

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 77 OF 2016

BETWEEN

MOMBASA MAIZE MILLERS LIMITED.....APPELLANT

VERSUS

JENNIFER LINDA MUTSIAMBO(suing as representative of the estate of FESTO

ALLAN MWASHI, deceased)..... 1ST RESPONDENT

WESTERN CROSS EXPRESS CO. LIMITED.....2ND RESPONDENT

***(Being an appeal arising from the judgment and decree of the Hon. S. Wahome Senior Principal Magistrate (SPM) in Kakamega
CMCCC No. 216 of 2016 of 27th July 2016)***

JUDGMENT

1. The appeal herein turns only on the question of general damages, the parties having resolved the issues of liability and special damages by consent.

2. The trial court awarded under the Law Reform Act, Cap 26 Laws of Kenya, Kshs. 50, 000.00 for pain and suffering after holding that the deceased had died instantly in the absence of any other evidence, and Kshs. 100, 000.00 for loss of expectation of life. Under the Fatal Accidents Act, Cap 32, Laws of Kenya, the court awarded Kshs. 3, 642, 840.65 for loss of dependency. It arrived at that figure after it was established that the deceased net pay was Kshs 30, 857.00, and adopted that as the multiplicand applicable. The deceased died at 23 years of age and was a military serviceman. The court adopted a multiplier of 30 after taking into account the retirement age in the Kenya Defense Forces was 60 years. At age 23 the deceased still had 37 years to go before retirement at 60. 37 would have been an ideal multiplier but the court reduced it to 30 to take care of any imponderables such as sickness, acts of God, terrorism, among others which could one way or the other have terminated the employment before he turned 60. The court picked a dependency ratio of 1/3.

3. The appeal generally raises the point that the awards made were on the higher side. I have considered the authorities placed before me by the parties. I am of the persuasion that the awards made, under both the Law Reform Act and the Fatal Accidents Act, fell within the range of what is reasonable in the circumstances. Indeed, it is my view that the awards under the Law Reform Act are on the lower side taking into account the depreciation of the shilling over the years. I see nothing to fault with regard to the award under the Fatal Accidents Act. The multiplicand adopted by the court was founded on the net income of the deceased from his employment in the armed forces. The multiplier took into account his age, the date he would have retired and the imponderables. The dependency ratio of 1/3 was just right for a young unmarried man, it was just his mother and siblings who were dependent on him.

4. I shall accordingly disallow the appeal. The appeal shall accordingly be dismissed. The respondent shall have the costs thereof. Should any party be dissatisfied with the outcome of these proceedings, there a right to appeal against the same at the Court of Appeal within twenty-eight (28) days.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER, 2018

W. MUSYOKA

JUDGE