



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 228 OF 2012

JOYCE WANGECHI MBUGUA &

MARY WAITHERA MBUGUA

(Suing on their behalf and the administrators

*of the estate of the late Stephen Mbugua Kamau (Deceased)).***PLAINTIFF**

-VERSUS-

HARMAN SINGH MARIWA.....1ST DEFENDANT

REUBEN WANJIHIA GACHAU.....2ND DEFENDANT

J U D G M E N T

The Plaintiffs herein have moved this Honourable Court by way of an amended plaint on 14th November, 2014 and filed in court the same day claiming special damages of Ksh.220,320/-, general damages under both Law Reform and Fatal Accidents Acts, costs of the suit, interest at court rates and any other relief that this Honourable court may deem fit to grant.

The Plaintiffs have pleaded that on or about the 1st day of June, 2010 while the deceased Stephen Mbugua Kamau was lawfully riding his motor cycle registration Number KMCJ 115G on the pavement, along Kiambu Road, the 2nd Defendant drove the 1st and the 3rd Defendants' motor vehicle registration Number KAP 646W, so negligently and/or carelessly that he knocked down the deceased who sustained fatal injuries as a consequence.

The particulars of injuries are particularized in paragraph 5 of the plaint. The Plaintiffs further avers that as a result of the accident, the deceased estate and dependants have suffered loss and damage as set out in paragraph 8 of the Plaint. They blame the 2nd defendant for the accident and avers that the 1st and 3rd Defendants are vicariously liable for the negligence by the 2nd Defendant.

The Defendants filed a joint defence on the 21st day of June, 2012 wherein they have admitted the occurrence of the accident but have denied the particulars of negligence attributed to the 2nd Defendant and have put the Plaintiff to strict proof thereof.

By way of further defence and without prejudice, the Defendants have pleaded, any injuries or damages resulting to the deceased and his estate (though not admitted) were solely caused or were contributed to by the deceased's own negligence as particularized in paragraph 6 of the defence. They have also pleaded the doctrine of *Res Ipsa Loquitur*. The Defendants further deny that the persons listed in paragraph 7 are beneficiaries to the estate of the deceased and that the deceased's estate suffered loss and damage. They have sought for the dismissal of the case with costs.

The Plaintiff filed a reply to the defence on 3rd July, 2012 wherein they have joined issues with the defendants on their defence.

When the matter came up in court on the 22nd October, 2015, parties recorded a consent on liability at 60%:40% in favour of the Plaintiff and it was further agreed that the quantum of damages be assessed by the court. The matter came up in court for assessment of damages on 10th March, 2015 when one of the Plaintiffs, Joyce Wangechi Mbugua, testified for purposes of assisting the court in assessing the quantum of damages. She adopted her statement dated 15th March, 2012 and asked the court to consider the documents that she has filed in the case herein. She filed her first list of documents on 16th May, 2012 and another one on 8th March, 2016. By consent of the parties, several

documents were produced as exhibits and marked accordingly, which included inter alia, police abstract, copy of records for the motor vehicle KAP 646W, death certificate, certificate of marriage, letter from the chief, Limited Grant, birth certificates for the children and several receipts in support of special damages.

It was her evidence that the deceased was working with Express Office Suites Limited and was earning a total sum of Ksh.28,500/- with a net salary of Ksh.25,297/- after deductions. A pay slip was produced as evidence of the earnings. She also told the court that in addition, the deceased was a Pastor with World Wide Gospel Church of Kenya at Waluku, in Kangemi earning a total of Ksh.12,000/- per month from his Pastoral Work.

The court also heard that the deceased died at the age of 49 years and before his demise, he was living a healthy life and had he not met his death, he would have lived to work up to the age of 70 years. The court was also told, as a Pastor, the deceased could have worked up to the age of 65 years by which time his salary could have gone up to Ksh.30,000/-. He died 30 minutes after the accident according to what the Plaintiff was told by the Doctors who attended to the deceased after the accident. She produced a bundle of receipts for special damages which included funeral expenses.

It was her evidence that she earns a living as a Pastor earning a salary of Ksh.16,000/- which is not enough to sustain the family. The court was told that, before his death, the deceased was responsible for paying school fees for the children and with his death, the Plaintiff, Joyce Wangechi has to feed the children and take care of them single handedly. She has been struggling to pay school fees and at times, she is forced to do harambees to raise the school fees.

On cross-examination, she told the court that she did not have any evidence to show how much the deceased would be earning if he was alive today.

Parties having recorded a consent on liability, the judgment herein relates to the quantum of damages. Submissions were filed by both parties in support of their respective proposals on quantum, which I will proceed to consider under various heads.

Damages under the Law Reform Act (Cap 26) Laws of Kenya.

In their submissions, the Plaintiffs have proposed a sum of Ksh.150,000/- being damages for loss of expectation of life and Ksh.50,000/- for pain and suffering. They have relied on the cases of **Wilson Mwangi Kabiro (representative of the Estate of Stephen Irungu Mwangi (Deceased) Vs Charles Nyamumbo Mageto [2015] eKLR**, HCCC 200 of 2011 and that of **Caroline Leah Awino Vs Stephen Miheso Ashikoyo [2014] eKLR**, HCCA No. 92 of 2012 where a sum of Ksh.150,000/- was awarded for loss of expectation of life.

On loss of expectation of life, the Defendants relied on the case of **Ann Njoki Njuguna Njenga Vs Umoja Flour Mills & another (2006) eKLR** where the court awarded a sum of Ksh.80,000/-

On pain and suffering, the proposed sum of Kshs.50,000/- was supported by the cases of **Alice O. Alukwe Vs Akamba Public Road Services Ltd & 3 Others [2013] eKLR**, HCCC No. 26 of 2005 and that of **Francis Wainaina Kurungu Vs Elijah Oketch Adella [2015] eKLR**, HCCC No. 1919 of 2013.

