



**Njuguna & another (Suing as the Legal Representatives of the Estate of Benson Kimani Muchohi (Deceased)) v Sarbor Enterprises Limited (Civil Case 143 of 2019) [2023] KEHC 18098 (KLR) (Civ) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18098 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 143 OF 2019**

**AN ONGERI, J**

**JUNE 2, 2023**

**BETWEEN**

**CATHERINE WANJIKU NJUGUNA ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL KENG'ETHE NJUGUNA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF BENSON  
KIMANI MUCHOHI (DECEASED)**

**AND**

**SARBOR ENTERPRISES LIMITED ..... DEFENDANT**

**JUDGMENT**

- 1) The plaintiffs in this case Catherine Wanjiru Njuguna and Samuel Kangethe Njuguna (hereafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs respectively) have sued the defendant Sarbor Enterprises Limited (hereafter referred to as the defendant only) in their capacity as legal representatives of Benson Kimani Muchohi (deceased) seeking general damages under the *Law Reform Act* and the *Fatal Accident Act*.
- 2) The deceased died on 3/7/2016 following an accident involving motor vehicle registration no KBJ 228M which was being driven by the deceased and motor vehicle registration no KBH 080R/ZD1039 lorry belonging to the defendant.
- 3) The defendant was served with the summons to enter appearance and file a defence but they failed to do so and interlocutory judgment was entered on 20/1/2022 and therefore the issue of liability is settled.
- 4) The case proceeded to formal on 23/3/2023. The 1<sup>st</sup> plaintiff adopted her written statement filed in court on 2/7/2019 in which she said that the deceased was her husband having gotten married to him on November 30, 2002.



- 5) The 1<sup>st</sup> plaintiff said on the material day (on 3/7/2016) she was lawfully being carried in motor vehicle registration no KBJ 228M along Eastern Bypass when motor vehicle registration no KBH 080R/ZD/039 knocked their motor vehicle.
- 6) PW 1 said motor vehicle registration KBH 080R/ZD/039 was coming from Utawala and they were going the opposite direction. It was at night between 9 – 10pm and they were coming from ACK church Emmanuel at Bahati where her husband was a pastor when the accident occurred.
- 7) PW 1 said the lorry lost control and hit their motor vehicle. She found herself in hospital later and she was told her husband had died. PW 1 said her husband was 42 years old at the time and he was earning ksh 110,000 as a pastor working with ACK Nairobi. She attached his payslips.
- 8) PW 1 said they had three children namely  
Diana Muthoni - born on June 13, 2005  
FN – born XXXX  
And TN born on XXXX
- 9) The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are seeking special damages as follows
  - a) Copy of record 1000
  - b) Search of business name 2000
  - c) Letter s of administration 10,000
  - d) Funeral expenses 29,600
  - e) Medical expenses 4,811
  - f) Medial report 5,000Total 52,411
- 10) The plaintiffs are also seeking general damages for pain and suffering together with general damages under the Law Reform Act and under the Fatal Accident Act.
- 11) I find that the issue of liability is settled by the interlocutory judgment. The defendant is held 100% liable for the accident.
- 12) The issues for determination in this case are as follows;
  - (i) Whether the plaintiffs are entitled to special damages and general damages against the Defendant.
  - (ii) If so how should the same be assessed.
- 13) On the issue as to whether the plaintiffs are entitled to special damages and general damages against the Defendant, I find that liability having been settled at 100%, the plaintiffs are entitled to both special damages and general damages from the Defendant.
- 14) On the issue of special damages, the law requires that the same be specifically pleaded and proved.
- 15) The plaintiffs pleaded special damages on paragraph 6(b) of the plaint as follows;  
Copy of record 1000



Search of business name 2000  
Letters of administration 10,000  
Funeral expenses 29,600  
Medical expenses 4,811  
Medical report 5,000  
Total 52,411

