



IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 101 OF 2007

ZIPPORAH KARIMI.....PLAINTIFF

VERSUS

HARUN MURIUKI DEFENDANT

Coram Mwera J
Oonge for plaintiff
Kioko for Mare for defendant
Njoroge court clerk

JUDGEMENT

About to follow is the judgement in **NRI HCCC 101/07** – a case heard side by side with **HCCC 17/07** as the test case. Therein the liability was found as against the 1st and 2nd third parties (Dualle, Farah). While in **HCCC 17/07** the deceased was one Lewis Mbiyiwe, in **HCCC 101/07** the deceased is one Martin Mbiyiwe. Their mother and legal representative remains the plaintiff.

When assessment of damages came up the plaintiff took the witness stand and told the court that Martin who died in the same accident as Lewis had no family, but he was employed by Africa Online (Exh P1). His income was as per the payslips (Exh 2) for months of July, August, September 2004. The deceased used to assist PW1 and the rest of the family financially.

Asked to submit the plaintiff urged the court to find for her under both the Law Reform and the Fatal Accidents Acts in damages, liability having been settled in **HCCC 17/07**.

Under the Law Reform Act, a sum of sh. 100,000/= was proposed while under the Fatal Accidents Act a salary of sh. 42, 683/05 per month was considered a proper base with a multiplier of 15, Martin having died at age twenty seven. Loss of dependency was worked at sh. 5,121,955/= to be awarded.

The defendant started off with a claim that negligence was not proved against the defendant, despite the finding in **HCCC 17/07** that it was the 1st and 2nd third parties whom the court found liable (see above). The other point the court found hard to accept was that the plaintiff did not place before court evidence that Martin was employed or that he earned an income. But a letter from African Online Ltd dated 29.6.04 was produced (Exh P1), and 3 payslips were produced (Exh P2 (a) (b) (c)). Up to this point the court was left wondering whether Mr. Mare for the defendant was in these proceedings all the time including in **HCCC 17/07**, in order to file the submission dated 8/7/10. But it was added that special damages were not proved by tendering receipts. Be that as it may.

In this court's mind the following is the determination of the case:

i) Under the law Reform Act

Pain and suffering - sh. 30,000/=
Loss of expectation of life – sh. 70,000/=
Total sh. 100,000

ii) Under the fatal Accidents Act. The court accepted that martin died at age 27, unmarried and with no children. He supported his mother plaintiff with part of his income from Africa online. The 3 salary slips tendered in evidence show that the deceased earned a net salary of sh. 23,333/15 in July 2004, sh. 22,000/= in August 2004 and sh. 41,683/05 in September the same year. The plaintiff urged the court to adopt a sum of sh. 42,683.05 per month. It was not clear as to the source of this sum but then nothing was said about the fluctuations, which gave the average of sh. 29,9005.30/= per month. In this circumstance the court adopts a sum of sh. 30,000/= per month as income. Taking a multiplier of 15 it arrives at a sum of sh. 3,600,000/= loss of dependency.

(30,000 x 15 x12 x2/3)

There was no prayer or proof for special damages and none is granted.

The grand award is:

Under the law reform Act -sh. 100,000/=
Fatal Accidents Act - sh. 3,600,000/=
Total sh.3,700,000/=

But that the plaintiff is the same claimant standing to benefit under the 2 Acts, the principle to avoid double benefits going to one claimant applies (see **Kemp & Kemp on Quartum of Damages**). Thus the award under the former Act is deducted from the grand total leaving & net of sh. 3,600,000/=(three million six hundred thousand) payable to the plaintiff together with costs and interest.

Judgement delivered on 16.3.11

J. W. MWERA
JUDGE