



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 326 OF 2011

**MERCY WANJIRU MUIRURI (suing as the administrators
of the estate of the Loise Njeri Mbugua).....PLAINTIFF**

VERSUS

ROBBERT BARASA.....1ST DEFENDANT
ERICK OCHIENG BARASA.....2ND DEFENDANT

J U D G M E N T

The Plaintiff is the administrator of the estate of Loise Njeri Mbugua (deceased) who died in an accident on 26th May, 2010, involving Motor vehicle registration number KAZ 193G which was being driven by 2nd Defendant but owned by the 1st Defendant. The Plaintiff claims that the deceased was lawfully standing at a bus stop along and off Jogoo Road near Total Petrol station when the 2nd Defendant driving the said motor vehicle hit the deceased. The Plaintiff blames the accident on the 2nd Defendant as the driver, servant and/or agent of the 1st Defendant for negligently driving, managing and controlling the said motor vehicle. The Plaintiff claims for damages under the Fatal Accident Act and under the Law Reform Act.

On the 6th October 2011, the Defendant entered appearance but they did not file any defence. The Plaintiff sought interlocutory judgment against the Defendants which was granted 27th June 2012. The matter proceeded to formal proof. The Plaintiff testified that the deceased was her daughter and she met her death on her way from college. She stated that the deceased was studying at Glassa College where she was undertaking a secretarial course. The deceased was standing at the bus stop when the motor vehicle knocked her and she died immediately.

The Plaintiff reported the matter to the police station and was issued with police abstract which she produced as **exhibit 5**. The Plaintiff also produced a death certificate as **exhibit 3** which indicated that the deceased was 20 years at the time of her death. She also produced her academic certificates for primary school, secondary and business school as **Exhibit 6 'a', Exhibit 6 'b', Exhibit 6 'c'**. The Plaintiff finally produced letters of administration of the estate of the late Loise Njeri Mbugua.

On quantum, the Plaintiff submitted that the court should award damages payable under the Law Reform Act. She stated that the deceased was a young woman of 20 years; she enjoyed a healthy and vigorous life of young woman. She was student at Glassa College in Nairobi and could have lived up to 65 years

with expected income of Ksh 20,000 per month. The Plaintiff proposed a multiplier of 35 years and calculated the award of lost years as :

Ksh 15,000 x35 years x 12 months=6,300,000.

The Plaintiff relied on the court of appeal decision in the case of **Sheikh Mushtaq Hassan Vs Nathan Mwangi Kamau Transportes & 5 Others (1982-88) 1KAR**

For loss of expectation of life the Plaintiff submitted that the normal conventional figure under these heading is between Kshs.100,000-150,000 and considering the young age of the deceased the Plaintiff proposed Kshs.150,000/-. Under the heading of pain and suffering the Plaintiff submitted that since the deceased died instantly an award of Kshs.30,000/- will be fair.

On special damages, the Plaintiff submitted that she had pleaded and claimed funeral expenses of Kshs.51,200/-, mortuary expenses Kshs.3,400/-, letters of administration Kshs.25,950/-, Death Certificate Kshs.150/-, search of the motor vehicle Kshs.500 and police abstract Ksh.200/- giving a total of Kshs.81,400/-.

Having stated the Plaintiff's case as above, the only issue for determination is the quantum of damages available for the Plaintiff.

The Plaintiff is claiming damages under both Fatal accident Act and Law Reform Act. Under the Fatal Accident Act damages will be awarded for loss of dependency. To assess the same the court must determine the multiplicand, the multiplier and the ratio of dependency. As for the multiplicand I accept that the deceased expected income would be Kshs.20,000/-. I will use the same in this case.

In determining a reasonable multiplier to be applied in a case such as this one, the court is required to apply the facts available before it. In the instant case the deceased was a young girl age 20 years and would have entered the job market at age 25 years and could have lived to the retirement age. This court takes judicial notice of the fact that the life expectancy of an average Kenyan has in the recent years gone down due to diseases and other incidents. I will apply the general retirement age which is 60 years. In my view a multiplier of 35 years will do justice. As to dependency, there is no doubt that the deceased would have used half of her estate on her dependents. I therefore hold that the dependency ratio that shall be applied in determining the damages to be paid to the deceased estate shall be 1/2. The damages to be paid to the deceased estate under the Fatal Accidents Act shall therefore be:

Ksh 20,000 x 35 years x 12 months x ½= Ksh 4,200,000

As to damages under the Law Reform Act, I only make an award for loss of expectancy of life. The deceased died instantly and the only damages recoverable will be for the deceased's loss of expectation in life. See the Court of Appeal decision of **Kemfro Africa Ltd T/A "Meru Express Services (1976) & Anor – Vs- Lubia & Anor (No 2) [1987] KLR**. The Plaintiff had suggested Kshs.150,000/-, I see no reason not to award it, and I hereby award the same

On special damages, the court is persuaded that the same has been pleaded and proven and I shall also grant as prayed.

In the premises therefore judgment is hereby entered for the Plaintiff as against the Defendants jointly and severally as hereunder:

(i) On Liability

Liability is apportioned at 100% in favour of the Plaintiff and as against the Defendants.

ii) On quantum

a) Under the fatal Accident Act, the sum of **Ksh.4,200,000/-** is hereby awarded.

b) Loss of expectation of life of **Kshs.150,000/-** is hereby awarded.

c) Special damages **Kshs.81,400/-** is awarded.

The Total Award will be Kshs.4,431,400/- as detailed above.

(iii) **Costs of the suit** is awarded to the Plaintiff to be agreed upon or taxed.

There will be interest on the general damages at court rate from the date of judgment until payment in full. Interest on special damages shall be from the date of the filing of the suit until full settlement.

Dated and delivered at Nairobi this 11th day of March, 2015.

.....

D A ONYANCHA

JUDGE