



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NUMBER 317 OF 2007

NTITO ENE MILIA.
MARY ENE MILIA
JOYCE NAIPUKO ENE MILIA (*Suing As The*
Administrators**PLAINTIFFS**
(Deceased). *Of The Estate Of Jackson Milia Limu*

VERSUS

HESHIM SHERIFF ABDUKADIR. **1ST DEFENDANT**
OLKIRA MATIAN CONSERVATION PROJECT. **2ND**
DEFENDANT

J U D G M E N T

In this matter which was commenced by way of plaint filed on 29th March 2007 under the Law Reform Act (Cap. 26) and the Fatal Accidents Act (Cap. 32), the prayers are as follows: -

- a) *General damages under the Law Reform Act and Fatal Accidents Act.*
- b) *Costs and interest at court rates.*

The plaintiffs are **NTITO ENE MILIA** (1st wife of the deceased at time of filing suit aged 33) **MARY ENE MILIA** (2nd wife of deceased at time of filing suit aged 29 years) and **JOYCE NAIPUKO ENE MILIA** (3rd wife then aged 28 years). The three sued on behalf of the estate of the deceased **JACKSON MILIA LIMU**. Each of the plaintiffs had children. The 1st plaintiff had 4 children; 2nd plaintiff had 5 children and 3rd plaintiff had 5 children.

The respondents in the suit were named as **HASHIM SHARIFF ABUBAKAR** (1st defendant) and **OLKIRAMATIAN CONSERVATION PROJECT** (2nd defendant).

No defence was filed by the defendants. On 8th July 2010, a consent judgment on liability was entered in the following terms: -

“By consent judgment be and is hereby entered on liability for the plaintiffs against the defendants in the ratio of 85% for the plaintiffs and 15% for the defendant. Mention on 22nd July, 2010 to record a final consent in the suit”.

After this above consent was entered, parties’ counsel filed written submissions on damages. Counsel who appeared before me on 11th October, 2010 Mr. Kivuva for the plaintiffs, and Mr. Molo for the defendants asked the court to assess damages on the basis of submissions filed.

The contentions in the plaintiffs’ submissions filed by their counsel Kivuva Omuga Waweru & Company Advocates, are firstly, that the deceased Jackson Milia Limu was involved in a road traffic accident while travelling as a passenger in the 2nd defendant’s motor vehicle KAU 943P along Ol Karamation Oloika road in Magadi, when the driver lost control and the plaintiff sustained fatal injuries; that the deceased was working as an Assistant Chief of Lerikobei sub location earning a net salary of Ksh.9,125/- and was survived by three wives and 13 children who were all minors.

It was the contention that the beneficiaries/dependants of the estate were entitled to damages under the Fatal Accidents Act as well as the Law Reform Act.

Under the heading of pain and suffering, it was submitted that it was the practice of this court to award damages for pain and suffering even where the deceased died instantly through an accident. Counsel for the plaintiffs asked for an award of Ksh.30,000/-. Reliance was placed on the case of **Jenipher Odhiambo Aloo Vs Elizabeth Mbuka Adam** – Mombasa HCCC No. 33 of 2001 where the court awarded Ksh.30,000/- for pain and suffering in a case where the deceased died the same day of accident. Reliance was also placed on the case of **Jane Kwamboka Mogere – Vs- Ouru Nyamwanicha** – Kericho HCCC No. 33 of 2001 wherein Kimaru J on 25th April 2005 awarded Kshs. 20,000/- for pain and suffering in a case where the deceased had died on the spot, following a road accident.

On loss of expectation of life it was contended that the deceased was 35 years old when he died. He could possibly have been promoted to a Chief and later District Officer. Counsel asked for an award of Ksh.150,000/-. Reliance was placed on a number of cases. Firstly, the case of **Henry Karanja –Vs- Joseph Endire** – Nbi HCCC No. 231 of 2001 wherein on 16th September 2007 the court awarded Ksh.150,000/- in a case where the deceased died aged 30 years. The other case relied on was **John Jembe Mumba – Vs_ Seif Mbaruku & Others** – Mombasa HCCC No. 523 of 2001 wherein the court on 21st March 2005 awarded Ksh.150,000/- where the deceased died aged 38 years. The third case was **Rosemary Epurukel –Vs_ Absalom Kariuki** – Meru HCCC No. 48 of 2003 wherein Sitati J. awarded Kshs.150,000/-.

On the multiplier, it was contended that the deceased was 35 years old when he died. He was a Civil Servant. Therefore, a multiplier of 25 years was suggested.

On the multiplicand, it was contended that the deceased was earning a gross salary of kshs.9,543/- per month and after deductions, his nett pay was Ksh.9,125/- per month. Therefore, a multiplicand of Ksh.9,125/- was proposed.

On the dependant’s ratio, it was proposed that a ratio of 2/3 was reasonable in the circumstances. That would translate to $25 \times \frac{2}{3} \times 9,125$ thus Ksh.1,825,000/-

On loss of consortium, it was contended that the deceased had three (3) wives at death. Their ages at the time of death were 33, 29 and 28 years respectively. An amount of Ksh.360,000/- was proposed. Reliance was placed on the case of **Jacquelyn Nyange –Vs- Daso Des Ltd** – Msa HCCC No. 118 of 2000 wherein the court awarded Ksh.120,000/-.

The defendants through their counsel filed their written submissions on 7th October, 2010. They stated that the consent judgment was to the effect that defendant had accepted liability to the extent of 85%. They agreed that the multiplicand should be Ksh.9,125/- per month. They also agreed that

dependency should be based on the ratio of 2/3. They proposed that the multiplier be 14 years. They suggest that the damages for loss of dependency be $9,125 \times 14 \times 12 \times \frac{2}{3} = 1,022,000/-$, subject to the 85% liability agreed.

They also submitted that the award for loss of expectation of life consortium be Ksh.60,000/-.

I have considered this case and the submissions of both parties. I am alive to the fact that liability has been agreed by consent and recorded as 85% against the defendant and 15% against the plaintiff.

The issue here is just on the award of damages. Parties agree to the multiplicand of Kshs.9,125/-. They also agree that dependency ratio be 2/3. They disagree on the multiplier. The plaintiff asks for a multiplier of 25 years. The defendants ask for 14 years. The deceased died aged 35 years. He was a civil servant. I am aware that the retirement age has been increased to 60 years. At the time he died, however, it was 55 years. I will therefore take 20 years as the multiplicand.

On loss of consortium, I am of the view that each of the three widows gets Ksh.80,000/-, which will total Ksh.240,000/-

Award for pain and suffering will be Kshs.30,000/-.

Consequently, I enter judgment for the plaintiff against the defendant as already recorded by consent and award damages as follows: -

(a)	Pain and suffering Ksh.	30,000/-
(b)	Lost Years $20 \times \frac{2}{3} \times 12 \times 9,125$ Kshs.	1,460,000/-
(c)	Loss of Consortium Ksh.	<u>240,000/-</u>
	TOTAL	1,730,000/-
	85% thereof	1,470,000/-

The above figure of Ksh.1,470,500/- as damages will attract interest at court rates from date of judgment until payment in full. The defendant will pay the plaintiffs costs of these proceedings.

Dated and delivered at Nairobi this 29th day of March, 2011.

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GEORGE DULU
JUDGE

In the Presence of

Mr. Kivuva for plaintiff

Mr. Molo for defendant

C Muendo – court clerk