



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 34 OF 2013

SILAS MUGENDI NGURU..... PLAINTIFF

VERSUS

NAIROBI WOMEN'S HOSPITAL.....DEFENDANT

J U D G M E N T

1. In this suit the Plaintiff claimed general and special damages in negligence on account of the death of his wife, **Lucy Njoki Kithaka** (hereinafter called the **Deceased**). The Deceased died from complications developed after delivery of a child in the Defendant hospital on 7th January 2012. She had been admitted at the hospital the previous day following doctors' advice when the Plaintiff took her for a routine pre-natal check-up.
2. It was the Plaintiff's case that the Deceased's death (as well as the subsequent death of her newborn child) was caused by the sole negligence of the Defendant.
3. The Defendant did not enter appearance or file defence. Interlocutory judgment was entered against it on 13th March 2013.
4. On 15th February 2014 evidence on quantum of damages was taken. Only the Plaintiff testified. He adopted as his evidence his **witness statement filed on 12th February 2013**. He also produced in evidence his **list and bundle of documents dated 12th February 2013 (Exhibit P1)**.
5. I have considered the evidence placed before the court and the Plaintiff's written submissions filed on 18th February 2014.

LIABILITY

6. The particulars of negligence alleged against the Defendant are pleaded at paragraph 8 of the **plaint dated 31st December 2012**. Those particulars are that the Defendant made extensive and unnecessary cervical lacerations to the Deceased; that it failed to diagnose the cause of excessive bleeding of the Deceased; that it failed to take immediate action to stop the excessive bleeding; and that it failed to follow the laid down medical procedure and thereby caused the Deceased's death.
7. As already noted, the Defendant did not enter appearance or file any defence and interlocutory judgment on liability was duly entered against it. The particulars of negligence pleaded against the 1st Defendant have thus not been denied or challenged.

8. There is no evidence before the Court that the Deceased contributed in any way to her own death. On the contrary, evidence available in the **postmortem report dated 10th January 2012 (Document 2 in Exhibit P1)** shows that the cause of the Deceased's death was **procedure-related extensive lacerations to the uterus with resultant massive blood loss**. This is consistent with the Plaintiff's testimony that the Defendant's Chief Executive Officer explained to him that the doctor in charge could not justify the cause of death, adding that in his practice as a gynecologist, he had not come across such an incident.

9. On liability therefore I will find for the Plaintiff at 100%.

DAMAGES

10. The Deceased's estate is entitled to damages for **pain and suffering, loss of expectation of life** and for **lost years**. These are claims under the **Law Reform Act, Cap 26**. No claim has been made under the **Fatal Accidents Act, Cap 32**.

Pain and Suffering

11. There is no indication whether at the time the Deceased received the lacerations to her womb and then bled to death, she was conscious or unconscious. There is no indication how long the Deceased may have suffered pain and the gradual ebbing away of her life through blood loss. It must be borne in mind that the Deceased was apparently a healthy woman carrying a healthy foetus when she went for a routine pre-natal examination. There is no explanation at all from the Defendant as to how an apparently healthy woman carrying a healthy foetus subjecting herself to a routine pre-natal examination wound up dead along with her baby.

12. For pain and suffering I will award **KShs 50,000/00**.

Loss of Expectation of Life

13. The Deceased was aged 29 years when she died. She was at the prime of her life and all being equal she still had many more years to live and work. But in life nothing is ever equal. I will award **KShs. 150,000/00** for loss of expectation of life.

Lost Years.

14. The Plaintiff produced the Deceased's pay-slip from the **Kenya Revenue Authority** where she worked. She was earning a net salary of **KShs. 88,715/00** per month after statutory deductions. This was her **income**.

15. The court was urged to use a **multiplier** of 31 years for lost years. The Deceased was aged 29 years at death as already seen. Indeed she could have worked for 31 years until the official retirement age of 60 years: but due regard must be given to the vicissitudes and uncertainties of life. A multiplier of **25 years** would be appropriate in this case.

16. As for the **dependency ratio**, I am satisfied that the Deceased used at most one-third of her income on her family which constituted her husband and herself only. Apparently there were no children apart from the one who died with the Deceased. I will therefore award dependency of **one-third (1/3)** only.

17. Damages for lost years therefore work out as follows –

$$\text{KShs } 88,715/00 \times 12 \times 25 \div 3 = \text{KShs } 8,871,500/00$$

Special Damages

18. The Plaintiff claimed special damages of KShs. 359,816/00. Special damages must not only be particularized but must also be strictly proved. **KShs 286,985/00** only was strictly proved. I will award

that sum.

Summary

19. In the event I will enter judgment for the Plaintiff against the Defendant as follows –

- (I) Pain and sufferingKShs 50,000/00
- (ii) Loss of Expectation of Life150,000/00
- (iii) Lost Years8,871,500/00
- (iv) Special Damages 286,985/00

20. The general damages will carry interest at court rates from the date of judgment until payment in full. The specials will carry similar interest but from the date of suit until payment in full.

21. The Plaintiff will also have costs of the suit and interest thereon at court rates from the date of suit.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS

1ST DAY OF APRIL 2014

H. P. G. WAWERU

JUDGE