



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2205 OF 1995

1 JOHN MUASYA USWIL.....PLAINTIFF

-VERSUS

JOHN MAINA KABURU.....1ST DEFENDANT

NYATURIMA HOLDINGS.....2ND DEFENDANT

JUDGMENT

LIABILITY

The issue of liability has been settled between the parties with the defendant being 100% liable and was recorded on 4.5.99. The only outstanding issue is assessment of damages.

EVIDENCE

Plaintiff gave evidence that at the time of his death the deceased was aged 18 years and had completed his KCSE in 1991 obtaining 71 points and had been admitted at Egerton University for a degree in Agricultural Education.

He did a course in Micro Computer Operations while awaiting to go to the University and attained grade A. He was an excellent student. Mr. Daniel Ndolo who was plaintiff witness No. 2 (PW2) gave evidence of his own career on completion of the same degree that the deceased was to have taken. His first salary with TSC was Ksh.8,400/- per month. Upon joining the private sector as trainee manager he earned Ksh.6,100/- Later in the same year he joined SOCFINAF CO. LTD.

where his salary is Shs.33,000 per month together with other benefits amounts to Shs.44,696. The plaintiff is claiming damages under Law Reform Act for:

- (1) Loss of expectation of life
- (2) Pain and suffering
- (3) Lost years

and under Fatal Accidents Act. He is also claiming special damages.

(a) For loss of Expectation of Life

For the defendant under this head it was urged that a figure of Shs.70,000 would be reasonable. These damages would be awarded under the principle that the deceased has been deprived of the normal expectation of life and the HCCC No. 1399 of 1985 Amolo Isaka Isaya Vs. Nyamache was cited in support.

The plaintiff suggests a figure of shs.100,000/- and cites the case of MUSHTAQ HASSAN reported in (1982-88) 1 KAR 946 in support. After considering these cases cited I find a figure of Shs.100,000/- to be reasonable under the circumstances of this case.

(b) For pain and suffering

The deceased died on the same day. For the defendant a sum of Shs. 5,000/- is suggested while for the plaintiff a sum of Shs.10,000/- is suggested.

I find a figure of Shs.10,000/- is reasonable.

© **For lost years**

For the plaintiff a multiplicand of Shs.20,000/- is suggested citing the cases already referred to. The defendant suggests a multiplicand of Shs.8,400/- which after taking into account the deceased expenses and statutory deductions should be Shs.1,680/-

I have considered the cases which have been cited by the parties in support of each side of view.

In this case the deceased had not started working. The evidence of the plaintiffs' witness Mr. Ndolo (PW2) while indicating the possibility of the deceased having the same chances in his future life it cannot be said with certainty that this was going to be so. Neither would it be fair to assume that the deceased was not going to be successful in life. The figure of Shs.8,400 is too low and I find that on balance of probability a figure of Ksh.10,000/- would be more reasonable.

For the multiplier both parties suggest 18 years so that the benefit to the estate would be $10,000 \times 12 \times 18 = \text{Shs.}2,160,000/-$

(d) Under the fatal accidents

There was no evidence that the plaintiff was being supported by the deceased at the time of death. I find therefore that no damages are payable under this head.

Special Damages

For the defendant it was urged that the special damages were not proved except for Shs.15,890/-. It is contented that no receipts were produced for the other items claimed and therefore the special damages are not proved as required by law.

It is accepted that after the accident the body was kept in Karatina Mortuary and that it was transported to kola in Machakos District in Eastern Province.

There were expenses involved in this transportation for such a long distance and mere lack of receipts does not mean that this expense was not incurred. It is obviously unpractical to insist that the only proof of damages is production of receipts. There is enough proof because the body was buried in Kola and not in Karatina.

The body was moved to Chiromo Mortuary in Nairobi before it was transported to Kola for burial. It is a fact the Chiromo Mortuary was paid for the days the body was there otherwise it would not have been released for burial. This is enough evidence that expenses were incurred.

All items pleaded as particulars of special damages with the exception of item 15, 19 and 16 are necessary in a burial. The items I have excepted are not absolutely essential in burial and a decent burial can take place without them. These are the only expenses I shall not include in the special damages.

JUDGMENT

Taking into account my findings, there shall be judgment for the plaintiff as follows:

1) Damages for loss of expectation of life	Shs.100,000/-
2) Damages for pain and suffering	Shs. 10,000/-
3) Damages for lost years	Shs.2,160,000/-
4) Special damages	<u>Shs. 46,790/-</u>
Total	<u>Shs.2,316,790/-</u>

The plaintiff shall be entitled to costs and interest. Delivered and dated at Nairobi this 17th day of February, 2000.

KASANGA MULWA

JUDGE