



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 543 OF 2011

FRANCIS GITHOGE KARUGU & DORAH NJOKI KARUGU

(Suing as personal representatives of the estate of

CATHERINE NJERI KARUGU-Deceased).....PLAINTIFFS

-VERSUS-

BOARD OF DIRECTORS/TRUSTEES EDEN

VALE TRUST JAMAA MISSION HOSPITAL.....1ST DEFENDANT

DR. STEPHEN KIMOTHO KARANJA.....2ND DEFENDANT

JUDGEMENT

1. The plaintiffs in this instance brought a suit against the 1st and 2nd defendants in their legal capacity as personal representatives of the estate of Catherine Njeri Karugu (“the deceased”) vide the plaint dated 9th December, 2011. The 1st defendant is sued in its capacity as the hospital in which deceased received treatment at all material times whereas the 2nd defendant is sued in his capacity as a medical practitioner and an employee of the 2nd defendant at all material times.
2. The plaintiffs pleaded in their plaint that on or about the 25th day of October, 2009 the deceased attended and was admitted at the 1st defendant hospital for purposes of undergoing a myomectomy which is a surgery to remove uterine fibroids that the deceased had presented.
3. The plaintiffs also pleaded that by agreeing to admit and attend to her, the 1st defendant took on the responsibility of ensuring to offer proper and efficient medical services to her, as well as ensuring that its staff were at all times competent and professional in carrying out their duties, pursuant to a contract entered into between the deceased and the defendants.
4. The plaintiffs pleaded in their plaint that it was also agreed that the surgical procedure would be performed by the 2nd defendant with the assistance of the nurses and that this was done on the aforementioned date.
5. It is pleaded in the plaint that in breach of contract, the defendants upon performing the myomectomy, left several areas of the operated area unstitched, resulting in intra-abdominal hemorrhage that ended in the death of the deceased. The particulars of breach of contract were laid out in the plaint.
6. The plaintiffs further attributed the death of the deceased on negligence on the part of the defendants by setting out its particulars under paragraph 14 of the plaint.
7. The plaintiffs went ahead to plead that the deceased who was a healthy and lively lady aged 39 years has left behind the following dependants:

a) Francis Githoge Karugu Father

b) Dorah Njoki Karugu Mother

8. Consequently, the plaintiffs sought the following reliefs from this court:

- a) General damages for pain and suffering and loss of expectation of life;**
- b) General damages and damages on behalf of the estate of the deceased under the Law Reform Act.**
- c) Special damages in the sum of Kshs.303,347/;**
- d) Grave maintenance in the sum of Kshs.12,000/ per year;**
- e) Punitive and/or exemplary damages;**
- f) Costs and interest of the suit; and**
- g) Any other or further reliefs that this Honourable Court may deem fit and just to grant.**

9. The defendants entered appearance and filed a joint statement of defence dated 16th January, 2012 to deny the plaintiffs' claim. It is noted that the 2nd defendant subsequently filed a separate statement of defence.

10. At the hearing, the plaintiffs relied on the testimony of three (3) witnesses while the 1st and 2nd defendants summoned four (4) witness collectively.

11. Dr. Joseph Ndung'u who was PW1 stated that he is a consultant pathologist and that he performed an autopsy on the deceased together with two (2) other pathologists, namely Dr.Oduor and Dr. Mutuma.

12. The doctor gave evidence that upon examining the body of the deceased, he found two (2) incisions and that upon opening up the body, he discovered 2.5 litres of blood in the abdomen, the source of which was the uterus which had multiple surgical incisions.

13. It was the testimony of the doctor that in any surgery, the acceptable level of bleeding is between 100cc and 200cc, and that upon conclusion of a surgery, the surgical team ought to ensure that any bleeding has been stopped. According to the doctor, the degree of bleeding in the present instance was 2500cc which exceeded the normal level of bleeding.