- 16) The plaintiff attached documents in support of the special damages and I find that in the absence of any evidence to controvert the 1<sup>st</sup> plaintiff's testimony, she has proved on a balance of probabilities that she incurred the special damages.
- 17) On the issue of general damages, the plaintiffs filed written submissions as follows; On liability it was the plaintiff's submission that she was a passenger in motor vehicle registration number KBJ 228M which was being driven by her late husband Benson Kimani Muchohi along the Nairobi Eastern By Pass when the Defendant's driver, servant, employee and/or agent drove motor vehicle registration number KBH 080R/ZD1039 so carelessly and negligently that he caused an accident to occur as a result of which she sustained multiple injuries and the deceased sustained fatal injuries.
- 18) It was argued that the defendant should be held liable for the accident based on the fact that the said accident the deceased Mr. Benson Kimani Muchohi suffered fatal multiple injuries and died before reaching St Bhakhita Hospital and further the 1<sup>st</sup> Plaintiff who was a passenger sustained severe injuries and was admitted in hospital.
- 19) On special damages the plaintiffs indicated that they produced receipts and proved that they suffered loss and damage.
- 20) On general damages it was indicated that the 1<sup>st</sup> plaintiff suffered soft tissue injuries to the left leg and blunt injury to the chest. They proposed an award of Kshs 120,000 and in support cited Civil Appeal No 54 of 2016: *Ndung'u Dennis v Ann Wangari Ndirangu & another* [2018] eKLR where the Respondent suffered bruises on the neck, tenderness on the right leg, blunt injury to the chest and both hands, back and chest pains. The trial court awarded Ksh 300,000 which was reduced to Ksh 100,000 on appeal.
- 21) The plaintiffs also sought damages under the *Law Reform Act* and the *Fatal Accidents Act* and proposed a sum of Kshs. 100,000 for loss of expectation of life and in support cited the case of *Mercy Muriuki & Another v Samuel Mwangi Nduati & Another (Suing as the legal Administrator of the Estate of the late Robert Mwangi)* [2019] eKLR where the Court observed that:
- “The generally accepted principle therefore is that very nominal damages will be awarded on these two heads of damages if the death followed immediately after the accident. The conventional award for loss of expectation of life is Ksh 100,000/- while for pain and suffering the awards range from Ksh 10,000 to Ksh 100,000/= with higher damages being awarded if the pain and suffering was Prolonged before death.”
- 22) Under loss of expectation of life, the plaintiffs proposed an amount of Kshs 100,000.
- 23) On loss of expectation of life, I award Kshs 100,000 since the deceased died on the way to hospital.



- 24) On loss of dependency, it was submitted that the deceased was 42 years old and he enjoyed good health and lived a happy and active life. He was at his prime and a beloved and devoted Priest at ACK Emmanuel Parish Bahati. He had a happy family comprising of his wife and three minor children.
- 25) On dependency ratio it was 1<sup>st</sup> Plaintiff's evidence that the deceased was survived by herself and three children who are both minors and proposed a 2/3 dependency. It was further submitted that at the time of his death the deceased earned a gross salary of Kshs 110,052 as evidenced by the requisite pay slips. It was suggested that the court adopts a multiplier of 18 years as the deceased lived a healthy life and he would have been expected to live up to the retirement age of 60 years.
- 26) The loss of dependency is therefore calculated as follows;  
 $2/3 \times 110,052 \times 18 \times 12 = \text{Kshs } 15,847,488.$
- 27) General damages are accordingly awarded as follows;  
 Liability 100% in favor of the Plaintiffs.  
 General damages for the 1st plaintiff kshs 150,000 for the soft tissue injuries she sustained.  
 In respect of the deceased, general damages are awarded as follows;  
 Pain and suffering 100,000  
 Loss of dependency (  $110,052 \times 18 \times 12 \times 2/3$  )=15,847,488  
 Special damages 52,411  
 Sub Total 16,149,899/-  
 Less ksh 100,000 ( loss of expectation of life ) 100,000  
 Total 16,049,899
28. Judgment be and is hereby entered in favor of the Plaintiffs against the Defendant in the sum of Kshs 16,049,899 together with costs of this suit and interest at court rates from the date of this judgment until payment in full.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 2<sup>ND</sup> DAY OF JUNE, 2023.**

.....

**A. ONGERI**

**JUDGE**

**In the presence of:**

..... **for the Plaintiffs**

..... **for the Defendant**

