



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 706 OF 2019

KENYATTA NATIONAL HOSPITAL.....APPELLANT

VERSUS

LOISE KING'ORI(suing as the administrator & personal representative of the estate

Of JOSEPH MAINA KING'ORI).....RESPONDENT

(Being an appeal from judgement and decree of Hon. Peter Muholi (Mr.) Senior Resident Magistrate delivered on 19th September 2018 in CMCC No. 2074 of 2014.)

JUDGEMENT

- 1) Loise King'ori, the respondent herein, in her capacity as the legal representative of the estate of Joseph Maina King'ori, deceased, filed a compensatory suit before the Chief Magistrate's Court seeking for damages for medical negligence against Kenyatta National Hospital, the appellant herein.
- 2) It is the respondent's case that the late Joseph Maina King'ori was a patient at the appellant facility on 3rd December 2012 where he succumbed to his illness. The respondent alleged that the deceased's death was as a result of the appellant's staff delay in giving prompt treatment to the deceased and having in its panel incompetent and or negligent doctors.
- 3) The appellant filed a defence denying the respondent's claim. At the hearing the respondent summoned two witnesses to testify in support of her case. Hon Peter Muholi, learned Senior Resident Magistrate heard the suit and in the end he entered judgment in favour of the respondent and against the appellant.
- 4) Being aggrieved, the appellant preferred this appeal and put forward the following grounds of appeal:
 - i. The learned magistrate erred in law and fact in awarding damages for lost years to the respondent for the benefit of the mother of the deceased, whereas dependency and existence of the said mother was not proved.*
 - ii. The learned magistrate erred in law and fact in awarding kshs.200,000.00 as general damages for pain and suffering which was inordinately high and in any case was never prayed for by the respondent in her plaint.*
 - iii. The learned magistrate showed extreme prejudice by totally ignoring the appellants' submissions on issues of law and evidence and thereby awarding the respondent damages for lost years.*
- 5) This court directed the parties to file and exchange written submissions.
- 6) I have re-evaluated the case that was before the trial court and considered the rival written submissions. The grounds of appeal can be disposed of by two main grounds. The **first** main ground is to the effect that the learned Senior Resident magistrate erred in awarding lost years yet there was no evidence proving the existence of dependency.
- 7) It is argued that there was no prove that the deceased's other existed therefore the award on lost years based on 1/3 salary should not have been made. The appellant further pointed out that the respondent pleaded in the plaint that the deceases was survived by his mother who was dependent on him but she failed to tender evidence of her existence of dependency.
- 8) The respondent opposed this ground arguing that she expressly pleaded that she brought the suit on behalf of the beneficiaries and future dependants of the deceased. She stated that the deceased was survived by his mother namely Hannah Nyaguthii king'ori. The appellant further pointed out that she pleaded in the plaint that she was claiming for inter alia loss of future dependency. It is argued that the appellant

did not expressly deny the respondent's assertion that the deceased was survived by his mother who depended on him.

9) Having carefully considered the rival submissions over this ground, I have come to the following conclusions. First, is that parties are bound by their pleadings. The record shows that the respondent pleaded in the plaint that the deceased was survived by his mother called Hannah Nyaguthi King'ori. The appellant did not deem it fit to deny nor controvert the respondent's assertion via its defence.

10) It is also apparent that the respondent sought for loss of future dependency. Secondly in her evidence in chief the respondent (PW 1) stated that the deceased was assisting him mother and other siblings. She expressly stated that she was claiming for inter alia, loss of dependency.

11) In cross-examination the appellant did not raise any query on the existence of the deceased's mother and dependency. In short, the appellant failed to deny the respondent's assertion that the deceased was survived by his mother. The appellant also failed to controvert the evidence by the respondent that the person named Hannah Nyaguthi King'ori was dependent on the deceased.

12) The **second** main ground is to the effect that the award of ksh.200,000/= for pain and suffering is ordinally high. It is the submission of the respondent amount award not inordinately high but instead the same is reasonable.

13) It is not in dispute that the learned Senior Resident Magistrate awarded the respondent a sum of ksh.200,000/= as general damages for pain and suffering. The record shows that the respondent had asked to be paid ksh.1,500,000/= on this head while the appellant had proposed a sum of ksh.10,000/=.

14) In the end and after considering the rival submissions and the authorities cited by the parties, the learned Senior Resident Magistrate awarded ksh.200,000/= stating that he considered the length of pain endured.

15) With respect, it is clear that the learned Senior Resident Magistrate did not breach any principle in assessing damages on this head, I am satisfied the award is reasonable.

16) In the end, this appeal is found to be without merit. The same is dismissed with costs being awarded to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021.

.....

J. K. SERGON

JUDGE

IN THE PRESENCE OF:

..... **FOR THE RESPONDENT**

..... **FOR THE APPELLANT**