14. In cross examination, PW1 testified that the deceased experienced acute blood loss and that the time taken for her to bleed as much as she did was short.

15. The 1st plaintiff who was PW2 adopted his witness statement and stated that he was the father to the deceased and stated that upon developing fibroids, the deceased was referred to the 2nd defendant who then referred her to the 1st defendant for the purpose of undergoing an operative procedure to remove the fibroids.

16. The plaintiff stated that it is the 2nd defendant who oversaw the operation. He went on to testify that on the fateful day following the surgery, he went to visit the deceased in hospital only to be later informed that the deceased had passed on.

17. It was the evidence of the plaintiff that the 2nd defendant was initially opposed to the performance of an autopsy on the deceased but agreed to the same upon hiring an independent pathologist, Dr. Mutuma, to represent him.

18. The plaintiff stated in his evidence that subsequently, he and the 2nd plaintiff lodged a complaint with the Medical Practitioners and Dentists Board ("the Board") and an inquiry was lodged, the result of which both defendants were found liable.

19. In cross examination, the plaintiff testified that the deceased was admitted at the 1st defendant hospital on 25th October,2009 and that he went to see her the following day.

20. The plaintiff also testified that he is aware that the deceased had previously visited the 2nd defendant's private clinic before being referred to the 1st defendant for the procedure.

21. In re-examination, it was the evidence of the plaintiff that his witness statement was guided by the report made by PW1.

22. The 2nd plaintiff who is the wife of the 1st plaintiff gave evidence as PW3 and adopted her signed witness statement.

23. In cross examination, she stated that she visited the deceased briefly on 25th October, 2009 during which time the deceased was in great pain and looked tired. This marked the close of the plaintiffs' case.

24. For the 1st defendant, Symon Sila Ndolo in his chief evidence as DW1 stated that he is a trained anesthetist at all material times working for the 1st defendant.

25. He stated that he received a call on the material date from the 1st defendant to attend to the deceased and that he took her vitals which confirmed that she was in fair condition.
26. DW1 gave evidence that he explained the procedure to the deceased and took measurements of her blood which revealed that her blood levels were normal, at which point she signed the consent form.
27. The witness further gave evidence that the deceased underwent a successful surgery on 25th October, 2009 at 7.45 am and that his role was to induce her prior to the surgery, which surgery was then performed by the 2nd defendant with the assistance of Sarah Muthama, a theatre technologist.
28. It was the testimony of DW1 that thereafter, the deceased was taken to the recovery room where she remained stable throughout the day and that he did not attend to her again.
29. In cross examination, the witness stated that he found the deceased to be fit for surgery only to be later informed that she had died of internal bleeding.
30. The witness confirmed that the report dated 15th November, 2012 was issued by the Board thereby finding *inter alia*, that he had been casual in handling the deceased. The witness stated that he did not in any way challenge the said report.
31. Fredrick Ochieng followed as DW2 and stated that he is a nursing officer who worked for the 1st defendant since 1991. He confirmed that the deceased was admitted in hospital on the material date and that the deceased signed a consent form before commencement of the operation.
32. According to the witness, they did a pre-operation check list on the deceased which concluded that she was fit to undergo surgery. He further stated that following the surgery, the deceased was taken to the recovery room before being moved to the ward, during which time nothing abnormal had been detected in the deceased's body.
33. It was his evidence that on the material date, the deceased appeared normal save for her blood pressure which was lower, and that the clinical officer and the 2nd defendant were informed of her status.
34. The witness gave evidence that when the deceased's condition deteriorated, a team tried to revive her and preparations had been made to transfuse blood to her but the efforts to resuscitate were unsuccessful.
35. DW2 stated that neither the 1st or 2nd defendant was negligent since the deceased had been offered proper and quality medical care. At this point, the witness produced the 1st defendant's list and bundle of documents as D. Exh 1-4 and 6-11.
36. In cross examination, it was the testimony of DW2 that he was not on duty at the nursing station on the material date but that it is standard procedure to have the operating doctor, a recovery nurse and the anesthetist in a recovery room with a patient. That a patient must be examined post-surgery before being wheeled to the general ward.
37. According to the witness, the patient's status was checked several times following the operation and the medical staff were unable to determine the exact cause of the decrease in blood pressure of the deceased.
38. It was the evidence of the witness that he was not aware on whether the deceased was attended to by a clinical officer at that point.
39. In re-examination, DW2 stated that where there is bleeding, the blood pressure of a patient decreased while the pulse rate goes up but that in the present instance, while the deceased's blood pressure decreased, her pulse rate retained normalcy. The witness added that where blood pressure of a patient lowers, saline is applied to bring it back up.
40. The 2nd defendant who was DW3 stated that he holds a Bachelors' degree in Medicine and a Masters' Degree in Obstetrics and Gynecology. He stated that he runs a private clinic and is a visiting gynecologist at the 1st defendant hospital. The 2nd defendant then went ahead to produce the medical report prepared by himself and constituted in his list and bundle of documents produced as D. Exh 1-7.
41. The 2nd defendant gave evidence that he had known the deceased for a while and that she had consulted him for some time prior to the operation due to the health challenges she was facing. That upon examining her, he discovered that she had uterine fibroids.
42. According to the evidence of the 2nd defendant, he regularly carried out similar operations as the one done on the deceased and that such procedures are not termed as emergency procedures.
43. It was the testimony of the 2nd defendant that during the operation, he applied a medication which prevents excessive bleeding before proceeding to remove the fibroids and thereafter repairing the uterus and fallopian tubes. He stated that there were no complications to the abdomen at this point and that the deceased only lost 200cc of blood.
44. The 2nd defendant stated that upon completion of the surgery, the deceased was wheeled out of theatre while fully awake and stable, and that she was observed every six (6) hours.

