



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 111 OF 1998 [RD]

ROBERT MUTONYI KARANJA.....PLAINTIFF

VERSUS

ZAINUL SUMRA.....DEFENDANT

JUDGMENT

Robert Karanja the plaintiff herein sued as the administrator of the estate of his late wife namely Mary Wanja. He sued Zainu Sumra. The plaintiff is seeking damages under the Law Reform, Act and The Fatal Accident Act. In his evidence he said that he was married to the deceased and they were blessed with five children as follows:-

- ***George Karanja born in 1972***

- ***John Mwaura born in 1973***

- ***Edwin Muriithi Karanja born in 1978***

- ***Peter Njuguna Karanja born in 1977***

· ***Christopher Mugo Karanja born in 1982***

The plaintiff said that he was a trained secondary school teacher but that by the time his wife passed away he had stopped working for a period of 8 years. On the fateful day 27th January 1997, his wife was on the way to the market to buy provisions for the family. Within 15 minutes of her leaving the house, the plaintiff was called and informed that she had been knocked down by a motor vehicle. He immediately went to the stage at Shanzu and he found her on the ground. With the assistance of a good Samaritan, he took his wife to hospital but he said within a short while after arrival he was informed that she had passed away. He produced the death certificate in court as an exhibit. The defendant did not deny that his car caused the accident. Indeed parties on 17th July, 2001 recorded a consent on liability whereby the plaintiff would bear 25% whilst the defendant would bear 75% of liability.

The deceased in her life time was a trained enrolled nurse. She worked at Shanzu Teachers College, but left that employment in 1980 to start her own business. She began to run her own tailoring school called Mla Leo Tailoring School. That school used to enroll 30 -40 students. The students attended classes in shifts. A register of the students was exhibited in court. The deceased was also running a tailoring shop business. That business was known as Modern Coast Uniform. The plaintiff as stated before at the time of his wife's death had been out of employment for 8 years. He stated that as a result, it was his late wife alone that was providing for the family through her businesses. In addition to running the tailoring school and shop, the deceased was also carrying out informal business of selling cereal. The plaintiff stated that the deceased was earning between Ksh. 12,000 and 14,000 per month from the tailoring school. From that amount she paid rent for the premises, where the school was operating from, of Kshs. 4,000. From her tailoring business, the plaintiff said that the deceased earned between Kshs. 180,000 and Kshs. 200,000 per month. The plaintiff stated that the deceased used to get orders for tailoring from institutions such as schools and government such as the Kenya Navy. The plaintiff produced in evidence, local purchase Order (L.P.O) where the deceased's business was ordered to make uniform for the Kenya Navy. Plaintiff produced various banking slips and a banking statement of Barclays Bank for the year 1994/5. That statement shows a credit balance of Kshs. 48,000 to Kshs 72,000. The credits for the months of October, 1994 to May, 1995 were in total Kshs. 12,760.05. The banking slips are not continuous in respect of their dates. Those various banking slips however, none of them exceeds Kshs. 10,000. There were no documents that were produced before court to prove that the deceased was running the cereal sale business. In evidence the plaintiff stated that the deceased used to spend Kshs. 15,000 per month on fuel for the vehicle that she used in the running of her businesses. Further, that the deceased used to provide clothing, school uniform amongst other provisions for the plaintiff and their children. The plaintiff estimated that the deceased used to spend Kshs. 20,000 on each family member per year. On the whole, the plaintiff estimated that the deceased used to spend between Kshs. 45,000 to Ksh. 50,000 per month on the family. Further that the deceased used to pay school fees for their youngest child which was between Kshs. 15,000 and Kshs. 20,000 per term. The plaintiff said that following the death of his wife, he had lost a companion and the children had lost a mother.

The plaintiff in his claim for special damages stated that he paid:

· Kshs. 18,060 to feed the mourners that came to their home.

- Kshs. 10,770 for payment for the coffin and the cross.
- Kshs. 15,500 for mortuary.
- Kshs 7,015 for advertisement in the press of the deceased's death.
- Kshs 37,500 for hiring vehicles
- Kshs 100 for police abstract

Finally in evidence the plaintiff stated that had the deceased been alive she would have continued working upto the age of 87 years. On cross examination, the plaintiff accepted that he was running a hardware shop but stated that he began to run that business after the death of his wife. He also confirmed that the mourners who visited his home contributed money which was to cater for the funeral expenses which he called '*matanga*' contribution.

