



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 46 of 2005

AGAPIO NYAGA..... PLAINTIFF

V E R S U S

JOHANA SHATSAMA LIPOSHE

2ND INTERESTED COMMITTEE OF THEDEFENDANT

JUDGEMENT

The pleadings

Agapio Nyaga the plaintiff herein is the father of one Anthony Kirima who was knocked down by a motor vehicle driven by the 1st Defendant while in the cause of duty for the second defendant. The accident occurred on 13th June 2003, along Ngong Road and said to have been knocked down near Dagoretti Corner,

A shopping Centre along the said Ngong Road AGAPIO NYAGA sues in his capacity as legal representative of the Estate of his son, the said Anthony Kirimi Nyaga deceased. He pleads that his son's death was caused by the negligence of the first defendant. He sets the particulars of negligence in paragraph 6 of the Plaint dated 8th June 2005. he also sets out the particulars of persons who were dependent on the deceased son, his parents, brothers and sisters all younger than him, and above all his little daughter Kendi Kirimi aged 5 years.

AGAPIO NYAGA the plaintiff also pleads that the deceased was aged 27 years and was a student at the prestigious Kenya Science Teachers College where he was to graduate and gain employment as a secondary School Teacher with a salary of Ksh.17,500/- excluding house allowance and other benefits. The Plaintiff also sought special damages which he particularised in paragraph 8(b) of the Rent totaling shs.169,380/- the end of his plaint the Plaintiff summarized his claim for judgment against the 1st and 2nd Defendant jointly and severally for:-

- (a) Special damages,
- (b) General Damages under the Fatal Accident Act, the Law Reform Act and damages for pain and suffering
- (c) Costs of the suit and incidentals thereto,
- (d) Interest on (a) (b) and (c) at Court Rates.
- (e) Any other remedy this court may find fit and just to grant.

(b) THE DEFENCE.

Separate defences were filed on behalf of the 1st and 2nd defendant. The 1st Defendant denied all the particulars of negligence or that the doctrine of ipsa Loquitor to the particular circumstances of the case. The 1st Defendant also

denied that the deceased enjoyed good health at the time of his death, and further denied all particulars of dependence by the persons enumerated. The 1st Defendant however admitted the age of the deceased at 27 years and that he was a student at Kenya Science Teachers College he denies that he would have become a Secondary Teacher earning a starting salary of Ksh.17,500/- The Defendant also denied liability in the sum of Ksh.25,000 being cost of obtainingof the letters of administration to Agapio Nyaga. This Defendant admitted the jurisdiction of this court but re.....the right to apply to have the matter transferred from Meru to Nairobi.

In contrast to the 1st Defendant's Defence, the 2nd Defendant claimedfrom by virtue of its incorporation in Kenya under the provisions of the privileges andInternational Committee of the Red Cross) Order 1996 made on 14.5.1996 pursuant to the provisions of the privileges and Immunities Act, (Cap 179 Laws of Kenya). The 2nd Defendant also pleaded that the plaintiff's plea of vicarious liability under paragraph 6 of the Complaint was maintainable nor enforceable in light of the 2nd Defendant's statutory immunity from suit and legal process given the nature of the Plaintiff's cause of action.

Like the 1st Defendant, the 2nd Defendant also admitted the deceased's age at 27 years and that he was a student at Kenya Science Teachers College but again like the 1st Defendant denies that the deceased would have graduated and become a secondary school teacher or would have earned a salary of Ksh.17,500/- and put the plaintiff to strict proof thereof.

Again like the 1st Defendant the 2nd Defendant pleaded that it was based in Nairobi filed the Defence to this suit in Meru under protest and reserved to apply to name the case transferred to Nairobi for hearing and final determination. In the ...neither the defendant applied to have the case transferred to Nairobi.

The Evidence

Dated, delivered and signed this 23rdday of May 2008

M. J. Anyara Emukule

JUDGE.