45. He testified that he left the 1st defendant hospital at 10.00am on the material date to attend to other patients in his clinic only to be requested back to the hospital as the deceased had developed complications.
46. The 2nd defendant is of the view that the pathologists who undertook the autopsy did not indicate the source of the bleeding and further did not consider the history of the patient.
47. In cross examination, the 2nd defendant testified that immediately following a surgery, it is normal for the blood pressure of a patient to go down and that it is standard procedure for a patient who has undergone surgery to be checked every half an hour until he or she wakes up.
48. The 2nd defendant stated that the deceased's blood pressure was un-recordable at 10.30am and that the loss of blood pressure was sudden but that it is not the blood loss that resulted in her death.
49. The 2nd defendant gave evidence that readings on the deceased's vitals were to be taken every four (4) hours from 6.00am following the surgery and further stated that where vital signs of a patient are unreadable, doctors who are present are to be informed and resuscitation is to be done to restore the pulse. That in the present instance, no doctor or clinician was called.
50. It was the evidence of the 2nd defendant that though he disputed the findings of the Board, he did not appeal against the same. He further stated that though he disputed the findings of the autopsy reports, he did not request a second autopsy report to be prepared as he did not deem this necessary.
51. In re-examination, the 2nd defendant testified that had the deceased been bleeding internally, she would have been unable to get out of bed and walk as she did.
52. Sarah Mulama who was DW4 stated that she was the theatre technician in charge of assisting the surgeon on the material date and that all the necessary preparations were made in the case of the deceased.
53. In her cross examination, the witness gave evidence that the deceased was cut open and later sutured (closed) and that it is the 2nd defendant who closed her.
54. On being re-examined, DW4 stated that during the surgery, the surgeon confirmed that there was no bleeding by using sponges.
55. At the close of the trial, the parties were directed to file and exchange written submissions. At the time of writing this judgment, the 1st defendant had not filed its written submissions despite this court extending time for them to do so.
56. On their part, the plaintiffs submit that the death of the deceased was purely the result of negligence on the part of the defendants as shown in the report by the Board and produced as an exhibit before this court and which report the defendants did not challenge in any way.
57. The plaintiffs also made reference to the autopsy report tendered in evidence which indicate the cause of death for the deceased as arising from blood loss, which position is confirmed by the death certificate.
58. It is the submission of the plaintiffs that following the operation, the defendants did not properly monitor the deceased, thereby breaching their duty of care owed to her. The plaintiffs made reference to the case of **P K M (Suing on own behalf and as next friend of A J B) & G S M v Nairobi Women Hospital & Mutinda [2018] eKLR** where the High Court held that where a person entrusts themselves in the hands of a medical professional, it is the responsibility of such professional to meet the person's expectations of expertise, knowledge and experience.
59. The plaintiffs are of the view that since the 2nd defendant was responsible for ensuring the deceased's wellbeing was upheld both pre and post-surgery but did not, thereby resulting in her death, he ought to be held liable for negligence. The plaintiff also urged this court to hold the 1st defendant vicariously liable for the acts/omissions of the 2nd defendant and cited the case of **M (a minor) v Amulea & Another (2001) KLR 420** whereby the court held that a hospital is liable for the negligent acts of its staff members.
60. On damages, the plaintiffs sought the special damages in the sum of Kshs.303,347/ pleaded. In respect to damages under the head of pain, suffering and loss of expectation of life, the plaintiffs urged this court to exercise its discretion in awarding a reasonable sum to suit the circumstances surrounding the death of the deceased.
61. The plaintiffs also sought for damages under the head of loss of future earnings by adopting a multiplicand of Kshs.300,000/; a multiplier of 30 years since the deceased would likely have worked up to the age of 70 years and a ratio of 1/2 totaling a sum of Kshs.54,000,000/.
62. Further to the foregoing, the plaintiffs urged this court to award exemplary damages upon considering the fact that the deceased bled to death for over eight (8) hours following the surgery and without the necessary care and attention she deserved.
63. In retort, the 2nd defendant while admitting the existence of a duty of care by virtue of the doctor-patient relationship which subsisted between him and the deceased, argues that he successfully performed the surgical procedure on the deceased and that the deceased was at all material times properly monitored.
64. According to the 2nd defendant, he carried himself out in a professional manner and exercised reasonable care and skill in attending to the

