



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO. 1657 OF 1993

MARY MUTHONI GACHAU PLAINTIFF

VERSUS

THE ATTORNEY GENERAL & 2 OTHERS.....DEFENDANT

JUDGMENT

On the 8th of April 1992, Joseph Gachau Mathenge was involved in a tragic car accident. He met his death whilst travelling in a motor vehicle registration No. KWS 022 - along the Eldama Ravine Nakuru road. This motor vehicle was involved in a collision with motor vehicle registration No. 44 KA14.

Mary Muthoni Gachau, took out letters of administration and filed this suit on behalf of the estate of Joseph Gachau Mathenge who was her husband. She sued under the Law Reform Act and the Fatal Accident Act for the wrongful death of her husband. On the 18th of October 1999, the deputy registrar recorded the following consent reached by the parties:-

It was noted that the 3rd defendant's suit be withdrawn. This was duly done by consent. Instead the parties found the 1st and 2nd defendant liable both jointly and severally at 10% to 90% ratio amongst the two.

This is the Attorney General for the 1st defendant and the driver and a servant to the 1st defendant namely the Army and herein referred to as the 2nd defendant.

The deceased had been travelling in a vehicle belonging to the 3rd defendant, whose case has now been marked as withdrawn.

The hearing held on the 4.4.2000 was for assessment of damages. The plaintiff gave evidence to prove her husband's death, that they had children. She produced the birth certificates of the nine children. She claimed that he supported her and the children. He would give her about Ksh.15,000/ to 20,000/- as her upkeep.

He worked at a petrol station as the petrol pump supervisor earning £2,760 per annum.

That he was aged 51 years as opposed to the 43 years earlier mentioned in the Plaintiff.

The defendant's advocate submitted that the plaintiff had failed to prove their case as such this case

be dismissed. He took issue as to the extension income earned by the deceased. It is said he ran a matatu business. The plaintiff produced the bank statements but there is no evidence to liken these statement with the matatu business.

To this end I would agree with the advocate for the defendant. That the plaintiff claims her husband owned and ran a matatu which produces an income of ksh.2,000/- per month. In order to prove this a book of a accounts should have been kept. It there was none, either the regularly driver of the matatu should have come to give oral evidence that he worked for the deceased. He would have also been able to confirm rightly the income the vehicle earned.

Further a log book and registration of the vehicle should have been disclosed this was never given in evidence. The bank statement would have thereafter corroborated such evidence if it had been produced. Income tax returns would have also assisted.

I am therefore inclined to hold that no proof of income on the matatu had been established.

I would hold that the plaintiff having proved her case on the other aspect of this case would find for her on the following heads of damages.

Under the Law Reform Act Loss of Expectation of life Ksh.100,000/- I give this award as being conventional. Under the Fatal accidents Act.

I accept the age of the deceased at the time of death to be 51 years old. I would agree with the advocate for the defendant that a multiplier of 5 years as convenient. Retirement age in Kenya being an average of 55 years That the plaintiff gave proformal income at £2,760 per annum (I presume the pounds is Kenya at 20/- per pound)

Thus 5 years x \$2,760 x 20 (salary 4,600/- per month) Ksh.276,000/- This represents the loss of earning.

The law requires that this amount be apportioned amongst the dependants which I do as follows:-

1. Mary Muthoni Gachau -wife Ksh.66,000/-
2. Esther Wamucii daughter born 1968 Ksh.10,000/-
3. Gladys Wangui daughter born 1970 Ksh.10,000/-
4. Catherine Wanjiku daughter born 1972 Ksh.10,000/-
5. Monica Njeri daughter born 1974 Ksh.10.000/-
6. Elizabeth Nyamwira daughter born 1975
Ksh.10,000/-
7. Josephine Wanja daughter born 1977
Ksh10,000/-
8. Gibson Mathenge son born 1979
Ksh.50,000/-
9. Ruth Wanjiru daughter born 1984 Ksh.50,000/-
10. Priscilla Wanjiru daughter born 1986 Ksh.50,000/-

Ruth and Priscilla - the last two daughters are still minors. Their portion of entitlement be invested in an interest earning account until they attain the age of 18 years with the East African Building Society or a reputable bank of their choice. This will be in the joint names of the Registrar of the High Court of Kenya and the plaintiff.

The plaintiff will be at liberty to apply for the interest on the capital.

This will be done only on application to the High court and only for the purposes of the benefit of the two minors.

Nothing was mentioned of special damages. The same is hereby dismissed as not being proved.

In summary.

Fatal accident

Deceased aged 51 years old.

Liability 1st defendant 10%

2nd defendant 90%

3rd defendant - case withdrawn by consent. Quantum:

Law Reform Act

Loss of expectation of life Ksh.100,000/- The Fatal Accidents Act.7

Loss of Dependence Ksh.276,000/-

apportionment as above.

Special Damages Nil_____

(not proved) Ksh.376,000/-

I award costs and interest to the plaintiff. Interest is so awarded from the date of this judgement.

Dated this 6th day of April, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE