



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 574 OF 2010

1. PATRICIA MONA
2. JOHN DENNIS ANTONY MUSYOKA

(Suing as administrators of the Estate of ANTONY MUSYOKA, Deceased).....
.....PLAINTIFFS

VERSUS

1. SAMUEL OPOT OMONDI
 2. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
-DEFENDANTS**

J U D G E M E N T

1. The Plaintiffs are the administrators of the estate of **Anthony Musyoka** (hereinafter called the **Deceased**) who died in a road accident on 14th May 2010. They claim damages for the estate under the **Law Reform Act, Cap 26** and for the dependants of the Deceased named in paragraph 6 of the plaint dated 24th November 2010 under the **Fatal Accidents Act, Cap 32**. Those dependants are the widow (1st Plaintiff) and four (4) children, one of them a minor. Special damages are also sought. The Defendants filed defence denying liability.

2. On 17th July 2013 when the suit came up for further hearing the Plaintiffs' suit as against the 2nd Defendant was by consent marked withdrawn with costs. Again by consent judgment on liability was entered for the Plaintiffs against the 1st Defendant at the ratio 75% to 25%. This judgment therefore concerns only quantum.

3. Only the 1st Plaintiff testified for the Plaintiffs. Her testimony was that the Deceased was aged 47 years at the time of his death. He was a technician with **Kenya Airways Corporation** whose job was aircraft mechanic. They had four children, all whom were dependent on the Deceased. The 1st Plaintiff herself was a housewife and subsistence farmer and therefore wholly dependent on the Deceased.

4. The 1st Defendant did not lead or call any evidence.

5. On 15th April 2013 at the commencement of the hearing, the Plaintiff's list and bundle of documents dated 16th February 2011 had been by consent admitted in evidence and marked as **Exhibit P "A"**.

6. The parties filed written submissions which I have considered, including the cases cited. The Plaintiffs' submissions were filed on 9th October 2013 while those of the 1st Defendant were filed on 29th October 2013. The fact of the filing of the submissions was brought to the attention of the court on 30th January 2014.

Under the Law Reform Act, Cap 26

i. Pain and suffering

7. The Deceased is said to have died at the scene of the accident. Damages under this head normally range between KShs 10,000/00 and KShs 30,000/00 depending on the degree of suffering as perceived by the court. I will award KShs 20,000/00.

(ii) Loss of Expectation of life

8. The Deceased was aged 47 years at the time of his death. He had many more years to live, all being equal. Usually the younger the deceased at death, the greater the award under this head. This is not to mean that an older life is less valuable than a younger one; but the court recognizes that perhaps the loss will be that much greater when a younger life who has not had the opportunity to live to his or her full potential is lost. I will award KShs 120,000/00 under this head.

(iii) Funeral and other Expenses

9. In my judgment funeral expenses are a proper claim under the Law Reform Act, I will award KShs 50,000/00 for funeral expenses. I will also award the proved special damages of KShs 900/00.

Under the Fatal Accidents Act, Cap 32

10. I am satisfied that the Deceased's widow (1st Plaintiff) and their four (4) children were all dependent on him. I am also satisfied that he could not have used on them less than two-thirds ($\frac{2}{3}$) of his income on them. I will award a **dependency ratio of two-thirds ($\frac{2}{3}$)**.

11. Regarding the multiplier, as already noted the Deceased was aged 47 years at his demise. He was employed by a Government corporation. His retirement age would thus have been the usual one for civil servants, 60 years. He was of good health and all being equal he would probably have worked to retirement age.

12. But the uncertainties and vicissitudes of life must be taken into account. The 1st Defendant has suggested a multiplier of 5 years while the Plaintiffs suggest 13 years. Having taken into account all that has been placed before the court, balancing this against that, and doing the best that I can, I will award a multiplier of 9 years.

13. As for income, the Deceased's total earnings for the month of April 2010 were **KShs 136,972/00**. His statutory deductions were **NSSF (KShs 200/00)**, **NHIF (KShs 320/00)**, **union dues (KShs 500/00)** and **PAYE (KShs 25,226/00)**. The total deductions were thus **KShs 26,246/00** leaving a net income of **KShs 110,726/00**. I accept this as the Deceased's income.

14. Damages under the Fatal Accidents Act therefore work out thus

$$\text{KShs } 110,726/00 \times 12 \times 9 \times \frac{2}{3} = \text{KShs } 7,972,272/00$$

15. In the event I will enter judgment for the Plaintiff against the 1st Defendant as follows –

(i) **Under the Law Reform Act.....KShs 190,900/00**

Less 25%47,725/00

KShs 143,175/00

(ii) Under the Fatal Accidents ActKShs 7,972,272/00

Less 25%1,993,068/00

KShs 5,979,204/00

16. I must apportion the damages awarded under the Fatal Accidents Act among the dependants as required by the statute. In doing so I have taken into account that the widow (1st Plaintiff) will pay all necessary legal and other fees, and also that one of the children is still a minor.

17. I will therefore apportion the sum of KShs 5,979,204/00 as follows –

(i) Patricia Mona Anthony (Widow)..... KShs 3,679,204/00

(ii) Denis John Anthony.....500,000/00

(iii) Kelvin Kiso Anthony.....500,000/00

(iv) Vivi Anthony.....500,000/00

(v) Charity Anthony (Minor).....800,000/00

Total **KShs 5,979,204/00**

18. The share of the minor child shall be invested in the joint names of the *Deputy Registrar of the Court* and the widow (1st Plaintiff).

19. The damages awarded, which are all essentially general, shall attract interest at court rates from the date of judgment until payment in full.

20. The Plaintiffs shall have costs of the suit as against the 1st Defendant appropriately reduced by 25%.

21. That will be the judgment of the court. It is so ordered.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS

3RD DAY OF MARCH 2014

H. P. G. WAWERU

JUDGE