



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 98 OF 2009**

**NAIMA IBRAHIM GABON**

**ADOW HUSSEIN AJAWA**

(Suing as the legal Representative of the Estate of

**ALIYOW ALI ABDI ARUR deceased).....PLAINTIFF**

**VERSUS**

**CITY HOPPER LIMITED.....1<sup>ST</sup> DEFENDANT**

**EDWARD VUGUSU MALESI.....2<sup>ND</sup> DEFENDANT**

**DIAMOND TRUST BANK.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. On 10<sup>th</sup> April 2007, Aliyow Ali Abdi Arur, deceased, was involved in a fatal Road traffic accident while cycling his bicycle along Ngong road near Ngong Hills. The deceased's bicycle was knocked down by Motor Vehicle Registration No KAV 871S Nissan Minibus owned by City Hopper Ltd (1<sup>st</sup> Defendant) and driven by Edward Vugus Malesi (2<sup>nd</sup> Defendant).
2. The legal representatives of the deceased's estate namely Naima Ibrahim Gabon and Adoo Hussein Ajaawa, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs respectively filed this compensatory suit vide the plaint dated 3<sup>rd</sup> March 2009. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a joint statement of defence to deny the Plaintiff's claim. When this suit came up for hearing on 6<sup>th</sup> March 2017, parties recorded a consent order on liability whereof the Defendants shouldered 80% liability while the Plaintiff accepted to shoulder 20% liability.
3. This suit therefore proceeded for hearing on quantum. The Plaintiffs summoned one witness namely Naima Ibrahim Gabon (DW1) to testify in support of their case.
4. The Defendants closed their case without summoning any witness to testify in support of their case. Naima Ibrahim Gabon (PWI) appeared before this court and adopted the contents of her written witness statement dated 21/3/2012 as her evidence in chief. She produced before this court as an exhibit in evidence the grant of letters of administration ad litem in respect of the estate of Aliyo Ali Abdi Arur, deceased.
5. PWI stated that the deceased was her husband. She stated that the deceased had gone cycling to his place of work on 10<sup>th</sup> April 2007 along Ngong Road but was knocked down by Motor Vehicle registration No KAV 871S near Ngong Hills.
6. PW1 further said that the deceased suffered fatal injuries. She also said that Motor vehicle was carelessly being driven by the 2<sup>nd</sup> Defendant.
7. PWI said that the 2<sup>nd</sup> Defendant was tried and convicted for causing death by dangerous driving and was sentenced to pay a fine of ksh. 70,000 and in default to serve 3 years imprisonment.
8. She stated that the deceased was an employee of KK security earning a monthly salary of ksh 11,325/= but the net salary stood at ksh.

8,780/= at the time of his death as shown in the pay slips produced as exhibits before this court.

9. PWI said that the deceased was survived by herself and her three children aged 15,13 and 12 years old. She also stated that her deceased husband was aged 34 at the time of death.

10. At the close of evidence, learned counsels appearing in this matter were invited to file written submissions. At the time of writing this Judgment, the Plaintiffs were the only parties who had filed their submissions.

11. Having considered the evidence and the Plaintiffs submissions, it should be remembered that this judgment is only in respect of quantum. The Plaintiffs urged this court to award them a sum of ksh. 50650 as a special damages. The Plaintiffs stated that the aforesaid amount is in respect of funeral expenses i.e ksh. 44,950/= for funeral expenses and the amount incurred in obtaining letters of administration i.e 5,700/=

12. The aforesaid amount is pleaded in the plaint and is strictly proved by the documents produced by consent of learned counsels. The amount is awarded for special damages.

13. The Plaintiff also beseeched this court to award them general damages as follows:

**i) Loss of life expectancy, a sum of ksh. 200,000. On this head, this court has made awards ranging between 70,000 and 100,000. I find a sum of ksh 100,000/= to be appropriate, reasonable and within the range of similar award.**

**ii) Pain and suffering, a sum of ksh 50,000 was asked.**

There is no evidence to show how long the deceased remained alive after the accident. What is clear is that the deceased passed on the same day he was involved in the accident. An award of ksh. 20,000/= is sufficient. I award the same.

**iii) Loss of dependency- The Plaintiffs have asked this court to grant them sum of Ksh. 2,080,000/= tabulated as follows:**

$$10,000 \text{ (salary)} \times 26 \text{ (years)} \times 12 \times 2/3 = 2,080,000/=.$$

14. It is not in dispute that the deceased was aged 34 years at the time of his death. The Plaintiffs have proposed that a multiplicand of 26 years should be applied. It is said that the deceased could have worked up to the age of 60 years. I find the proposal to be plausible.

15. This court was also urged to apply a salary of ksh. 10,000/= per month. The pay slips presented by PWI indicate that the deceased earned a net salary of ksh 8,277.75 per month. I will apply the figure as shown by the pay slips.

16. The deceased person was married to the 1<sup>st</sup> Plaintiff who did the business of hawking. I am satisfied that the deceased spent two thirds (2/3) of his income on his family.

17. I award the Plaintiffs a sum of ksh. 1,721,772/= tabulated as follows

$$8,277.75 \times 12 \times 26 \times 2/3 = 1,721,772/=$$

18. In the end, Judgment is entered in favour of the Plaintiffs and against the Defendants as follows:

**i) Special damages ..... ksh.50,650/=**

**ii) General damages**

**a) Pain and suffering ..... ksh 20,000/=**

**b) Loss of life expectancy ..... ksh 100,000/=**

**c) Loss of life dependency ..... ksh 1,721,772/=**

**Gross Total ..... ksh1,892,422/=**

**Less 20% Liability .....ksh 378,484.40/=**

**Net total..... ksh 1,513,937/60/=**

**iii) The aforesaid amount to attract interest at court rates from the date of Judgment until the day of full payment.**

**iv) The Plaintiffs to have costs of this suit.**

**Dated, Signed and Delivered at Nairobi this 21<sup>st</sup> day of January, 2020.**

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**J.K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the 1<sup>st</sup> Defendant

.....for the 2<sup>nd</sup> Defendant

.....for the 3<sup>rd</sup> Defendant