deceased hence he ought not to be held liable under the tort of negligence. The 2nd defendant cited before this court the English case of **Sidaway v Bethlem Royal Hospital Governors [1985] 1 ALL ER 643 at 649** where the court reasoned that all medical procedures involve some form of risk and such risk is ordinarily considered by a medical professional in determining the interest of a patient in proceedings with a particular form of treatment.

65. The 2nd defendant in his submissions expressed his dissatisfaction with the three (3) autopsy reports prepared by the pathologists since in his view the said pathologists did not take into account the medical history of the deceased and the circumstances surrounding the operation. The 2nd defendant submits that the change in the deceased's medication condition was not only sudden but was the result of unexplainable circumstances rather than any negligent act/omission by the 2nd defendant.

66. The 2nd defendant directed this court to the authority of **Herman Nyangala Tsuma v Kenya Hospital Association T/A The Nairobi Hospital & 2 Others [2012] eKLR** with reference to the case of **Wishamina v Kenyatta National Hospital Board [2004] 2 EA 351** where the court held thus:

“...The true test of establishing negligence and treatment on the part of the doctor is whether he has been proved to have been guilty of such failure as no doctor of ordinary skill would be guilty of it acting within ordinary care.”

67. It is the contention of the 2nd defendant that should this court find in favour of the plaintiffs, then liability be apportioned at 50:50.

68. On damages, the 2nd defendant suggested an all-inclusive award of Kshs.100,000/ on special damages in the absence of evidence to show that the plaintiffs incurred the sum of Kshs.261,347/ on funeral expenses.