PW2 was the deceased's landlord to the premises where the deceased run the school. He confirmed that the deceased was successful in her business and that at times she paid rent in advance. Plaintiff through his learned counsel's submissions has sought that the court would find that the deceased would have worked for another 30 years had it not been for the fatal accident. He also sought that the court would use a multiplicand of Kshs. 45,000 per month. The plaintiff sought for a total award of $45,000 \times 12 \times 30 = 16,200,000 = 5,400,000 \times 2 = 10,800,000$

The plaintiff sought the reduction of that amount by a third. I have considered the plaintiff's evidence and the parties written submissions.

It is clear that the plaintiff did not prove that the deceased was spending between Kshs. 45,000 and 50,000 per month on the family. It should be noted that at the time of death of the deceased, the plaintiff and the deceased's first born was 25 years old, the 2nd born was 24 years old, 3rd born was 20 years old and the 4th born was 19 years old. The only minor child was the 5th born. The school fees that were tendered in evidence were only in respect of the minor. It does seem in all probability that the 1st to the 3rd born children were not dependent on the deceased at the time of her death. I have noted also, that the plaintiff on a balance of probability was also not candid about his livelihood. In evidence in chief he stated that he stopped working 8 years prior to the death of his wife. On being cross examined stated that he lost his job in 1989. Even if the plaintiff was unemployed, in my view it is inconceivable that he would have stayed at home whilst his wife took all the responsibility of providing for the family.

I therefore make a finding that both the plaintiff and the deceased equally contributed for the family's upkeep. It is because of that finding that I find that the plaintiff exaggerated the amount spent by the deceased on the family. The deceased tailoring school earned on average between ksh. 12,000 and 14,000 per month. I will take it that the earnings were Ksh. 13,000 per month. The business was paying rent of Ksh 4,000 per month. This is because the plaintiff conceded that by the time the deceased died the rent for the business premises had doubled. Once one deducts the rent, the remainder of the monthly earning is Kshs 9,000. There is no doubt that the deceased used some of that earnings to pay salaries and other overheads. In respect of the tailoring shop, there was no clear evidence of the amount it earned. The L.P.O exhibited was only one. There was also no evidence of the earnings of the informal business. It is for that reason I make a finding that the deceased earnings was Ksh. 20,000 per month from her businesses. I also make a finding that the dependency of the family was one third of that earning. The deceased died on the way to the hospital. That is what was recorded in the death certificate. In the claim for pain and suffering, the court will award ksh. 20,000. The deceased was 43 years old at the time of death. In determining the multiplier I am guided by the case; **JOSEPHINE EGWA MWADIME VS PHILLIP MWANGEDE MSA CIVIL SUIT 112 OF 1997 RD** where the deceased who was 48 years old at the time of death the court used 7 years as the multiplier. I will take into consideration that the deceased in this case was in informal employment and did not have to retire at the age of 55 which was the age of retirement at the time. Since she was self employed, I will use the multiplier of 15 years.

I am however cautioned by the finding in the case; **KEMFRO AFRICA LTD t/a MERU EXPRESS SERVICES & ANOTHER VS A.M. LUBIA & ANOTHER [1982-88] 1. KAR 727** where the court stated that in making awards under the Law reform Act and the fatal Accident Act the court should be wary and ensure not to make double awards. I will bear that holding in mind as I make the orders on this judgment. I decline to award damages for loss of companionship and loss of motherly care. I do find that the plaintiff has supported his claim for special damages. The judgment of the court is as follows:

1. General damages $20,000 \times 15 \times 12 \times 1/3 = 1,200,000$ less 25% the plaintiff's contribution on liability.

2. Pain and suffering ksh. 20,000 less 25%.

3. Special damages Ksh. 118,945

4. The plaintiff shall have interest at court rate on the general damages award from this date upto payment in full and shall have interest on special damages award from the date of filing suit until payment in full.

5. The judgment amount shall be apportioned as follows:

· ***Robert Mutonyi Karanja shall get 30%***

- *George Karanja 10%*

- *John Mwaura 10%*

- *Edwin Muriithi Karanja 10%*

- *Peter Njuguna Karanja 20%*

- *Christopher Mugo Karanja 20%*

6. *The plaintiff is awarded costs of the suit.*

DATED and DELIVERED at MOMBASA this 15th day of *March, 2012.*

Mary Kasango

JUDGE