposed that the Court to uses a multiplier of 8 years taking into

account the vicissitudes of life; that the deceased would have been engaged up to the age of 65 years here he proposed an amount of Kshs. 25,000/-; that since the deceased was married counsel proposed a multiplier ratio of 2/3 as she was supporting her family.

$$25,000/- \times 8 \times 12 \times 2/3 = 1,600,000/-$$

$$\text{Less } 20 \times 1,600,000 = 1,280,000/-$$

100

On pain and suffering Counsel submitted that the deceased died on the way to M.P. Hospital and as such must have endured considerable pain before her demise. Counsel under this head proposed an award of Kshs. to 60,000/- subject to 20 % liability

$$20 \times 60,000 = 48,000/-$$

100

In total Counsel proposed an award in respect of Lydia Kahiga as follows

Loss of dependency Kshs. 1,280,000

Pain and suffering Kshs. 48,000

Loss of expectation of life Kshs. 80,000

Special damages Kshs. 25,300

Total

1,433,200

Kshs.

In regards to Elizabeth Murugi Kahiga Counsel submitted that at the time of her death she was earning a gross pay of Kshs. 61,539/- which translated to Kshs. 49,241/- net; that at the time of her death the deceased was not married but was assisting her parents in educating her other siblings.

On loss of dependency it was submitted that the deceased died at the age of 35 years and was in government employment and as such would have worked until the age of 60 years hence she would have worked for 25 years putting inconsideration the vicissitudes of life proposed the number of years to be discounted by 3 years to 22 years and a multiplier of 1/3 since she was not married.

$$49,241 \times 22 \times 12 \times 1/3 = 4,333,209$$

$$\text{Less } 20\% \text{ liability } 20/100 \times 4,333,209 = 3,466,567/-$$

On pain and suffering it was submitted that the deceased died while undergoing treatment at M.P. Shah Hospital and as such she must have undergone a lot of pain and suffering and proposed an award of Kshs. 100,000/- Less 20% liability which translates to Kshs. 80,000/-. On loss of life a sum of Kshs. 100,000/- was proposed less 20% liability which translates to Kshs. 80,000/-. Amount payable in respect to Elizabeth Murugi Kahiga, is Loss of dependency Kshs. 3,466,567/-,

Pain and suffering Kshs. 80,000/-,

Loss of expectation of life Kshs. 80,000/-

Counsel relied on the case of **WILFRED WANZAU KIOKO & ANDREW WAMBUA HCCC NO.707 OF 2007.**

The 1st and 2nd defendants submitted that since the deceased died at 57 years and was a retired teacher earning a monthly pension of Kshs. 12,909/- per month; that no evidence has been adduced to prove that she was engaged in farming. It was their contention that the deceased had lived a substantial part of her life and had retired they proposed a sum of Kshs. 50,000/-.

On pain and suffering he submitted that the deceased did not reach the hospital and as such proposed a sum of Kshs. 10,000/- as adequate compensation and referred the Court to ***Kericho HCCC 35 of 2011 Eldoret express co. ltd William Kirui Korir and Karen (Both suing as the administrators of the estate of Simon Cheruiyot Korir (2014) eKLR***

On Loss of dependency, it was submitted that though the plaintiff had children they were adult children and no evidence was tendered to prove that they were school going and it was more probable than not that the children were supporting their mother and not the other way round. Counsel relied on the case of ***HIGH COURT CIVIL APPEAL NO. 1 OF 2011, NEW KENYA CO-OPERATIVE CREAMERIES AND ANOTHER VERSUS CHEBUT ARAP LANGAT.***

Thus loss of dependency was worked out as follow; Kshs.12, 909 x5x12x1/3=258,180.The 1st and 2nd defendant submitted that the proposed amounts payable should be as follows;

Loss of expectation of life Kshs. 50,000/-

Pain and suffering Kshs. 10,000/-

Loss of dependency Kshs. 258,180/-

Special damages Kshs. 26,500/-

Total Kshs. 344,680

For Elizabeth Murugi Kahiga it was submitted that the deceased died at 35 years and was working as a librarian at KARI earning a net salary of Kshs. 49,241/- she was single and had no children and was survived by her father.

On loss of expectation of life defendants a sum of Kshs. 60,000/- was proposed. On pain and suffering noting that the applicant died on same day defendants proposed a sum of Kshs. 10,000/- was proposed. On loss of dependency the deceased was survived by the father a multiplier ration of 1/3 was proposed.

