



REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 12 of 2008

ZACHARY ACHACHI NYAKUNDI [Suing as the administrator

and personal representative of the estate of

DOUGLAS GISEMBA ACHACHI (deceased) PLAINTIFF

V E R S U S

KIMILILI HAULIERS LIMITED 1ST DEFENDANT

JASON ARONI OBEGI 2ND DEFENDANT

J U D G M E N T

The late **DOUGLAS GISEMBA ACHACHI** died on the 3rd day of March 2007 as a result of a road traffic accident along Kisumu road in Eldoret Town. The deceased's father **ZACHARY ACHACHI NYAKUNDI** brought this suit seeking damages as a result of the accident. Parties recorded a consent on liability after the plaintiff had testified.

The main issue for determination remaining is the amount of quantum payable. Liability has been agreed upon at 70:30 in favour of the plaintiff. Parties filed written submissions on the issue of quantum. Counsel for the plaintiff is urging the court to award KShs.150,000/= for loss of expectation of life, KShs.20,000/= pain and suffering, KShs.133,000/= as special damages and KShs.3,722,400/= for lost years. The plaintiff's counsel is proposing a multiplier of 30 years and a monthly salary of KShs.31,020/= this being the entry point for Job Group 'K' in the public service. Counsel is relying on the case of **JOHN JEMBE MUMBA V SEIF MBARUKU T/A TACRIM BUS & ANOTHER – Mombasa HCCC. 523 of 2001 where KShs.156,000/=** was awarded for loss of expectation of life. On the award for lost years, the plaintiff's counsel is relying on the case of **PHILIP WISHAMINYA V KENYATTA NATIONAL HOSPITAL BOARD, Nairobi HCCC No.512 of 1999** and that of **BARNABAS BWAMBOK & ANOTHER V VITALIS ODIWUOR RUGIE & 2 OTHERS, Eldoret C.A. No.19 of 2004.**

On his part, counsel for the defendant proposed a sum of KShs.500/= for pain and suffering, KShs.80,000/= for loss of expectation of life and KShs.1,600,000/= for loss of dependency/lost years using a multiplier of 20 years and a monthly salary of KShs.20,000/=. The defence counsel is relying on the case of **NEHEMIAH KIBET BUWEI & ANOTHER V PAUL KANGOGO TUITOEK (2006) eKLR, JACQUELYN RITA WANJIRU NYANGE V DASO DE LTD. & UNIVERSITY OF NAIROBI, Mombasa HCCC No.118 of 2000, SAMUEL NJOROGE V TEA DEVELOPMENT AUTHORITY, Nairobi HCCC No. 1536 of 1992** and that of **EPOC BUILDING (K) LTD. V ROSALIA KEMUNTO ONGORI , Kisii HCCA No.143 of 2004.**

From the submissions of the parties and the evidence on record, parties are in agreement that the deceased was a 2nd year student at Moi University undertaking a Bachelor of Business Studies degree. No post mortem report was produced. The death certificate indicates that the deceased sustained a fracture of Mandible ribs, right foot and fracture of diaphragm. According to the evidence of PW1 the deceased died on the way to hospital. That would mean that the deceased did undergo pain and suffering before he succumbed to his death.

I do appreciate the efforts of both counsels when it comes to assessing the amount of damages to be paid to the plaintiff. Counsel for the plaintiff has not expressed excessive greed that is almost common in such cases while the defence counsel has not made very mean proposals as is normally the case. When the parties give figures that are at great variance, the court is left with no option but to ignore the proposals put forward by the parties.

It is clear from the record that the deceased died shortly after the accident. He did suffer pain and I do award a sum of KShs.15,000/= for this category of damages.

With regard to loss of expectation of life, the reasonable award has been between KShs.80,000/= to KShs.150,000/=. I do find that based on the authorities relied upon by the parties, a sum of KShs.150,000/= is realistic. In the case of JOHN JEMBE MUMBA the deceased was 38 years old and a sum of KShs.150,000/= was awarded in 2005. A similar award in 2013 will not be considered to be on the higher side.

With regard to loss of dependency, counsel for the defendant proposed a multiplier of 20 years while the plaintiff is proposing 30 years. The deceased was 21 years old. There is no guarantee that he would have lived up to the current retirement age of 60 years. However, with the improvement in medical care, Kenya's life expectancy has gone above the 50 year mark. I do find 25 years would be ideal.

The plaintiff contends that the entry point for graduates in the public service is Job Group K. He has produced a scheme of service document that shows that the entry point is KShs.31,020. Counsel for the defendant has proposed a monthly salary of KShs.20,000/=. The deceased was undertaking a degree in Business Studies. Although his father testified that the deceased would have worked as a financial consultant earning a starting salary of KShs.170,000/=, that was only a possibility.

My understanding of the public service is that many graduates start from Job Group H. That gives a starting salary of KShs.19,523/=. Any employee expects to progress in rank through his working life. Having adopted a multiplier of 25, I do find that a monthly salary of KShs.25,000/= is realistic. The award for loss of dependency shall be $25,000/= \times 1/3 \times 12 \times 25 = 3,500,000/=$.

The plaintiff produced receipts which exceed the amount of special damages pleaded in the plaint. Counsel for the plaintiff urges the court to award the amount pleaded. The evidence on record proves that a sum of KShs.133,000/= was incurred as special damages and I do award that amount. The defence counsel contends that no demand notice was issued and therefore no costs should be awarded. I have gone through the defence on record and there is no denial of paragraph 12 of the plaint which state that notice of intention to sue was given. In any case, the costs follow the outcome of the case. I do grant the plaintiff costs of the suit.

In the end, the plaintiff's suit is granted in the following terms:-

- a) Pain and suffering - KShs. 15,000/=
- b) Loss of expectation of life - KShs. 150,000/=
- c) Special damages - KShs. 133,000/=
- d) Loss of dependency - KShs.2,500,000/=

TOTAL - KShs.2,798,000/=

The above amount shall be reduced by 3% contribution. I see no good reason to offset the amount of KShs.150,000/= as loss of expectation of life against the amount awarded as lost years. That amount shall form part of the deceased's estate. Costs to the plaintiff.

Delivered, dated and signed at Kakamega this 20th day of March 2013

**SAID J. CHITEMBWE
J U D G E**