



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 101 OF 2012

T M (Minor) and

N N (minor) suing through the mother and next friend

D K M.....PLAINTIFF

VERSUS

M K M.....DEFENDANT

RULING

1. This ruling is in respect of apportionment of the general damages among all the beneficiaries of the deceased person. It is also in relation to the investment of part of those general damages to the three minors namely I M (aged 16 years), T M (aged 11 years) and N N (aged 6 years).

2. Counsel for the plaintiff/applicant has proposed that the general damages be apportioned as follows:

D K M	Kshs. 6,109,000/-
D G	Kshs. 1,000,000/-
J M	Kshs. 1,000,000/-
I M	Kshs. 1,000,000/-
T M	Kshs. 1,000,000/-
N N	Kshs. 1,000,000/-

3. The justification for apportioning the sum of kshs. 6,109,500 to the plaintiff is that the plaintiff will be paying the legal charges and other expenses incurred in the cause of prosecuting this suit. Additionally, being the mother of all the beneficiaries she will continue to take care of all the children until they are able to take care of themselves.

4. I have considered the apportionment as set out in the foregoing paragraph and the case of *Patricia Mona & Another V. Samuel Opot Omondi & Another Nairobi High court Civil Case No. 574 Of 2010*. I find that that case is persuasive. I find that the general damages should be modified as further proposed by counsel and be apportioned as follows:

D KM	Kshs. 6,109,000/-
------	-------------------

D G Kshs. 500,000/-
J M Kshs. 500,000/-
I M Kshs. 600,000/-
T M Kshs. 1,500,000/-
N N Kshs. 1,900,000/-

5. D K M has stated in her supporting affidavit that D G and J M are over 18 years. It is for this reason that they are entitled to a lower apportionment of damages because they are adults. The plaintiff still retains parental responsibilities over them notwithstanding that they are adults.

6. It is therefore my considered view that the apportionment of the general damages should be modified as set out in paragraph 4 above.

7. The shares of the minor children namely I M, T M and N N shall be invested in the joint names of the Deputy Registrar of this court and the widow, **D K M**. The reason for this requirement is that the State through the Deputy Registrar is in law the upper guardian (*parens patriae*) of the minors and those who are similarly placed such as those who are mentally disabled due to mental illness, senility and felonious assaults.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **May, 2016**

In the presence of Ms Muriuki holding brief for Mr. Kathungu and in the absence of the defendant.

Court clerk **R. Njue**

J.M. BWONWONGA

JUDGE

12/05/2016