



REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1031 OF 1996

DAMARIS WAKINYI GIKAARA PLAINTIFF

VERSUS

THE ATTORNEY GENERALDEFENDANT

J U D G E M E N T

Damaris Wakene Gikaara sued the Attorney General for damages arising from the death of her son caused by gun shot wounds inflicted by police officers manning a road block along Kericho Nakuru road.

The plaintiff prayed for judgement against the defendant for “general damages”, “special damages” and “costs and interest”.

The plaintiff identified her son a George Kifari Njai who died on 27th August, 1995, aged 22 years old, and was working as a mechanic in Kangemi, Nairobi. The plaintiff is a widow, her husband died on 4th December, 1976, so it was her son who used to pay her house rent of Kshs.2,000/= and was also used to buy food for her, spending about Kshs.2,000/= per month. The plaintiff was aware that her son was travelling in Billy Wachira’s vehicle together with Waweru and other people.

The plaintiff filed a Succession Cause being P&A No. 2714/95. She produced a copy of Letters of Administration issued to her on 9th April, 1996. The plaintiff also produced the death certificate of her son as an exhibit, plus a receipt showing that she spent Kshs.15,000/= to obtain Letters of Administration to her son’s estate.

Her son’s body was at Kericho Mortuary after death. She hired a vehicle at Kshs.20,000/= to bring the body to Nairobi for post mortem, and burial at Langata cemetery. She had an invoice and not a receipt of the hiring charges. Counsel for the Attorney General objected to the production of the invoice, but I allowed its production because there was no dispute that the incident of shooting involving the deceased occurred along Kericho-Nakuru road. Further there was no dispute that the deceased died as a result of the shooting incident. The dispute was whether the shooting was justified or not. There was also no dispute that the plaintiff who is the deceased’s mother lives in Nairobi. So for her to collect the body of the deceased from Kericho hospital mortuary, she needed to hire a vehicle. The hiring charges of Kshs.20,000/= was reasonable, in my view, from Kericho to Nairobi, that is why I allowed it. The plaintiff paid for the post mortem and got a report, which showed that her son was shot several times. She bought a coffin for Kshs.19,000/= and paid a sum of Kshs.700/= to get permission to bury the body at Langata cemetery. She made a further payment of Kshs.1,900/= at

Kenyatta National Hospital, for ex rays. She produced the 3 receipts in court as Ex.6. She prayed the court to compensate her and also refund all the monies she spent.

Peter Waweru Kungu was travelling in the same vehicle as the deceased on 27th August, 1995. They were coming from a funeral in Luanda, Kakamega District. They were travelling a long Kericho Nakuru Road and were at Londiani where there was a police road block which blocked the road completely. Waweru said that he was the one who was driving the vehicle which was No. KQX 661 a Mitsubishi. There were a total of 5 people in the vehicle including the deceased. He stopped at the road block. A police vehicle was stationery somewhere a head. Almost immediately, he heard gun shots. One hit the window of the vehicle so he bent down. Thereafter many shots were fired and at the end of it all, the police came to the vehicle and ordered them out and they came out. The police further ordered them to lie down, which they did, except for the deceased who could not come out of the vehicle because he was injured. The police ordered Waweru and the others to remove him from the vehicle and they did so. He was bleeding profusely. It was difficult at that time to tell which part of his body was injured. Waweru said that they all remained lying by the road side for about half an hour. Waweru had been shot on the left hand, he too was bleeding. A police land rover arrived and they all got into it. The deceased was also carried into the landrover.

Waweru recalled that Kibathi, the deceased, asked him to remove the one shoe which was still remaining on his feet. That was the last statement to have come from the deceased's mouth because he died only minutes after that. Waweru, and all the other occupants of the vehicle were taken first to Kericho district hospital then to Kericho police cells. The police claimed that they thought the occupants of the vehicle were the likes of "Mathari" and "Rasta", who by then were the most wanted criminals. Waweru and his colleagues gave the police their identification documents but the police threw them. The following day police took Waweru and his colleagues back to Kakamega police station and from there to Vihiga court where they were charged with the offence of creating disturbance at Luanda police station in Kakamega. They were however, acquitted of this offence. Waweru was nevertheless charged with the offence of failing to stop at a road block. The case proceeded for hearing. Waweru denied the charge and allegation that he failed to stop at a road block. He also denied having made a U-turn, when he saw the police. He was eventually acquitted of the offence.

The Attorney General who was the defendant was sued on behalf of the police commissioner. Mr. Sitima who represented the Attorney General failed to produce any witnesses in court. Eventually he himself failed to turn up in court to finalize the case. He did not make any submissions. The defence which was filed was not proved, and the prosecution evidence remained unchallenged. In these circumstances, I am entitled to accept it. The plaintiff's counsel gave detailed submissions on the quantum of damages to be awarded to the plaintiff, the mother of the deceased who was dependent on him.

Though the counsel took a sum of Kshs.5,000/= per month as the deceased's salary, there was no proof of this. The evidence simply said that he was a mechanic. But perhaps Kshs.5,000/= per month for a mechanic is a reasonable figure to work with. Out of that sum, the deceased paid his mother's rent and also gave her money for food. The deceased was aged 22 years old at the time of his death. In the case of Stella Amuka, a multiplier of 25 years was used to calculate damages for lost years under the Law Reform Act.

In this case I have decided to take a multiplier of 30 years. The deceased could have easily continued to work as a mechanic for a period of 30 years, which period was cut short by this death. To calculate the sum for lost years I will use the deceased's monthly income multiplied by 12 months, and again further multiplied by 26 years, a figure suggested by the plaintiff's counsel. www.kenyalawreports.or.ke 6 The deceased could have easily been spending 1/3 of his monthly income on his mother, or to put it another way, his mother's dependency on him was to the extent of 1/3 of his income. This must be reflected in the calculation for loss of anticipated income under the "lost years" would be thus

$$5000 \times 4 \times 26 \times 1/3$$

$$5000 \times 4 \times 26$$

$$= \text{Kshs.520,000/=}$$

During submissions, counsel for the plaintiff prayed for a sum of Kshs.50,000/= for pain and suffering. I have read the relevant authorities on this point, and I have decided to award a sum of Kshs.25,000/=. I will award a further sum of Kshs.50,000/= for loss of expectation of life. The plaint dated 21st March, 1996 did not have a claim for exemplary damages. I will not therefore consider awarding any sum on that head.

So the general damages I have awarded are

Kshs. 520,000/=

Kshs. 25,000/=

Kshs. 50,000/=

TOTAL 625,000/=

To this will be added the sum for special damages i.e

Letters of administration Kshs. 15,000/=

Hire charges of vehicle

To transport the body

From Kericho to Nairobi Kshs. 20,000/=

Price of coffin Kshs. 19,000/=

Burial permit Kshs. 700/=

X-ray pictures at Kenyatta

Hospital Kshs. 1,900/=

TOTAL Kshs. 56,600/=

When we add general damages to special damages we get i.e

Kshs. 625,000/= +

Kshs. 56,600/=

681,600/=

I find judgement for the plaintiff against the 2 defendant's jointly and severally, in the total sum of Kshs.681,600/= plus costs and interests. I order that interest on special damages be calculated from the date the suit was filed i.e 21st March, 1996 till date of judgment whilst interest on general damages is payable from date of Judgement till payment in full.

Dated at Nairobi this 7th day of February, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE

