



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 655 OF 2006

MICHAEL MUVINGU WAMBURA.....PLAINTIFF

(Suing as the Personal representative and administrator of the Estate of

PATRICK MUTUA (Deceased)

VERSUS

DANIEL MWANGI MBOGO.....DEFENDANT

JUDGMENT

1. The Plaintiff, filed this suit as the legal representative of the estate of the deceased, Patrick Mutua. The claim is for damages arising out of fatal road traffic accident. The accident is attributed to the alleged negligence in the manner the Motor Vehicle Registration No. KYD 563 Isuzu Matatu owned by the Defendant was allegedly driven at the material time.

2. The claim was denied as per the Statement of Defence filed. The occurrence of the accident was admitted but any negligence on the Defendant's part was denied. The accident was blamed solely caused or substantially contributed to by the deceased.

3. Michael Muingu Wambua (PW1) testified that he was informed of the fatal road traffic accident involving his son, the deceased herein. That he visited the Police Station and later made the burial arrangements.

4. Samuel Mbugua (PW2) who described himself as a witness from the scene blamed the motor vehicle herein for attempting to overtake a tractor. His evidence was that the motor vehicle moved from its lane and went to its right unto the pathway of the deceased who was riding a bicycle towards the opposite direction.

5. Daniel Mwangi Mbogo (DW1) testified that he was driving the motor vehicle herein which was ferrying maize and potatoes to the market. That the motor vehicle was at a slow speed as there was a tractor ahead. That he was going uphill when he saw two cyclists moving downhill to the opposite direction at a high speed. That after the tractor by passed the cyclists, the deceased in an attempt to overtake his fellow cyclist left his correct lane to the motor vehicle's side and the collision occurred.

6. DW2, Moses Ndungu, a loader in the motor vehicle and DW3, Simon Macharia, the owner of the goods that were being ferried to the market gave a similar account of evidence as the driver (DW1).

7. From the evidence adduced by both sides, it is apparent that each side blames the other as having left their correct lane. No independent witness was called to testify. The Police Officers who are said to have visited the scene were not called to testify. The police abstract produced by the Plaintiff reflects that the accident is still **"pending under investigations"**. It is therefore difficult for the court to establish who is to blame to what extent for the accident. Consequently, I apportion liability on a 50-50 basis liability.

8. As stated by the Court of Appeal in **Hussein Omar Farah v Lemto Agencies [2006] eKLR** held as follows:-

"In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame."

9. PW1 produced as exhibits the certificate of death. Same reflects that the 20 year old deceased died on 23rd June, 2003 which is the date

of the accident. The evidence from both the Plaintiff's and the Defendant's side clearly reflects that the deceased died on impact. I award the sum of Ksh.10,000/= for pain and suffering and Ksh.100,000/= for loss of expectation of life.

10. The Plaintiff's uncontroverted evidence was that the deceased was employed as a cook at a flower farm at a salary of Ksh.7,400/=. He produced a letter from the employer to confirm that position. The Plaintiff's further evidence was that the deceased was not married and had no children. At the age of 20 years, the deceased could have worked up to 70 years. Taking into account the vicissitudes of life, I adopt a multiplier of 30 years and a dependency ratio of 1/3 (See for example **Beatrice Waingui Thairu v Honourable Ezekiel Barnetuny & another Nairobi HCC 1638 of 1988** (unreported)). The dependency herein therefore works out as follows: $Ksh.7,400 \times 12 \times 30 \times 1/3 = Ksh.888,000/=$.

11. The Plaintiff prayed for special damages for Ksh.26,500/= for funeral expenses, Ksh.300/= for obtaining the death certificate and Ksh.100/= for obtaining the police abstract. The receipt for Ksh.8,500/= for the purchase of a coffin was produced as an exhibit. The Plaintiff was no able to tell what receipt No. 529870 for Ksh.90/= and receipt No.8888419 for 3,800/= were for. There were no other receipts produced in support of special damages. I therefore award the sum of Ksh.8,500/= as special damages.

12. With the foregoing, the total is as follows:

a) Pain and suffering	Ksh.10, 000/=
b) Loss of expectation of life	Ksh.100,000/=
c) Loss of dependency	Ksh.888,000/=
d) Special damages	<u>Ksh.8,500/=</u>
Total	<u>Ksh.1,006,500/=</u>
Less 50% contribution	Ksh.503,250/=

13. The upshot is that judgment is entered for the Plaintiff against the Defendant for the sum of Ksh.503,250/=, interest and costs.

Date, signed and delivered at Nairobi this 5th day of March, 2020

B. THURANIRA JADEN

JUDGE