



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 92 OF 2011**

**BERNARD MULILU**(Suing as the administrator of .....**PLAINTIFF**

the estate of **ANTHONY SHITSILU MULILU** (Deceased)

**VERSUS**

**LENGA DISTRIBUTORS COMPANY LIMITED**.....**1<sup>ST</sup> DEFENDANT**

**RAPHAEL MBUGUA GAKURU**.....**2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. On 20<sup>th</sup> July, 2018, judgment on liability was entered at 20% for the Plaintiff and 80% for the Defendant. The Plaintiff's list of documents together with the witness statement of Bernard Mulilu signed on 3<sup>rd</sup> March, 2011 were produced as exhibits. The parties thereafter filed written submissions which I have considered.

2. The statement of Bernard Mulilu reflects that he was the father to the deceased. His evidence is that the deceased who died in a Road Traffic Accident used to assist his mother and father with Kshs.10,000/= per month which was used to assist in paying school fees for the siblings. That Ksh.60,700/= was incurred as funeral expenses; Ksh.50/= to obtain the death certificate and Ksh.200/= to obtain the police abstract. The copies of the death certificate and the police abstract were produced as exhibits. The receipt for the Ksh.200/= paid for the police abstract was produced as an exhibit together with a receipt for Ksh.6,800/= for the coffin. An agreement was produced which reflects the payment of Ksh.50,000/= for transportation of the body from Nairobi to Kakamega where the deceased was buried.

3. There is no evidence on whether the deceased died instantaneously or not. An award of Ksh.10,000/= for pain and suffering is reasonable. I award Ksh.100,000/= for loss of life.

4. Although the evidence of dependency at Ksh.10,000/= per month is uncontroverted, the sum of Ksh.9,000/= is pleaded as the monthly earnings. There is no evidence that the deceased had a wife and children. The death certificate reflects the age of the deceased at the time of death as 30 years. Taking into account the preponderancies of life and the fact that the payment will be made in a lumpsum, a Multiplier of 20 years is reasonable. The dependency therefore works out as  $Ksh.9,000 \times 12 \times 20 \times \frac{1}{3}$  which comes to Ksh.720,000/=

5. Special damages claimed as Ksh.200/= for the police abstract are supported by the receipt produced. Funeral expenses pleaded is Ksh.60,700/=. However, the documents produced for the funeral expenses is for Ksh.50,000/= for transport and Ksh.6,800/= for the coffin which totals up to Ksh.56,800/=. I award the same. No receipt was produced for obtaining the death certificate.

6. The total claim proved is as follows:

a) Pain and suffering	Ksh.10,000.00
b) Loss of expectation of life	Ksh.100,000.00
c) General damages	Ksh.720,000.00
d) Special damages	<u>Ksh.56,800.00</u>
Total	<b><u>Ksh. 886,800.00</u></b>

Less 20% =

Ksh.841,360.00

7. Judgment is entered for the Plaintiff against the Defendants jointly and severally for the sum of Ksh. 841,360.00 interest and costs.

Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of June, 2018

**B. THURANIRA JADEN**

**JUDGE**