



- 1) Running Down Cause
- 2) Pedestrian male adult aged 26 years old in 1990
- 3) Road traffic accident between motor vehicle and pedestrian
- 4) Injuries:-
Fatal
- 5) Liability: Nil not proved
- 6) Quantum: Nil: Possible Award:-
 - I) Law Reform Act
 - a) Pain and suffering - Nil
 - b) Loss of expectation of life - Nil
 - c) Lost years - Nil
 - II) Fatal Accidents Act
 - a) Loss of dependency
2000/- x 16 x 12 x 2/3 Ksh.250,000/-
 - III) Special Damages NilSuit dismissed
- 7) Case law
 - a) Peter Kamau Njoroge v Godfrey P. Njuku Murenge
Hccc 1409/00, Ang'awa,J.
Court
 - b) Mary Ayo Wanyama & Others v Nairobi City Council C.A. 252/98
 - c) Touristic Union International & Another v Jane Mbuyu
CA 145/90
- 8) Advocates
M. Waweru Advocate for the plaintiff
B. Wamalwa Advocate for the defendant

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1319 OF 1992

EVANS MUTHAITA NDIVA PLAINTIFF

VERSUS

FATHER RINO MENEGHELLO & ANOTHER DEFENDANT

JUDGMENT

In this running down case, Evan Muthaita Ndiva the plaintiff herein filed suit on the 9.3.92 against a defendant, one Francisco Spagnola. Three years later he amended his plaint and added the present two defendants namely:-

- 1) Rino Meneghello
- 2) Arch Diocese of Nairobi

On the 16.10.95 and 6.2.97 respectively.

According to the plaint the 1st defendant is alleged to have run down the deceased, one Amos Kuria a male adult aged 26 years old and son to the plaintiff. The vehicle was owned by the 2nd defendant. When the trial commenced it was clear that the parties had not done pre-trial conferences and preparation of their case.

Nonetheless only the plaintiff appeared to court. In his evidence he stated that he had a son who had been run over with a vehicle. He only knew those who ran over his son were Catholics. He then confirmed that his son had a daughter who depended on him.

1) LIABILITY

In the case law of:-

Mary Ayo Wanyama & Others v Nairobi City Council

1 CA 252/98

The plaintiff gave evidence but failed to prove negligence on the part of the defendant. The court of appeal upheld the decision of Khamoni J. whereby he had ruled that no evidence had been adduced to prove the case on a balance of probability. In this case before me the plaintiff was not an eye witness to the accident He could not prove negligence on the part of the defendants. The defendant did not call any evidence especially so to prove that the defendant indeed were negligent. I would therefore struck out and dismiss this suit against the 1st and 2nd defendants.

Obiter dictum

The 2nd defendant is not a legal entity. He can therefore not be sued according to law. Secondly the 1st and 2nd defendants were brought into this suit when three years for filing a suit in TORT had expired. The plaintiff obtained leave to file its amended plaint but did not file an application for leave to bring the suit against the two defendants outside the three year period. Thirdly, the defence had alleged in their defence an alibhai. There was no action taken by the plaintiff seeking further and better particulars.

I would accordingly have struck out the suit due to this technicalities. I nonetheless am required by law to state what my possible award would have been if per chance the plaintiff was successful in his claim.

a) Law Reform Act

I would not have awarded any claim under this head. When the plaintiff had filed suit he did so without first obtaining letters of administration making him the legal representative in this suit. The plaint dated 14.8.91 and filed on 9.3.92 was so filed before clarification was made in the Trouistic Case CA 145/90 that clarified the position under the Law Reform Act. Letters of administration have to be first obtained before a suit is filed.

I would have dismissed the claim under his head.

b) Fatal Accidents Act Under this act, a litigant does not need grant of letters of administration to file suit. All he requires to do is to show that the deceased had dependency.

Section 4 requires that the dependency be the spouse, parents and children.

There is said to be a daughter born and the mother ran away. The plaintiff did not mention his wife in this case. It seems that an award of Ksh.1.900,000/- is sort by the plaintiff. The advocate holding brief stated that:-

A multiplier of 30 years (deceased was aged 26 years old) an income of Ksh.12,000/- x 30 x 12 x 2/3 should have been awarded. There was no proof of income produced to court to establish the deceased earned Ksh.12,000/- as a businessman.

The advocate relied on this court's decision of:-

Peter Kamau Njoroge & Another

V

Godfrey P. Njuku Murenge Hccc 1409/00

When an award of Ksh.250,000/- for loss of dependency was made. The adult male deceased was aged 24 years old. Thus, $16 \times 12 \times 2000 \times \frac{2}{3}$ Ksh.256,000/- say Ksh.250,000/-.

I would have awarded this sum if proof of income had been established. The minor daughter is now an adult. The suit was filed 14 years ago.

I would have awarded in the circumstances, apportion to her of Ksh.125,000/- as at the time the suit was filed she was a minor.

I would have made no award for Special Damages as none was spoken of. I would make no award on the stated grounds, namely that this suit is dismissed.

In summary:-

- a) Pedestrian male adult aged 26 years old in 1990
- b) Injuries: Fatal
- c) Liability: Nil not proved
- d) Quantum: Possible Award

I: Law Reform Act

- a) Pain and suffering Nil
- b) Loss of expectancy of life Nil
- c) Lost years Nil

II: Fatal Accidents Act

- a) Loss of dependency 2,000/- x 16 x 12 x $\frac{2}{3}$ rd Ksh.250,000/- Subject to apportionment

III) Special Damages Nil

Not proved

Total Ksh.250,000/-

I award the costs of this suit to the defendant. I dismiss this suit.

Dated this 11th day of February 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

J. Guserwa & Co. Advocates for the plaintiff

Mbai & Kibuthu Advocates for the defendant