



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Civil Case 48 of 2003**

**ROSEMARY EPURUKEL (Suing as legal**

**Representative of JOSEPH EKUSI)..... PLAINTIFF**

**VERSUS**

**P.C. ABSALOM KARIUKI ..... 1ST DEFENDANT**

**ATTORNEY GENERAL ..... 2ND DEFENDANT**

**JUDGMENT OF THE COURT**

The plaintiff herein, Rosemary Epurukel is a sister to the deceased Joseph Ekusi who was shot in the back by the 1st defendant herein. The fatal shooting took place on 4.4.1999 at Isiolo Township. The deceased died on the day he was shot.

The plaintiff applied for and obtained Limited Grant of Letters of Administration which she produced as P Exhibit 3. On the strength of the said Letters of Administration the plaintiff filed this suit both under the Law Reform Act and under the Fatal Accidents Act.

The plaintiff's case is that the defendants and especially the 1st defendant had no reason whatsoever to shoot and kill the deceased and that she holds the 1st defendant liable in negligence for the shooting and the 2nd defendant vicariously liable for the tortuous acts of the 1st defendant. The plaintiff adduced evidence to the effect that indeed the deceased died as a result of the 1st defendant's shooting of the deceased. Medical evidence, contained in P Exhibit 7 – being the proceedings in Inquest No. 7 of 1999, as given by Dr. Kiambati, (PW9 at the Inquest) showed that the deceased was aged about 35 years as at the time of death. That the physical examination of the deceased's body showed that he suffered bruises on the left knee and that the gunshot had entered through the left causing a burning effect around the wound in the lumbar region with the exit being between ribs 6 and 7 on the right anterior. That the 6th and 7th ribs were fractured. Dr. Kiambati concluded that the cause of death was secondary to gun shot wounds that shattered the deceased's liver.

The plaintiff claims both general and special damages. The plaintiff testified that at the time of his death, the deceased was a farmer in horticulture making about Kshs. 15,000/= per month some of which money the deceased spent on assisting his siblings who numbered six including the plaintiff. That the death of the deceased had deprived his siblings of that support which they enjoyed 100% since the deceased was not married.

The 1st and 2nd defendants filed a joint statement of defence in which they denied any negligence and/or malice in the 1st defendant shooting and fatal wounding of the deceased. The defendants further denied that there was any shooting at all and dismissed the plaintiff's claim as having been filed without basis and without requisite leave to file suit out of time.

The defendants did not adduce any oral evidence during the hearing of the case despite having been given the opportunity to do so. The learned state counsel therefore made submissions. Before I consider the submissions by defence, I will briefly deal with the plaintiff's submissions made on her behalf by Mr. Mithega appearing for her. Mr. Mithega urged the court to make awards on the following:-

- (a) 2/3 of income, namely Kshs. 10,000/= as the amount the deceased used to spend on his siblings.
- (b) Multiplier of 25 years.
- (c) Loss of expectation of life at Kshs. 150,000/=.
- (d) Pain and suffering at Kshs. 20,000/=.
- (e) Specials at Kshs. 25,000/=.

Mr. Mithega cited the following two authorities in support of his claim:-

**1. HCCC No. 3448 of 1989 Alice Wanja Munene V. Wilson Mutegi and another.**

**2. HCCC No. 2197 of 1998 – Cecilia Rachier and Esther Okwalo v. Floyd Peter Raval.**

Mr. Njogu, learned state counsel submitted that the plaintiff had not proved actual income by the deceased and that the sum of monthly earnings of Kshs. 15,000/= was mere allegation without any basis. He counter proposed Kshs. 5,000/= as the probable income which the deceased was making. Mr. Njogu also disputed the plaintiff's allegation that the deceased used to spend 2/3 of his income on his siblings. He proposed 1/3 instead since all the deceased's siblings were adults.

Mr. Njogu proposed 15 years multiplicand as opposed to the 25 years proposed by Mr. Mithega for the plaintiff. On the amount proposed for pain and suffering, Mr. Njogu had no problem but contested specials of Kshs. 25,000/= as the receipts did not comply with the provisions of the Stamp Duty Act. Mr. Njogu conceded the figure of Kshs. 20,000/= for pain and suffering and urged the court to find that a global figure of Kshs. 800,000/= would be sufficient.

I will first deal with the undisputed claims. I have found that the plaintiff's case that the deceased died at the hands of the 1st defendants has been proved and accordingly find the 1st defendant to have been negligent. The 2nd defendant is held liable in negligence for the tortuous acts of the 1st defendant.

Though it is not clear how long after the shooting the deceased died, I make an award of Kshs. 20,000/= for pain and suffering. I also make an award of Kshs. 150,000/= for loss of expectation of life.

On the loss of dependency, I would agree that in the absence of evidence of actual income, a figure of Kshs. 5,000/= per month would be reasonable. Mr. Mithega urged the court to apply a multiplier of 25 years. Taking all the vicissitudes of life into account, I would allow a multiplier of 20 years. As a farmer, one would not expect the deceased to work much longer beyond age 55, and especially in harsh climatic conditions like those prevailing in Isiolo. Though the plaintiff alleged that the deceased used to spend about 2/3 of his monthly earnings on his siblings, there was no evidence to show that the persons named in the plaint, except for the plaintiff herself were siblings of the deceased. None of them was called to testify. For this reason, I agree with Mr. Njogu that only a 1/3 of the deceased's income could have been spent on his siblings. In effect, the award under this head would be  $20 \times 12 \times 5,000 \times \frac{1}{3} = 400,000/=$ .

The plaintiff has not proved her claim for specials since she has not complied with the provisions of the Stamp Duty Act. The receipts produced in support of the claim of Kshs. 25,000/= do not bear revenue stamps. All the same, the plaintiff must have buried her brother and for this reason only, I make a token award of Kshs. 5,000/= for funeral expenses. Though Mr. Njogu did submit that the total award to the plaintiff would be Kshs. 800,000/=, his submissions do not support that figure.

In summary therefore I enter judgment for the plaintiff as against the defendants jointly and severally as follows:-

1. Liability – 100% in favour of the plaintiff.

2. Awards

(a) Pain and suffering	- Kshs. 20,000/=
(b) Loss of expectation of life	- Kshs. 150,000/=
(c) Specials (funeral expenses)	- Kshs. 5,000/=
(d) Loss of dependency	- Kshs. 400,000/=
All totaling	<b><u>Kshs. 575,000.00/=</u></b>

I also award costs of the suit to the plaintiff and interest thereon at court rates on specials from the date of filing suit and general damages from the date of judgment.

Dated and delivered at Meru this 31st day of May 2005.

**RUTH N. SITATI**

**JUDGE**

**31.5.2005**