

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO.1934 OF 1998

PHILIP NG'ANG'A KAMOMBO (K).....PLAINTIFF
VERSUS
SUPREME SERVICE STATION.....1ST DEFENDANT
EUNICE KAMOTHO.....2ND DEFENDANT
HONORABLE JOSEPH KAMOTHO.....OBJECTOR

RULING

The plaintiff'S motor vehicle registration No. KAG 423R Toyota Pick Up was involved in a motor road accident. On 25th December 1996 along Muranga Kiriaini Road one PHILLIP NG'ANG'A who was a passenger in the said motor vehicle sustained serious injuries which culminated into his death. The plaintiff filed a suit against the applicant seeking damages. The suit was filed on behalf of the estate of the deceased.

The court awarded Shs.1,417,578.95 all inclusive.

On 25th February 2005 the applicant (Judgment Debtor) applied to be allowed to settle the decretal sum by monthly instalments of Sh.30,000/=. A sum of Sh.300,000/= has already been paid. The motor vehicle was being driven by one Mutinda Mwangi Kiilu an employee of the applicant who also died in the said accident. On an application for orders to settle a decretal sum by instalments, the court must consider each case on its own merit. The applicant submits that she is hard pressed and unable to settle the whole amount at once but that is not sufficient reason. Mr. Onyango submits that the applicant has not shown bone fides by arranging prompt payment of a fair proportion of the debt.

The Sh.300,000/= paid was by order of the court.

But as I have said earlier each case has to be decided on its own merits, the predominating factor being of course the bone fides of the debtor. In the case of KESHAVJI JETHABHAI & BROTHERS LTD VS. SALEH ABDALLA 1959 EA 260 the court held that hardship to a debtor might in some circumstances be taken into consideration on an application for payment by instalments; it is a question in each case whether some indulgence can fairly be given to the debtor without unreasonably prejudicing the creditor.

In the present case it is not a commercial debt. The claim arises out of a road accident and the deceased was traveling in the motor vehicle of the applicant which was being driven by her servant. These are circumstances which attract the courts discretionary powers in favour of the applicant. She has asked to be allowed to pay Shs.30,000/= monthly instalments. But I would raise the amount to Shs.50,000/=

Accordingly the applicant's application is allowed and I order that the applicant be allowed to remit Sh.50,000/= monthly until payment in full. Costs of this application to the respondent. Those are the orders of this court.

Dated and delivered at Nairobi this 21st April 2005.

J.L.A. OSIEMO

JUDGE