



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NUMBER 2 OF 2001

JAMES ACHOKA OMAE.....1ST PLAINTIFF

JOSEPHINE CHEPKURUI OMAE2ND PLAINTIFF

VERSUS

JOSEPH KIRUI1st DEFENDANT

WESLEY TANGUS BOY.....2ND DEFENDANT

JUDGMENT

The Plaintiffs, James Achoka Omae and Josephine Chepkurui Omae have sued the Defendants on behalf of the Estate of Wycliff Omae Achoka – deceased (hereinafter referred to as the deceased) claiming special and general damages arising out of the road Traffic Accident that took place on the 11th May, 1999 along Kericho – Nakuru road involving the collision motor vehicle registration number KYT 944 and motor vehicle registration number KAA 942L which caused the deceased to sustain fatal injuries. The Plaintiffs blame the Defendants for the said accident and the consequent loss suffered by the Estate of the deceased. The defendants were served and duly entered appearance.

They also filed a defence denying the Plaintiffs' claim. On the 15th of July, 2004 the Plaintiffs through their Counsel on record Mr. Motanya fixed the suit herein for hearing on the 25th of October, 2004. The date was taken in the absence of the Defendants. The Defendants were served with the hearing notice of the 4th of October, 2004. On the 25th of October, 2004 when this case was called out, the Defendants were found to be absent from court. This court being satisfied that the Defendants were properly served, ordered the hearing of the case to proceed, notwithstanding the absence of the Defendants. The Plaintiffs called one witness, the 1st Plaintiff, James Achoka Omae. He testified that the deceased was his son who died in a road accident when the motor vehicle he was traveling in collided with another motor vehicle. The 1st Plaintiff testified that after the accident the deceased was admitted at Kericho District Hospital where he died from the injuries he sustained in the accident. He further testified that he had obtained letters of administration to administer the Estate of the deceased (produced as Plaintiffs' exhibit number 1). He testified that the deceased was treated at the hospital before he died. (Medical treatment papers produced as Plaintiffs exhibit number 2). Post mortem was carried out (post mortem report produced as plaintiffs Exhibit No. 3). A burial permit was later issued to authorize the 1st Plaintiff to bury the deceased (Burial permit produced as Plaintiff exhibit number 4).

The 1st Plaintiff later went to the Police Station and was issued with a police abstract report (produced as plaintiffs' exhibit number 5). Later a death certificate of the deceased was issued (produced as plaintiff exhibit number 6). The 1st Plaintiff testified that the deceased at the time of his death was working as a teacher employed by the Board of Governors of Chepseon Secondary School. The deceased was earning the sum of Ksh.5,500/- per month. At the time of his death the deceased was aged thirty six years. A Letter confirming the salary of the deceased was produced as Plaintiffs exhibit number 7. He further testified that the deceased was married to Josephine Chepkurui Omae and was blessed with two

children, namely Brian Nyamweno Omae and Adrian Achoka Omae. Their birth certificates were produced as plaintiffs' exhibit number 8(a) and (b). The 1st Plaintiff testified that the deceased used to support the 1st Plaintiff and his wife (the deceased's mother). The deceased also supported his wife and children. The 1st Plaintiff prayed that this court orders that the Defendants compensate him and the Estate of the deceased for the loss that resulted from the death.

I have considered the evidence adduced in court by the Plaintiffs. The issue for determination by this court is whether the Plaintiffs have established that it is the Defendants, who were to blame for the said road traffic accident that occurred on the 11th of May, 1999. The other issue for determination is what, if any, compensation should be paid to the Estate of the deceased as a result of the said death of the deceased. The Plaintiffs pleaded that the deceased was traveling in motor vehicle registration number KYT 944 as a lawful passenger when the said motor vehicle collided with motor vehicle registration number KAA 942L. The said motor vehicle was being driven by the 1st Defendant and was owned by the 2nd defendant. As a result of the said accident, the deceased sustained fatal injuries. The Plaintiffs blame the Defendants for the said accident. The 1st Plaintiff's evidence in court was not controverted. In the absence of any evidence to the contrary, I do find the defendants liable in tort to the Plaintiffs. The Defendants are therefore found to be solely liable for the said accident and consequently to the deceased's Estate in damages as a result of his death.

The Plaintiffs in their testimony before court stated that the deceased at the time of his death was aged thirty six years. He was working as a teacher at Chepseon Secondary School. He was employed by the Board of Governors. He was earning a salary of Ksh.5,500/- per month. The deceased was married with two young children. The 1st Plaintiff testified that apart from supporting his wife and children, the deceased also supported him and his mother.

In his submission before court, the Plaintiffs urged this court to apply a multiplier of 19 years in assessing the damages to be paid to the Estate of the deceased under the Fatal accidents Act. The Plaintiffs also submitted that the dependency ratio that ought to be applied should be $\frac{3}{4}$. I have looked at the pleadings filed by the Plaintiffs in this case. I have also carefully considered the evidence adduced by the 1st Plaintiff in this case. It is now established law that a party has to prove dependency in cases such as the instant one. A party cannot pluck a figure from the air and say that the deceased used to utilize, let's say a half of his salary, to support his family. The Plaintiffs have to establish that indeed the deceased actually utilized the said amount of his salary to support his family. In the circumstances of this case, and having evaluated the evidence, adduced by the Plaintiff, I would put dependency at the ration of $\frac{2}{5}$.

The deceased was at the time of his death aged thirtysix years. The Plaintiffs have suggested the Multiplier to be applied to be 19 years. The Plaintiffs have referred this court to two decisions, ***Alisenfuka Kibirige – versus – Crossline Ltd HCCC no. 1406 of 1996 (Nairobi)(unreported) and Musa Alulwa – versus – The Attorney General and a nother HCCC no. 1597 of 2000 (Nairobi)(unreported)***

In both these two cases, a multiplier of 20 years was applied. In both cases however, the deceased person died while they were aged below the age of thirty years. In the instant case, the deceased was aged thirty six years when he died. In arriving at the multiplier to be applied, the court has considered the circumstances and the condition of life that is prevailing in Kenya today as a pointer to the expectation of life that the deceased could have lived. This court is not oblivious of the fact that the standard of life and the life expectancy in Kenya has reduced in the past few years. This court is also aware that incidences of poverty, the impact of the HIV/AIDS epidemic, Road Traffic Accidents and other diseases are such that it cannot be assumed that the deceased in this instance could have lived to the retirement age of fifty five years. The deceased may or may not have lived to the said retirement age

In the circumstances of this case, and doing the best that I can, I will assess the multiplier to be applied to be thirteen years. In the premises the Plaintiffs are awarded general damages under the Fatal Accidents Act on behalf of the deceased's Estate and hereunder;

Ksh.5, 500/- (monthly salary) x $\frac{2}{5}$ (dependency ratio)

X 13 years (multiplier) x 12 months = 343,200/-

The Plaintiffs are further awarded the sum of Ksh.11, 200/- being the special damages proved, that is, funeral expenses and the costs of the police abstract report and the death certificate. The total sum awarded to the plaintiffs is this Kshs. 354400/=.

I will not make an award under the Law Reform Act as it would amount to the Plaintiffs being given double compensation from a single act of negligence. **(See *Kemfro Africa Ltd T/a Meru Express Services and another – versus – A M Rubia and another [1982-88] I KAR 727*)**

The Plaintiffs shall have the costs of this suit. The interest on the special damages shall be applied from the date which the suit was filed whilst the interest on the general damages awarded shall be applied from the date of this judgment.

DATED at KERICHO this 29th day of October 2004

L. KIMARU

AG JUDGE