



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 550 OF 1996

STELLA MUMBUA MWOLOLO (MRS.)

SAVALI MWOLOLO PLAINTIFFS

VERSUS

PAUL W. GITONGADEFENDANT

1. Running Down Action
2. Driver male adult aged 44 years in 1994
3. Collision between bus motor vehicle
4. Injuries: - Fatal
5. Liability: - Interlocutory judgment entered 3.8.00 (PDR)
6. Quantum

Law Reform Act

- (i) Pain and suffering nil
- (ii) Loss of expectation of life Khs.70, 000/-
- (iii) Lost years nil

..... Fatal accidents act

Loss of dependency

3,000/- x 6 x 12 x 2/3 = Kshs.144,000/-

Special Damages (a) nil

(b) Loss of lamp nil

7. Caw Law -

(a) Susan Mumbi Waititu v. Efala Gribedhin

HCCC 3321/93

(b) Esther Njeri Nduru v Stephen Ngigi Kali

HCCC 3613/94

© Rose Aminde Osiako v Mbukinya Bus Services

Vates HCCC 4947/92

JUDGMENT

I have before me a Running Down action that was filed on the 7.3.96. The said action was thought by Stella Mumbua Mwololo(Mrs.) (the widow to the deceased one Geoffrey Muinde Mwakani) and Sakali Mwololo (the son to the deceased) for the wrongful death occasioned by the driver of motor vehicle driven by the deceased reg. No. KAD 515T.

The owner of the vehicle one Paul W. Gitanga was sued and is the defendant herein.

Paul W. Gitanga was never traced to be served with the plaint and summoned. The plaintiffs applied for substantive services, which was duly granted on 19.9.97 (Githinji J.). The plaintiff then placed a notice in local newspapers. The actual newspaper and date is unknown but the notice is dated the 15.12.97.

The court file then went missing. The plaintiff had the file reconstructed.

On the 3.8.00 the Principal Deputy Registrar as to the martial powers given to him under order 48 Civil Procedure Act entered an interlocutory judgment against the defendant.

What I have before me is a formal proof.

The advocate for the plaintiff called Savali Muoki – to the 2nd defendant herein to give evidence.

He produced a copy of records from the register of the motor vehicle to prove that the vehicle registration number KAB 591L was registered in the name of Paul W. Gitanga, the left herein and another.

He also produced grant of letters of administration in the name of Stella Mumbua Muololo and himself.

He stated orally that his father earned a salary of Kshs.3,000/-

The plaintiff then closed his case. As there was interlocutory judgment already entered, the court would compute liability at 100% against the defendant. the plaintiffs now required to do is to prove their

This has been done by PW1 to show that a claim under the Fatal accident act cap 34 and the Law Reform Act Cap 26 Laws of Kenya can be claimed by them.

1. Special Damages.

(i) Law Reform Act

(a) Pain and suffering

I have no evidence before me to show how long the deceased was alive after the accident to illustrate

he pain that he underwent before he died. I make no award under this head of damage.

(b) Loss of expectations of life

I award a commentary sum of Kshs.70,000/-.

2. Fatal accidents act

The claim herein is one of loss of dependency. In order to prove these claim particulars under the Fatal accidents act of dependency must be pleaded. Thereafter the administration/administration is to formally prove that the named dependents are actually the child, parents or spouse to the deceased (see section 4 of the Fatal accidents act).

In this case the plaintiff should have, out of formality, produced the birth certificates of the children to the deceased as particularized in the plaint. The plaint claimed that the deceased provided food, clothes, school fees, love affection and companionship. The plaintiff herein (PW1) never spoke of this nor demonstrates this dependency.

I further note that the two plaintiffs did not claim under this act.

I would dismiss this claim as not having been proved.

In the event that the plaintiffs would have been successful I would have used a multiplier of 6 years. The plaint states the deceased was 40 years though the witness said 41 years. I would base this on the plaintiff's case law of

5 Esther Njeri Nduru

V

Stephen Ngigi Kabui

HCCC 3613/94 Juma J. where a multiplier of 6 years was given to a deceased aged 46 years old at the time of death.

If the wage of Kshs.3,000/- was proved for a driver, I would have taken this.

Thus $3,000/- \times 6 \times 12 \times 2/3 = \text{Kshs.}144,000/-$

The claim is otherwise dismissed.

3. Special Damages

(a) Funeral expenses of 23,900/- and police abstract report of Kshs.100/- was claimed. The witness never spoke of these damages nor was he able to produce any documentary proof of payment.

I dismiss this claim.

(b) Loss of future lamp

No evidence was led by the witness on this claim nor even mentioned. The same be and is hereby dismissed.

4. Lost years

A claim for lost years was also made. This is a claim under the law report act. The witness never spoke of this claim to court. The same is dismissed.

The advocate had referred me to the case law of

Susan Mumbi Waititu

V

Fufala Gribbe Dhin

HCCC No. 3321/93

Juma J.

To prove the doctrine of Res Ipsa Longata. Page 3 of that Judgment is missing. I therefore do not have the full reasoning on that doctrine. The said doctrine though is not applicable in this case as interlocutory judgment has already been entered on liability.

The case of Rose Amindu Osiako

V

Mbukinya Bus Services & others

HCCC 4947/93

Dealt with the loss of expectation of life awarded at Kshs.100,000/-.

The above decision be persuasive. They do not hind this court.

I nonethele ss enter judgment for the plaintiff on the proved claims.

In summary

1. Running Down Action
2. Driver, male adult aged 44 years in 1994
3. Collision between two motor vehicles
4. Injuries - fatal 5. liability Interlocutory judgment entered on 3.8.00 (PDR)
5. Quantum

Law Reform Act

(i) Pain and suffering Nil

(ii) Loss of expectation of life Kshs.70,000/-

(iii) Lost years Nil

(.....) Fatal accidents Act

(a) Loss of dependency

3,000/- x 6 x 12 x 2/3 = Kshs.144,000/-

Special Damages

(a) Nil

(b) Loss of lamp Nil

70,000/- I award the cost of this suit to the plaintiff.

I award interest on Special Damages from the date of this judgment.

Date this 18th day of July 2002 at Nairobi.

M.A. Angawa

Judge