69. On damages under the head of pain and suffering, the 2nd defendant suggested a sum of Kshs.30,000/ while on the subject of loss of dependency, it is the 2nd defendant's submission that a dependency ratio of 1/3 would suffice together with a multiplier of 16 years and the minimum wage of Kshs.9,641/ to be tabulates as:

$Kshs.9,641 \times 16 \times 12 \times 1/3 = Kshs.617,024/$

70. I considered the evidence placed before this court and the rival submissions coupled with the authorities cited. I have established that the issues for determination are three-fold in nature.

71. I will begin with the **foremost** issue to do with whether the plaintiffs have made out a case for negligence against the defendants. The court in the case of **Herman Nyangala Tsuma v Kenya Hospital Association T/A The Nairobi Hospital & 2 Others [2012] eKLR** quoted in the 2nd defendant's submissions described the tort of negligence as follows:

“In the case law of Blyth v Birmingham Co. [1856] 11 exch.781.784, Negligence was defined as the omission to do something which a reasonable man, guided upon those considerations which regulate the conduct of human affairs would do, or doing something which a provident and reasonable man would not do. In strict legal analysis, negligence means more than needless or careless conduct, whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing...A duty of care arises once a doctor or other health care professional agrees to diagnose or treat a patient. That professional assumes a duty of care towards that patient.”

72. Further to the above, the following are the elements encompassing the tort of negligence as laid out by the Supreme Court in the case of **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited [2018] eKLR**:

- a) ***a duty of care,***
- b) ***a breach of that duty,***
- c) ***causation, and***
- d) ***damage.***

73. As concerns the first element on statutory duty of care, it is not in dispute that the deceased was at all material a patient under the medical care of the defendants once the 2nd defendant diagnosed and agreed to treat the deceased at the 1st defendant hospital, thereby giving rise to a statutory duty of care.

74. It is also not disputed that the 2nd defendant is the medical doctor who recommended that the deceased undergoes the surgical procedure to remove the uterine fibroids and indeed performed the surgery himself.

75. Consequently, the statutory duty of care owed by the defendants required that they not only ensure that the 2nd defendant possesses the proper skills and expertise, but that he exercises the same in a proper and reasonable manner. The authority of **Jimmy Paul Semenye v Aga Khan Hospital & 2 others [2006] eKLR** referenced in **Ricarda Njoki Wahome (Suing as administrator of the estate of the late Wahome Mutahi (Deceased))** cited by the 2nd defendant illustrated the above position in this manner:

“There exists a duty of care between the patient and the doctor, hospital or health provider. Once this relationship has been established, the doctor has the following duty;-

a. Possess the medical knowledge required of a reasonably competent medical practitioner engaged in the same specialty.

b. Possess the skills required of a reasonable competent health care practitioner engaged in the same specialty.

c. Exercise the care in the application of the knowledge and skill to be expected of a reasonably competent health care practitioner in the same specialty and

d. Use the medical judgment in the exercise of that care required of a reasonably competent practitioner in the same medical or health care specialty.”

76. Having established that there subsisted a statutory duty of care owed by the defendants to the deceased, I will now contemporaneously discuss the second, third and fourth elements on whether the same was breached, thereby causing the injuries/complications to the plaintiff.

77. Upon considering the oral evidence adduced by the 2nd defendant that he has attained a Bachelor’s Degree in Medicine and Surgery as well as a Master’s Degree in Obstetrics and Gynecology, I note that the said defendant did not adduce any documentary evidence to support this position.

78. It is also noted from his oral evidence that the 2nd defendant indicated that he regularly performed reproductive-related surgeries. However, he did not bring any credible evidence to reinforce his testimony that he possessed the necessary expertise and experience to successfully perform a myomectomy being the surgery he undertook on the deceased to remove uterine fibroids. The 2nd defendant similarly did not bring any evidence to show his track record in performing procedures of such nature.

