



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 297 OF 2013

JOHN KABUTU NGAHU & ESTHER WANJIRU KABUTU (suing as the
administrators of the estate of **BERNICE WAMBUI KABUTU**, Deceased)...**PLAINTIFF**

VERSUS

SHABBIR NANABHAI.....**1ST DEFENDANT**

MURTAZA NANABHAI.....**2ND DEFENDANT**

JUDGMENT

1. The Plaintiffs instituted this suit on their own behalf and on behalf of the estate of the late Bernice Wambui Kabutu (hereinafter the deceased). The suit was brought under the law Reform Act and the Fatal Accidents Act.
2. The Plaintiffs' claim is for damages arising out of a fatal road traffic accident involving motor vehicle registration No. KBA 352B and the deceased which occurred on or about the 17th October, 2011. The Plaintiffs blamed the accident on the alleged negligent manner that the motor vehicle belonging to the 1st Defendant was driven at the material time by the 2nd Defendant.
3. The claim was denied as per the joint statement of Defence filed by the 1st and 2nd Defendants. In the alternative, the accident was blamed wholly on the deceased or as substantially contributed to by the deceased or due to unavoidable and inevitable circumstances.
4. The Plaintiffs filed a reply to the Defence, reiterated the contents of the plaint and joined issues with the Defendants.
5. Rosemary Mino Mutisya (PW1) testified that she was with the deceased at the material time. Her evidence was that together with the deceased they were walking from Jomo Kenyatta University of Agriculture and Technology (hereinafter JKUAT) Karen Campus going home when at around 4.30 p.m. they were involved in an accident. She described the point of impact as off the road on a footpath and blamed the motor vehicle for veering off the road and hitting them. PW1 maintained her evidence during cross-examination and stated that they were hit from behind.
6. John Kabutu Ngahu (PW2) the father to the deceased produced the grant of letters of administration to the estate of the deceased. His evidence was that the deceased had just completed a certificate course in IT at JKUAT and was to undergo a Diploma course in IT as a bridging course then embark on a degree course in IT. His further evidence was that the deceased was in good health and was expected to finish her university education and start earning and support her family. He produced as exhibits the death certificate, police abstract, receipt for the expenses incurred, University documents, copy of records from Kenya Revenue Authority and the judgment in the Traffic case in CM's Kibera TR. Case 570/12.
7. The Defendants' side closed their case without calling any witness. The parties then proceeded to file written submissions.
8. The evidence of PW1 reflects the manner in which the accident occurred. PW1 maintained her evidence during cross-examination. Her evidence remains uncontroverted by any other evidence. The ownership of the motor vehicle was proved through the copy of records and the police abstract produced. These documents reflect the 1st Defendant, Shabbir Nanabhai as the owner of the motor vehicle. The police abstract also names the 2nd Defendant, Murtaza Nanabhai as the driver. The judgment in CM's Kibera TR. Case No. 570/12 shows that the 2nd Defendant was found guilty and convicted for the offence of causing death by dangerous driving and fined Ksh.200,000/= in default to serve one year imprisonment. I find the Defendants 100% liable to blame for the accident.

9. The accident occurred on 17th October, 2011. The certificate of Death reflects the date of death also as 17th October, 2011. Both PW1 and PW2 came to learn of the death of the deceased later. The evidence of PW2 was that he found the body of the deceased at Kenyatta National Hospital in a body bag. The judgment in the traffic case reflects that the deceased was pronounced dead on arrival at Kenyatta National Hospital. I award a sum of Ksh.10,000/= for pain and suffering and Ksh.100,000/= for loss of expectation of life.

10. The death certificate reflects the age of the deceased as 18 years at the material time. The letter from JKUAT reflects that the deceased had been admitted to do a certificate course in IT. Her colleague (PW1) who was undertaking a certificate course in IT at the material time completed the course and proceeded on a Diploma course in IT then to the degree level in IT and started working at a net salary of Ksh.60,000/= and a gross of Ksh.84,000/= according to her evidence.

11. PW2 the father to the deceased also produced documents for one Benson Kibiru Kamau who graduated with a Bachelor of Science in IT from JKUAT in the year 2004 and was earning a gross salary of Ksh.227,535/= in year 2012. The father gave an estimate of Ksh.70,000/= to Ksh.80,000/= as earnings of an IT graduate in the public sector and Ksh.150,000/= to Ksh.200,000/= in the private sector. Taking into account the foregoing evidence the claim of Ksh.50,000/= estimated minimum earnings after graduation is a reasonable figure. Subjected to statutory deductions, the net earnings would be approximately Ksh.30,000/=.

12. The deceased was not married and had no child. At the age of 18 the deceased was already a student at JKUAT. She could have completed her studies before the age of 25 years and probably worked for approximately 35 years before the retirement age of 60 years in the public sector and probably beyond the age of 60 years in the private sector. One however has to take into account the vicissitudes of life and the fact that the compensation herein will be paid in a lump sum. I apply a multiplier of 30 years and a dependency ratio of 1/3. The dependency works out as $Ksh.30,000 \times 12 \times 30 \times 1/3 = KSh.3,600,000/=$

13. The Plaintiffs claimed special damages totaling Ksh.319,504.75. The receipts produced to funeral expenses are as follows:

- Receipts dated 19th October, 2011, 20th October, 2011 and 24th October, 2011 for Ksh.3,500/= each from St Paul's Catholic chapel for Hall charges which comes to Ksh.10,500/=
- City Council of Nairobi Receipt dated 21st October, 2011 for the grave Ksh.25,000/=
- City Council of Nairobi Receipt dated 24th November, 2011 for Death certificate Ksh.250/=
- Receipt for Nation Media Group for the obituary Ksh.33,300/=
- Receipt from Lee Funeral Services Ltd Ksh.41,500/=
- Receipt from Montezuma Monalisa Funeral Home Ltd for Ksh.8,500/= for the hearse.
- Receipt dated 24th October, 2011 from Montezuma Monalisa Funeral Home Ltd for the coffin for Ksh.45,000/=.
- Receipt dated 23rd July, 2013 from J.M. Njenga & Co. Advocate for obtaining the Grant of letters of Adm. Ksh.50,000/= but produced claimed Ksh.40,000/=
- Letter from Advance Litho Ltd reflecting payment of Ksh.21,554.75 for printing the funeral programmes.
- Receipt dated 20th November, 2011 for a frame from Taifa Studios Ksh.1,200/=

Special damages **Total Ksh.226,804.75**

14. The total works out as follows:

a. Pain and suffering	Ksh.10,000/=
b. Loss of expectation of life	Ksh.100,000/=
c. Loss of dependency	Ksh.3,600,000/=
d. Special damages	<u>Ksh.226,804.75</u>

Total **Ksh.3,936,804.7**

15. The upshot is that judgment is entered for the Plaintiff against the Defendant jointly and severally for the sum of Ksh.3,936,804/= interest and costs.

Dated, signed and delivered at Nairobi this 6th day of May, 2020

B. THURANIRA JADEN

JUDGE