



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 160 OF 2008

JOHN SIELE.....1ST PLAINTIFF
JULIUS SIELE.....2ND PLAINTIFF

VERSUS

EDWARD KOTUT.....DEFENDANT

JUDGMENT

Judgment on liability in this matter was entered on 16th November 2010 at 50%:50% in favour of the Plaintiff against the Defendant. The issue remaining was the assessment of the quantum of damages payable to the plaintiffs.

For purposes of determining the quantum of damages payable to the plaintiff, Mr. Ogola, learned counsel for the plaintiff called one witness PW1, Mr. John Siele Chepochok, the 1st Plaintiff herein. His testimony comprised of two main aspects, **firstly**, the lost earnings of his sister, Regina Chesiele Ngerechu (*deceased*), and **secondly** the funeral expenses incurred by the deceased's family for her burial.

LOST EARNINGS

PW1 testified that the deceased was engaged in mixed farming, that is growing crops, dairy and poultry. The deceased grew potatoes, maize, beans and kept poultry for the production of eggs, and dairy cattle. Out of these activities, the deceased used to have an average income of Kshs 301,962/= per annum.

FUNERAL EXPENSES

The Fatal Accidents Act, (*Cap. 32, Laws of Kenya*) does not define funeral expenses but Section 6 thereof provides for the recovery thereof in these terms:

"6. In an action brought by virtue of the provisions of this Act, the court may award, in addition to any damages awarded under the provisions of subsection (1) of Section 4 damages in respect of the funeral expenses of the deceased person. If those expenses have been incurred by the parties for whom and for whose benefit the action is brought."

It was the evidence of PW1 that they incurred the following expenses-

(1)	Food, including two cows slaughtered	Shs	60,000/=
(2)	Post Mortem	Shs	12,000/=
(3)	Mortuary Fees	Shs	3,000/=
(4)	Cost of coffin	Shs	15,000/=
(5)	Transport including special hire of two vehicles	Shs	<u>94,000/=</u>

Total

Shs 194,000/=

The figures (1) & (5) have no receipts, but it is common knowledge that families celebrate the lives of the deceased through these offerings. I would allow them as funeral expenses.

GENERAL DAMAGES

Assessment of damages is a matter at large in the discretion of the court taking into account all circumstances of the case. Under this head are comprised pain and suffering, loss of expectation of life, lost years.

There was no evidence as to how the deceased died. It was merely stated by PW1 that his sister was involved in an accident and died. There was no evidence of pain and suffering. Mr. Muriuki counsel for the Defendant suggested a figure of Kshs 10,000/=. This is too old a figure, I would suggest Shs 20,000/=. Mr. Muriuki suggested a figure of Shs 70,000/= for loss of expectation of life. I would think a sum of Kshs 100,000/= as more appropriate. Mr. Muriuki suggested a multiplier of 12 years. The deceased was 43 years, and would be active for another 17 years to reach 60 years. Taking the vicissitudes of life, I would accept Mr. Ogola's figure of 14 years rather than 12 suggested by Mr. Muriuki counsel for the Defendant.

In this regard, PW1 had testified that the deceased had an average earning of Shs 301,962/= which translate to an average of Shs 25,000/= per month. Although PW1 produced receipts allegedly collected from the deceased's house, it is difficult to ascertain their authenticity in the absence of witnesses who issued those receipts in exchange for the various produce sold to them. The sale of farm produce in most rural areas is more often an informal negotiated arrangements in which prices are agreed, moneys received, and goods taken without the formality of receipts. Mr. Ogola had taken the figure of Shs 25,141/= as his multiplier but I do not think the record of earnings was so mathematically kept by the deceased to produce those earnings. A figure of Shs. 15,000/= would give a return of high earnings per month, as it was suggested by PW1 in his evidence.

I would therefore take a multiplicand of Shs 15,000 x 14 x 12 x $\frac{2}{3}$ = 1,680,000/=

In summary I would award the plaintiffs the sum of Ksh 887,000/= made up as follows -

(1) GENERAL DAMAGES

(a)	Pain and Suffering	Shs	20,000/=
(b)	Loss of expectation of life	Shs	100,000/=
(c)	Lost years	Shs	1,680,000/=

(2) SPECIAL DAMAGES

		Shs	<u>194,000/=</u>
	Total		1,994,000/=
	Less 50%		<u>887,000/=</u>
	Nett payable to the estate	Shs	<u>887,000/=</u>

The plaintiffs shall have the costs of the suit, less one half.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 18th day of March 2011

M. J. ANYARA EMUKULE
JUDGE