79. The courts have previously held that any professional person ought to demonstrate the skills possessed and to thereafter use such skills with adequacy and efficiency. This is precisely what the East African Court of Appeal alluded to when it held as hereunder in the case of **Pope John Paul’s Hospital & Another v Baby Kasozi [1974] EA 221** cited in the authority of **John Gachanja Mundia v Francis Muriira & Another [2017] eKLR** cited by the plaintiffs:

“If a professional man professes an art, he must reasonably be skilled in it. He must also be careful, but the standard of care, which the law requires, is not insurance against accidental slips. It is such a degree of care as normally skilful member of the profession may reasonably be expected to exercise in the actual circumstances of the case, and, in applying the duty of care to the care of a surgeon, it is peculiarly necessary to have regard to the different kinds of circumstances that may present themselves for urgent attention...A charge of professional negligence against a medical man was serious. It stood on a different footing to a charge of negligence against the driver of a motorcar. The consequences were far more serious. It affected his professional status and reputation. The burden of proof was correspondingly greater...The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care...”

80. Even if I were to conclude that the 2nd defendant was properly clothed with the expertise to perform a myomectomy, I must still consider whether he extended a reasonable degree of care to the deceased. Going by the evidence, it is apparent that pre-operative procedures were done to the deceased as shown in the hospital records produced. Following the surgery, it is indicated that the deceased was stable for some time before her condition suddenly deteriorated, at which point the 2nd defendant who was out of the vicinity was contacted.

81. Upon evaluating the evidence, I established that following the surgery, the deceased was taken into the recovery room where she is said to have stayed for a few hours. The defence witnesses did not specify who attended to her at that point even though they mentioned the kind of medical staff who would ordinarily stay with a patient.

82. Be that as it may, when the deceased’s condition deteriorated, it was the evidence of DW4 that no doctor in the vicinity was summoned by the hospital staff to respond to the situation save for the 2nd defendant who was away at the time. It remains unclear who was specifically left to regularly check on the deceased’s condition in the absence of the 2nd defendant, especially considering she had just undergone a sensitive surgery.

83. The evidence shows that upon arrival at the 1st defendant hospital at about 11.30 am, the 2nd defendant directed the medical staff available to undertake a blood transfusion of the deceased while resuscitation was done. There is nothing to indicate the active steps taken by the 2nd defendant in establishing the cause of the sudden reduction in blood pressure of the deceased.

84. I also examined the three (3) autopsy reports which all indicated that the deceased had 2.5 litres of blood in her peritoneal cavity, an amount with PW1 mentioned was much higher than the ordinary blood loss. Further to this, the autopsy reports concluded the cause of death of the deceased as hypovolemic shock due to post-operation hemorrhage from the site of operation. In addition, the autopsy report dated 2nd December, 2009 which was prepared by Dr. Geoffrey Zambezi Mutuma who was a representative of the 2nd defendant, termed the cause of bleeding as suture, which refers to the stitches done on a body during surgery. From her evidence, DW4 confirmed that it is the 2nd defendant who opened and sutured (closed) the deceased. There is no evidence to the contrary of this.

85. I also examined the report dated 15th November, 2012 produced as an exhibit and I established that following a complaint by the plaintiffs, the Board found merit in the complaint by finding both defendants culpable in relation to the death of the deceased.

86. While the 2nd defendant mentioned his dissatisfaction the contents of the autopsy reports, he did not seek to engage the services of an independent pathologist. In the same manner, the 2nd defendant stated in his evidence that he has never appealed against the decision of the Board or sought to challenge it in any manner.

87. Going by the evidence, it is not controverted that the deceased passed away at the 1st defendant hospital and under the care of the 2nd defendant.

88. As concerns the 1st defendant, there is no evidence to refute that it at all material times engaged the services of the 2nd defendant, thereby making him its agent/servant, for whose negligent actions it would be held vicariously liable.

