



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 542 OF 2010

JAMES MACHARIA KINYUA.....1ST PLAINTIFF

FREDRICK MWANGI KINYUA.....2ND PLANTIFF

(Suing as the administration of the estate of Simon Kihara Kinyua(Deceased))

VERSUS

STEPHEN KARANJA NJUGUNA.....DEFENDANT

JUDGEMENT

By a plaint filed in court on the 15th November, 2010, the plaintiffs have sued the defendant herein claiming damages under both the Law Reform and Fatal Accidents Act, special damages and costs of the suit plus interest.

The cause of action is alleged to have arisen from a traffic road accident that occurred on the 4th January, 2009 when the deceased Simon Kihara Kinyua was lawfully standing on the side of the road when the defendant, his driver and/or authorized agent drove motor vehicle registration number KAV 697C along outer ring road that it knocked down the deceased occasioning him fatal injuries.

When the matter came up for hearing on the 25th May, 2016, parties recorded a consent on liability in the ratio of 70:30% in favour of the plaintiff. The judgment therefore is on quantum of damages.

The 2nd plaintiff testified as PW1 and in his evidence, he told the court that the deceased was his brother. That on the 4th January, 2009, at 9.30pm he received a call from a certain Lydia Wanja who was the deceased 's girlfriend who informed him that his brother had been involved in a road accident and had been rushed to Guru Nanak Hospital. In the company of his other brother they rushed to the said hospital only to find their late brother's body on a stretcher. They were informed that he had died on his way to the hospital. They took the body to the mortuary. Among the documents he produced as exhibits was a grant of letters of administration issued to him and the first plaintiff both as administrators of the estate of Simon Kihara Kinyua (deceased).

It was his further evidence that the deceased did not have a family but he was working with Co-operative Development Information Centre Limited earning a total of Kshs.13,000/-. A letter from the employer was also produced as an exhibit in the case. Though it was his evidence that the deceased was buried in Murang'a, he did not produce any receipts in support of funeral expenses.

He told the court that the estate of the deceased has suffered loss and damage which he is claiming on it's behalf.

In cross examination, it was his evidence that the deceased was aged 31 years and he did not have a family. Both of his parents are deceased. He could not tell how long the deceased took before he died. He could also not tell how much the deceased was spending on himself.

In their submissions, the plaintiff asked the court to award a sum of Kshs.100,000/- for pain and suffering. The court was referred to the case of **Alexander R. O. Anagure Vs. Reuben Muriuki Kahuha & Another** where the court awarded a sum of Kshs.100,000/- for pain and suffering. The defendant on their part, suggested a sum of Kshs.10,000/-. Under this head and being guided by the case of **Patricia Muna & Dennis Antony Musyoka(suing as legal representatives to the estate of Antony Musyoka) Vs. Samuel Opot Omondi & National Environment Management Authority HCC No. 574/2010 where an award of Kshs20,000/- was made for a deceased who died at the scene of the accident** the court makes an award of Kshs.30,000/-.

(ii) On loss of expectation of life,

The plaintiffs have suggested a sum of Kshs.200,000/= relying on the case of **Cornerlia Elaine Wamba Vs. Shreeji Enterprises Limited** where the court awarded a sum of Kshs.150,000/- for loss of expectation of life. On his part, the defendant has suggested a figure of Kshs.60,000/- and has relied on the case of **Mohammed Vs. Salim & 4 Others(1990) KLR356** in which the court made an award of Kshs.60,000/=.

The court will award a sum of Kshs.150,000/= and in so doing, I have relied on the case of **Violet Jeptun Rahedi Vs. Albert Kubai Mbogori (2013) eKLR (HCC No. 676/2009)** where a similar sum was awarded for a 44 year old.

(iii) Lost Years

The plaintiffs have submitted on a multiplier of 29 years citing the case of **Jane Wangari Vs. Felix Ole Nkaru Nai HCCC No.191/2002 and Cornelia Elaine Wamba Vs. Shreeji Enterprises Ltd & others** where multipliers of 20 and 25 respectively were applied. They submitted that the salary of the deceased of Kshs.13,000/- be applied as the multiplicand and a ratio of 2/3 making a total of Kshs.3,016,000/-.

On the part of the defendant a total sum of Kshs.739,812.00/- was submitted under this head based on the net income of the deceased at Kshs.12,330.20cts, multiplier of 15 years and a 1/3 ratio. The defendant argued that since the defendants are the same under both the law reform and fatal accidents Act, the court should discount the award under the law reform Act. In support of this contention, the court has been referred to the case of **Kemfro African Limited Vs. Olive Luibia (1982 -88) 1KLR 727 and that of Maina Kaniaru & Another Vs. Josephat Muriuki Wangonde Civil Appeal No. 14 of 1989.**

The position on discounting damages under the law reform Act has been the legal position but the same has changed with the recent decision by the court of Appeal in Civil Appeal No. 22/2014 **Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (deceased) Vs. Kiarie Shoes Stores Limited** where the appellate court in a decision delivered on the 14th day of October, 2015 held;

“This court has explained the concept of double compensation in several decisions and it is surprising that some courts continue to get it wrong. The principle is logical enough; duplication occurs when the beneficiaries of the deceased estate under the law reform Act and dependants under fatal accidents Act are the same; and consequently the claim for lost years and dependency will go to the same persons. It does not mean that a claimant under the fatal Accidents Act should be denied damages for pain and suffering and loss of expectation of life as there are only awarded under the law reform Act., hence the issue of duplication does not arise.

Having considered the arguments by the parties, an award of Kshs.1.233,000/- is made under this head brokedown as follows;

Multiplicand _____ Kshs.12,330/-

Multiplier_____25 years

Ratio_____1/3

(iv) Special damages

It is trite law that special damages have to be specifically pleaded and strictly proved. See the case of **Coast Bus Services Limited Vs. Sisco E. Muranga Danyi Civil Case No. 192 of 1992**. The same principle was restated in the case of **Bogajo Christian Children Fund Inc. (2004) KLR 73 by Ringera J.A,**

In the case before the court, a sum of Kshs.21,375/- was pleaded and claimed but no evidence was produced in support of the same. Though the plaintiffs have sought refuge in the **Nakuru HCCC No. 26/2005 Alice Alukwe Vs. Akamba Public Road Services & Another** where the court awarded a sum of Kshs.30,000/= as funeral expenses notwithstanding that the claimants could not produce receipts , this court is not persuaded by that decision and I beg to differ with it. I hold and find that special damages have to be pleaded and strictly proved.

The plaintiffs herein did not proof any special damages and therefore none will be awarded.

In the end, this court enters judgment for the plaintiffs against the defendant as follows;

(A) Liability at 70:30% in favour of the plaintiffs (as Recorded in court)

(B) Pain and suffering ----- Kshs.30,000/-

(C) Loss of expectation of life-----Kshs.150,000/-

(D) Loss of dependency-----Kshs.1,233,000/=

(E) Special Damages-----Nil

Total-----Kshs.1,413,000/=

Less 30% contributing negligence

Final judgment-----Kshs.989,100/-

The plaintiffs are awarded the costs of the suit.

Dated, signed and delivered at Nairobi this 2nd day of March, 2017.

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L. NJUGUNA

JUDGE

In the Presence

..... **For the 1st Applicant**

..... **For the 2nd Applicant**

.....**For the Defendant**