

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 7 of 2001

GEORGE KANGANGI KABUTU.....PLAINTIFF

VERSUS

SAMWEL MAINA MUTUGI.....DEFENDANT

JUDGMENT

The plaint herein dated 17/1/2001 was filed by J.K. Kibicho & Co. Advocates on behalf of George Kangangi Kabutu who was suing as the legal representative of Joel Muriuki (deceased.) He has sued one Samuel Maina Mutugi. The named plaintiff passed away subsequently during the pendency of this suit and one Gladys Wangui Kangangi was substituted as the plaintiff before the matter was set down for formal proof. The defendant failed to file any defence after being duly served and the matter proceeded by way of formal proof. The substituted plaintiff – Gladys Wangui Kangangi was the deceased's mother. She said that the deceased was about 20 years of age and he had just completed his O level before he died. She told the court that the deceased was hit by a motor vehicle on 14/11/99 at Kabonge area on the Kagumo-Karatina Road. The motor vehicle which was involved in the accident was KZJ 100 which was said to have been owned by the defendant herein.

PW2 one David Kibaara said that he was at Kabonge market when the accident in question occurred. He told the court that the deceased was hit while off the road. He was the deceased's brother. The defendant though properly served with the summons and plaint and subsequently with the hearing notice failed to file a defence interlocutory Judgment was therefore entered against him and the matter proceeded by way of formal proof. Counsel for the plaintiff filed a written submission and urged the court to find that the defendant was 100% liable for the accident. Indeed, evidence was adduced to the effect that the defendant was charged with the offence of causing death by dangerous driving and convicted. In the absence of any other evidence to the contrary, my finding is that the defendant was entirely to blame for the accident in which the deceased lost his life. He will shoulder liability at 100%.

This then brings me to the issue of damages. The plaintiff produced the receipts in support of the claimed special damages. I will therefore award her the 30,150/= claimed as special damages. On the issue of general damages, I have been guided by the submission filed by counsel for the plaintiff and the law applicable. I am nonetheless in extreme difficulty in assessing the damages awardable for lost years. The practice is for the court to take the earning of the deceased (or expected earnings), multiply the same with the years he would have been expected to earn the same, less expenses etc. (i.e the multiplier and multiplicand less expenses).

In my view however, this formula is not cast in stone. It is impossible for instance in this case to decide on how much the deceased's future earnings would be. He is said to have sat for his O levels. No evidence whatsoever was adduced to prove that assertion. It was said that he hoped to be a teacher one day. Is mere hope sufficient in this case to calculate future earnings? I don't think so. In the present era of joblessness even for university graduates, it is impossible to contemplate with certainty prospects of a teaching career for the deceased herein, and even assume that amount of money he could have earned. It is also difficult to assume his life expectancy given the perils and constant dangers and other hazards looming over our lives and health these days. Indeed it is said that life expectancy in some parts of this country has fallen to below 40 years of age. I am of the view that the right conclusion is not to be reached by applying what may be called the statistical or actuarial test and arithmetic calculations are to be avoided in circumstances such as these. It would be fallacious to assume, for this purpose, that all human life is continuously an enjoyable and productive thing, so that the shortening of it calls for compensation

to be paid to the deceased's estate on a quantitative basis. The ups and downs of life, its pains and sorrows which include possibilities of affliction by diseases, joblessness etc have to be allowed for in the estimates. In assessing damages for lost years therefore, such damages should not be calculated solely, or even mainly, on the basis of the length of life that is lost. The question thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of happiness and productivity and the loss of dependency on the part of the deceased's dependants.

In this regard therefore, I will award the damages which are in my view practicable given the circumstances of the deceased as at the time he passed on and those prevailing currently. It is with this in mind that having entered Judgment in favour of the plaintiff as against the defendant at 100% liability make the following award:-

- (a) Special damages as claimed in the plaint – Ksh.30,150
- (b) Loss of expectation of life - Ksh.100,000
- (c) Lost years - Ksh.300,000
- (d) Pain and suffering - Ksh. 20,000

TOTAL **Ksh. 450,150**

The plaintiff will also get the costs of this suit plus interest at court rates.

W. KARANJA

JUDGE

Delivered, signed dated at Embu this 1st day of July 2009.

In presence of:-Mr Ngenge for Plaintiff.