89. From the foregoing, I am satisfied that the plaintiffs have successfully made their case for negligence against the defendants and I hold both defendants 100% liable.

90. I will now address the **second** issue touching on whether the plaintiffs are entitled to the reliefs being sought. Now that I have found in favour of the plaintiffs, I am persuaded that they are entitled to damages, which I will address under the following heads.

91. On damages for pain and suffering, I considered the evidence which shows that the deceased passed away on 26th October, 2009 within hours of the surgery and that she naturally must have experienced quite some discomfort and a great deal of pain post-surgery. I also considered the proposed award of the 2nd defendant in the absence of any suggestions by the plaintiffs. In the case of **West Kenya Sugar Co. Limited v Philip Sumba Julaya (Suing as the administrator and personal representative of the estate of James Julaya Sumba [2019] eKLR** the court upheld an award of Kshs.30,000/ awarded to the estate of a deceased whose death was immediate. Taking into account the peculiar circumstances of this case, I will award a sum of Kshs.50,000/.

92. Under the head of loss of expectation of life, none of the parties offered any proposals. Suffice it to say that I deem it proper to award a conventional sum of Kshs.100,000/.

93. In respect to damages for loss of dependency, I note from the documents filed by the plaintiffs that the deceased had attained a Bachelor of Arts degree in Human Resource Management and subsequently attained various Higher Diplomas in Sales and Higher Marketing Management. While the 1st plaintiff testified that the deceased worked for Kenya Building Society, he did not produce any employment letter or pay slip. Further to this, the death certificate indicated the deceased's occupation as business, though the nature of such business remains unclear.

94. Going by the evidence, the deceased was unmarried and had no children, but the plaintiffs indicated that she supported them financially.

95. In the absence of any way of ascertaining the nature of the deceased's employment and earnings, I am inclined to apply a global sum since even the minimum wage may not apply herein.

96. I considered the judicial authority of **Mwai Kibaki Foundation v Alice Wanjiru & another (Suing as personal representatives of David Kihungu Murugi - Deceased) [2019] eKLR** where the High Court sitting on appeal upheld application of a global sum of Kshs.1,600,000/ awarded to the estate of a deceased person aged 33 years. Taking into account the age of the deceased herein, the number of years she would have worked, inflation rates and the uncertainties of life, I will award a reasonable figure of Kshs.1,000,000/ under this head.

97. In respect to exemplary damages, such award of damages is deemed to apply in instances where there has been some arbitrary or calculated conduct by the defendant. Upon considering the evidence on record vis-à-vis the nature of damages sought herein, I am of the view that the plaintiffs have not satisfied the threshold for an award under this head.

98. On special damages, it is trite law that they must be specifically pleaded and strictly proved. Upon considering the evidence adduced by the plaintiffs, I find that the plaintiffs proved that they had incurred the sum of Kshs.249,497.08 on funeral and related expenses. I will only award this amount.

99. On the **third** and final issue regarding who ought to bear the costs of the suit, the law is well settled that costs follow the event. 100. In the end, judgment is entered in favour of the plaintiffs and against the defendants jointly and severally in the following manner:

a) General damages for

i. Pain and suffering Ksh. 50,000/

ii. Loss of expectation of life Ksh. 100,000/

iii. Loss of dependency Ksh.1,000,000/ Ksh.1,150,000/=

b) Special damages Ksh. 249,497.08

TOTAL Ksh.1,399,497.08

The plaintiffs shall also have the costs of the suit and interest on special damages at court rates from the date of filing of the suit while

general damages shall attract interest at court rates from the date of judgment until payment in full.

Dated, signed and delivered virtually via Microsoft Teams at Nairobi this 10th day of July, 2020.

J.K. SERGON

JUDGE

In the presence of:

.....for the Plaintiffs

.....for the 1st Defendant

.....for the 2nd Defendant