The deceased was 35 years at the time she died and owing to the variation of life defendants proposed a multiplier of 15 years, they relied on the case of ***Cornelia Elaine Wamba –vs- shreji enterprises Limited, HCCC 754 of 2005.***

And therefore the same would translate to;

49,241/- x15x12x1/3= Kshs. 2, 954,460/-

The amounts payable to Elizabeth Murigi Kahiga as per the 1st and 2nd defendant is;

1. Loss of expectation of life Kshs.60000/-
2. Pain & suffering Kshs.10,000/-
3. Loss of dependency 2954460/-

Total 3024460

The 3rd defendant under the head of pain and suffering argued that since both deceased persons died

on the 23/6/08 on the same day of accident they should be awarded nothing, they were guided by the case of **Mori Chacha vs. Richard Arap Koech Nairobi HCCC No. 1863 of 2001**. On loss of expectation of life it was argued that there was no birth certificate produced to show the ages of each deceased, that there was no evidence to show that they were in perfect health at the time of their death, counsel proposed a conventional sum of Kshs. 50,000/= for each deceased. It was also submitted that the courts have to take into account an award made under the Law Reform Act when making an award under the Fatal Accidents Act and relied on the case of **Joseph Wachira Maina and another vs. Mohammed Hassan 2006 eKLR** where the Court upheld that the dependants of the deceased estate should not obtain double compensation that is under the Fatal Accident Act and the Law Reform Act. He urged the court to deduct the award given under the law Reform Act from the award given under the Fatal Accidents Act. On loss of dependency for Lydia Wanjiku Kahiga Counsel urged the court to take the multiplier of 5 years as the deceased was 57 years old and to take the sum of Kshs. 12909/- as her net pension. Counsel argued that there was no evidence that the dependent children were schooling and that in the absence of dependency a multiplier of 1/3 was sufficient. He calculated the amount due as $1/3 \times 12909 \times 12 =$ Kshs 258,180/=.

On Elizabeth Murugi Kahiga Counsel argued that the net salary of Kshs. 49241/= was her earnings, that the multiplier of 20 years was sufficient taking into account the vagaries, vicissitudes and uncertainties of life, that , that there was no evidence of dependency and therefore a multiplier of 1/3 was sufficient. He assessed the sum due as $1/3 \times 49241 \times 20 \times 12 = 258180 = 3,939,280$ /. On special damages counsel submitted that a sum of Kshs. 33,968/= should be awarded for the late Lydia Kahiga and Kshs. 67096/= for the late Elizabeth Kahiga.

DETERMINATION

On Lydia Wanjiku Kahiga

I have considered all that has been submitted. Before I delivered the judgment I sought to know the ages of the dependent children and the plaintiff did adduce evidence by calling the deceased's husband who testified that their children were adults.

On quantum these are my finding. Lydia Wanjiku Kahiga was 57 at the time of her death. It has been submitted that she was into business yet no evidence was adduced to support this. I therefore take it that she was earning 12909/- as pension I note that this is not in dispute. For her age a multiplier of 8 years is sufficient taking into account the vagaries vicissitudes and uncertainties there was no proof of dependency. The dependents were all adults at that time of her death though it was stated that they were not working.

The award for Lydia Wanjiku Kahiga is as follows; $12909 \times 8 \times 1/3 \times 12 = 413088$ /-.

The specials have been agreed on.

For pain and suffering I award 50,000/- and loss of expectations of life 60,000/-.

I therefore award the following for Lydia Wanjiku Kahiga.

1. Loss of dependency Kshs.413,088/-
2. Pain and suffering Kshs.50,000/-
3. Loss of expectancy of life 60,000/-

Less the amount awarded for loss of expectation of life, the balance is Kshs. 463.088/-

Elizabeth Murugi Kahiga

It is not in dispute that the deceased was an employee of KARI. From the pay slip adduced the deceased was earning a gross pay of Kshs. 61,539/- and a net pay of Kshs. 49,241 after statutory

deductions. The deceased died at the age of 35 years. The retirement age being 60 years she could have worked for 25 years. Considering the vicissitudes of life I reduce the years to 20 years. Since the plaintiff was not married and did not have any children I find that a ratio of 1/3 is reasonable. This translates to $49,241/- \times 12 \times 20 \times 1/3 = 4,333,208/-$, plus 50000/- for pain and suffering, plus 60000/- for loss of expectancy of life this gives a total of Kshs. 4,443,208/- less 60000/- awarded for loss of expectation of loss, gives a figure of 4,383,208/-

Judgment is therefore entered for the plaintiff against the defendants as follows; for Lydia Wanjiku Kahiga Ksh.463088/- and for Elizabeth Murugi Kshs. 4383208/-.The plaintiff bears 20%, the 1st and 2nd defendant 70% and the 3rd defendant 10%. The plaintiff is awarded costs and interest too.

Orders accordingly.

Orders accordingly.

Dated, signed and delivered this **8th** Day of October **2014**.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Plaintiffs**

.....**For the 1st and 2nd Defendant**

.....**For the 3rd Defendant**

.....**Court Clerk**