Under this head, the Defendants on their part proposes a sum of Ksh.10,000/- arguing that the deceased died on the same day.

Loss of dependancy

Under this head, the Plaintiff submitted that the deceased was earning a salary of Ksh.28,500/- and was also engaged in Pastoral Duties earning a salary of Ksh.12,000/- per month which totals to Ksh.40,500/-. He was aged 49 years when he met his death and before then, he enjoyed good health and lived a happy life. The deceased's life expectancy was cut short by the said death. They have proposed a multiplier of 21 years assuming that he could have retired at the age of 70 years, given that he was employed in the Private Sector, a ratio of 2/3 has been proposed in which case the total would be $Ksh.40,500 \times 21 \times 12 \times 2/3 = \mathbf{Ksh.6,804,000/-}$.

They have relied on the cases of **Jane Kanaga Kaduyu & another (2014) eKLR**, HCCC No. 584 of 2001 where the Plaintiff who was aged 46 years and had been employed in the private sector, the judge used a multiplier of 18 years and also the case of **Samuel Osewe Ochillo Vs Simon Omwoyo Obare (2013) eKLR**, HCCA No. 42 of 2010 wherein a multiplier of 15 years was used by the trial court and upheld by the Court of Appeal on the ground that those who work under the Private Sector are likely to work up to about 65 years.

On damages under the Fatal Accidents Act (Loss of Dependancy) the Defendants suggested a multiplicand of Kshs.25,297/- as the net salary that the deceased was earning. The Defendants also suggested a multiplier of 6 years based on the case of **James Wambua Nyikal & another Vs Mumias Sugar Company Ltd & another (2011) eKLR**, where the court awarded multiplier of 6 years for a person aged 49 years. The dependency ratio of 2/3 was proposed.

In addition to the salary from his employer Express Office Suites Limited, the Plaintiff has submitted that the deceased was a Pastor, working for World Wide Gospel Church of Kenya earning a salary of Ksh.12,000/- per month. In support of this earning, the Plaintiff produced a pay slip for the month of May, 2010 dated 28th May, 2010 which shows a net salary of Ksh.12,000/- and it is duly stamped with a stamp of World Wide Gospel Church of Kenya Starehe.

The counsel for the Defendants in his submissions, did not address the court on this earning and has not even considered it in his proposals under the relevant headings. The Plaintiff was not even cross-examined on it and in the circumstances, there being no other evidence to the contrary, and on the basis of the said pay slip, the court finds that the deceased was earning the extra income of Ksh.12,000/- per month from his Pastoral Work.

On special damages, the Plaintiff has submitted on a figure of **Ksh.220,320/-** made up as follows: -

- a) Police Abstract – **Ksh.200/-**
- b) Letters of Administration **Ksh.50,000/-**
- c) Burial expenses – **Ksh.169,520/-**
- d) Death Certificate – **Kshs. 100/-**
- e) Copy of Records – **Ksh. 500/-**

The Defendants have on their part urged the court not to award special damages as the receipts in support of the same have not been duly stamped as required by Section 19 of the Stamp Duty Act.

Regarding that contention, it is the finding by this Honourable court that no objection was raised to the production of those receipts at the hearing and the receipts having been produced as exhibits, the court will award the amounts claimed in those receipts.

All considered, the court makes the following awards: -

(I) Loss of Expectation of Life – **Ksh.120,000/-**

(II) Pain and Suffering **Ksh. 50,000/-**

(III) Loss of Dependency

(A) Multiplicand

(i)(a) Net salary from his employer

(Express Offices Suits Ltd) Ksh.25,297/-

b) Salary for Pastoral Work **Ksh.12,000/-**

(Net Total Salary – Total Ksh.40,500/-)

(B) Multiplier – 16 years

(C) Dependency Ratio 2/3

SUB-TOTAL – under this head Ksh.5,354,000/-

(D) Special damages: -

a) Copy of records – **Ksh.500/-**

b) Mortuary Fees – **Kshs.3,100/-**

c) Embalming of the body – **Ksh.7,000/-**

d) Legal Fees **Ksh.60,000/-**

e) Advertisements

i) Nation Media **Ksh.18,500/-**

ii) Royal Media **Ksh.2,520/-**

f) Kenya Gazette **Ksh.50/-**

Subtotal Ksh.91,670/-

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The court has perused the receipts that were produced as evidence vis-à-vis the claimed amount of Ksh.220,320/- as special damages. It is trite law that special damages have to be pleaded and proved and it is on that basis that the court has awarded a sum of **Ksh.91,670/-**

In conclusion, judgment is hereby entered for the Plaintiffs against the Defendants for as follows: -

- a) Liability at - 60% :40% in favour of the Plaintiff
 - b) Loss of Expectation of Life – Ksh.120,000/-
 - c) Loss of Dependency – Kshs.5,184,000/-
 - d)Special Damages – Ksh.91,670/-
- Total** **Ksh.5,445,670 /-**

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After contribution the Plaintiff is entitled to **Ksh.3,267,402/-**. It is also trite law that the Estate should not benefit twice as the beneficiaries are the same for that reason a sum of **Ksh.120,000/-** is reduced from the total award leaving a final figure of **Ksh.3,147,402/-**

The Plaintiff shall also get the costs of the suit plus interest on the special damages from the date of filing the suit and on general damages from the date of this judgment.

Dated, signed and delivered at Nairobi this 8th day of September, 2016.

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L NJUGUNA

JUDGE

In the presence of

Mr. Ndirangu holding brief for Mrs. Wangombe for the Plaintiff.

Mr. Mutua holding brief for Mr. Michuki for the Defendant.