

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.CIVIL CASE NO.2080 OF 1997

JANE MARTHA W. WACHIRA AND ANOTHER
PLAITNIFF

VERSUS

THE ATTORNEY GENERAL AND ANOTHER
DEFENDANT

JUDGMENT

In my ruling of the 24th October, 2003 I allowed the Defendants Counsel to put in written submissions in connection with the Judgment I gave on the 16/5/2003 as the A.G had not received notice of the date fixed for submissions. Mrs. Ungu submitted that particulars of negligence were not contained in the plaint contrary to O.VI rule 8(1) of the Civil Procedures Rules. OVI rule 8 1(a) sets out the cases where the pleadings must contain particulars. Amongst the various matter mentioned there is no reference to negligence.

I would agree that it is advisable to plead particulars of negligence but where these are missing the other party is at liberty to seek these particulars and if the same are not forthcoming to apply for the dismissal of the suit. The Plaint refers to the 2nd Defendant negligently opening fire. This is in my view sufficient pleading to support the claim. What is required in the pleading is to put the party on notice of what they will have to face at the hearing. In this connection I would refer to the observation of Cotton LJ in Philippe V Phillips referred to in the copy of Bullen and Leake and Jacob's 12 Edition page 11 where he said

“What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleadings not, not to be embarrassing to the defendants, should state those facts, which put he defendants on their guard, and tell them what they will have to assert when the case comes on for trial”

With regard to liability I have considered the submissions of Counsel but see no reason to alter my finding contained in the Judgment. I would however say this. As it turned out the deceased was an innocent man. It appears to me that the police may have over reacted in the case. I am aware of the security problems in the country at large. Each case depends on its individual facts.

In this case I am of the view that the shot fired was done so precipitately and a little more patience should have been shown by the policeman who shot the deceased. In many cases the shorting of a dangerous criminal is justifiable especially where the police are themselves in danger. This case, however does not appear to fall into that category. I have considered the cases relied on by Counsel but on the case of Marshall V Osmond & Another the police office accused of negligence was acting in the course of his duty to apprehend someone who was in a vehicle taken without consent. Clearly therefore that person was involved in an unlawful act. The person injured was therefore a party to their own injuries, which took place in a chase after the vehicle.

Quantum: The Plaintiff's obtained Letters of Administration on the 7/8/1997 and the plaint was filed on the 27/8/1997 caused a claim to damages under the Fatal Accident Acts. I agree with Counsel that no award under the Law Reform Act could be made and do not make any findings under this head. I therefore follows that the special damages assessed are disallowed. So far as general damages are concerned, I have considered counsel's submissions and see no reason to alter the amount awarded by me. Except as stated in this Judgment I maintain and adopt the contents of my Judgment already delivered.

Dated and delivered at Nairobi this 5th day of December 2003

P.J. RANSLEY

JUDGE