



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 133 OF 2011

I D K N.....PLAINTIFF

VERSUS

JOHN MURITHI WAHOME.....1ST DEFENDANT

MATIGARI TRANSPORTERS LTD.....2ND DEFENDANT

J U D G M E N T

1. The Plaintiff – I D K N sued on behalf of the estate of M N M who was her husband. She filed the suit under the Law Reform Act and Fatal Accident Act and claims general and special damages.
2. The Defendants filed a joint defence through Gachanja & Co. Advocates denying all the Plaintiff's claims.
3. On 19th June 2014 a consent order for Judgment on liability was adopted by the Court. It was to the effect that the Plaintiff bears 10% with the Defendants bearing 90% liability. The matter is therefore before this Court for assessment of damages only.
4. It is the Plaintiff's case that as a result of the deceased's death his estate has suffered loss and damage under the Law of Reform Act (Cap.26) and the Fatal Accidents (Cap.32). Part of the consent was that the filed witness statement and documents be deemed as adopted as evidence and exhibits.

They also agreed to file written submissions on quantum which they have done. They have each submitted on the damages payable under both Acts with supporting authorities.

5. A brief background is lifted from the evidence and exhibits which is that the deceased was a Police Officer aged 26 years. He got married to the Plaintiff on 6/9/2008 under the repealed African Christian Marriage and Divorce Act (Cap.151). The Plaintiff was expecting their 1st child when this incident occurred. Their child was born on 22nd March 2009. The birth was registered vide Certificate No. [Particulars Withheld]. As per the payslip for October 2008 the deceased was earning a gross salary of shs.20,005/= while the net was shs.8,237/=. His official retirement date would have been 27th May 2042. So he had 33 years to continue working.
6. I will first deal with the claim under the Law Reform Act. The Plaintiff obtained a limited grant ad litem dated 9th July 2010 from Meru High Court for purposes of filing suit. The said grant is one of the exhibits. She therefore has *locus standi* in this matter.

7. (i) **Loss of Expectations of Life.**

Courts have awarded conventional figures of between kshs.70,000/= -kshs.150,000/= on this head. The deceased was aged 26 years at his time of death. A young life full of expectation was abruptly brought to an end. I award shs.70,000/= under his head.

(ii) **Pain and suffering**

What is considered under this head is the nature of injuries and how long it took before the victim succumbed to the said injuries. From the police abstract (No.0128287), witness P.C. Nelson Masunzu and the Post Mortem form, the accident occurred on 19th October 2008 at 4pm. The Post Mortem form shows that the deceased died as he was being rushed to Hospital. This is also confirmed by P.C. Nelson Masunzu who witnessed the accident and also took the deceased to hospital. I find that the deceased died within hours of the accident. It was a **brief but extremely painful** experience. Counsel for Defendants suggested a figure of shs.5,000/= while the Plaintiff's Counsel asked for shs.40,000/=. I find a figure of shs.25,000/= to be quite appropriate considering that the authorities cited were decided about ten (10) years ago.

8. **Fatal Accidents Act (loss of Dependency)**

The deceased was a Police Officer and was carrying out patrol duties when this accident occurred. The nature of his job was a hazardous one. It involved a lot of risks and so it cannot be stated with all certainty that he could have retired in 2042 at the age of 60 years. Mr. Gikunda suggested a multiplier of 25 years while Ganja suggested a multiplier of 18 years. Taking into account his age and the risks involved in the job, I will apply a multiplier of 24 years.

His net salary was shs.8,237/05 which is what he actually took home. That is the multiplicand I will adopt. The deceased was newly married and left an expectant wife. He definitely spent quite a bit of his money on his young family. The ratio I will apply is 2/3.

For dependency the formula to adopt will be;

$$8,237 \times 12 \times \frac{2}{3} \times 24 = \text{kshs.1,581,505/=}$$

At paragraph 5 of the plaint the Plaintiff has pleaded that the deceased was doing some farming and earning shs.25,000/= per month. This claim is not supported by any evidence. It is therefore disallowed.

9. **SPECIAL DAMAGES**

The Plaintiff pleaded special damages of shs.35,000/=. She paid shs.15,000/= to Gikunda and Anampiu Advocates as fees for grant of letters of administration. A receipt was produced. That is a proved special damage which she is entitled to. She pleaded shs.20,000/= as funeral expenses but no receipts were produced. It can't be denied that expenses were incurred for the coffin, transport etc. Courts have taken judicial notice of this expense called "**Funeral expenses**" as long as the sum pleaded is reasonable. I refer to the cases of;

- i. ***APOLO NYANYAYO HONGO –VS- KENYA BUS SERVICE LTD & ANOTHER KERICHO H.C.C. NO.70/2002***
- ii. ***BENJAMIN KOECH –VS- ROBERT T. NGETICH & ANOTHER – ELDORET HCCC NO.98/2008.***

A funeral expense of shs.20,000/= for a funeral in 2011 is quite reasonable. I therefore allow it.

10. Following the case law in ***KEMFRO AFRICA LTD trading as MERU EXPRESS SERVICES***

[1996] & ANOTHER –VS- LUBIA & ANOHER (NO.2) [1987] KLR 30, the claim for loss of expectation under the Law Reform Act and Loss of dependency under the Fatal Accidents Act relate to the loss the estate has suffered as a result of the death. Where the persons claiming under both Acts are the same then the Court must ensure that they do not benefit twice. In this case the persons claiming under both Acts are the Plaintiff and the minor who are the dependents of the deceased. The sum for loss under the Law Reform Act will therefore be discounted.

11. The awards made are as follows;

Loss of expectation of life	-	kshs.70,000/=
Pain and suffering	-	kshs.25,000/=
Loss of dependency	-	ksh.1,581,504/=
Special damages	-	kshs.35,000/=
TOTAL		<u>kshs.1,711,504/=</u>
Less Loss of expectation of life	-	kshs.70,000/=
BALANCE	-	kshs.1,641,504/=
Less 10% LIABILITY	-	kshs.164,150/40
BALANCE	-	<u>kshs.1,477,353/60</u>

12. I accordingly enter Judgment for the Plaintiff against the Defendants jointly and severally for **kshs.1,477,353/60 (one million, four hundred and seventy seven thousand, three hundred and fifty three shillings and sixty cents only)** plus interest of costs. Interest on special damages is from the date of filing of the plaint. The rest is from the date of this Judgment.

13. When the Judgment is satisfied the following will be the distribution;

Widower Plaintiff - kshs.877,353/60

J F W (minor) aged 5 years now kshs.600,000/=.

14. The sum of kshs.600,000/= (Six Hundred Thousand only) to be invested in an interest earning account in the name of the Plaintiff I D K N and the Deputy Registrar High Court Embu in an institution of the Plaintiff's choice until the minor (J F W) attains the age of eighteen (18) years. The Plaintiff may apply for release of interest if need be.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT EMBU THIS 9TH DAY OF SEPTEMBER 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Kiama for Gikunda for Plaintiff

Mutero/Kirong – C/c