



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MOMBASA**

**CIVIL CASE NO 659 OF 1987**

**ALI DHIDHA MOHAMED .....PLAINTIFF**

**VERSUS**

**SWALEH SALIM & 4 OTHERS .....DEFENDANTS**

**JUDGMENT**

The plaintiff claims damages under Law Reform Act for the benefit of the estate of the deceased and damages under Fatal Accidents Act for the deceased's dependants.

The defendants have admitted full liability.

The plaintiff is the brother of Abbas Mohamed Ali who died in a road accident in June 1986. He was 24 years old. According to the evidence of the plaintiff, the parents of the deceased predeceased the deceased and the plaintiff educated the deceased. Deceased finished Form IV in 1982 and obtained Division IV. His School Leaving Certificate issued on 22/11/82 shows that he was an average student.

At the time of his death, the deceased was working as a casual labourer employed by a sub-contract and earning shs 60 a day. He was working 6 days in a week. Plaintiff states that the deceased was giving the plaintiff all the shs 60/- but plaintiff was giving back shs 15/-. According to the plaintiff, the deceased was training as a mason and was expected to start his own business after obtaining a certificate in which he would be earning about shs 5000/- per day.

The deceased was not married but the plaintiff had arranged for his marriage.

From those facts, Mr Asige for the plaintiff submitted that for loss of earning in the lost years, the deceased's net earnings should be shs 2,000/- per month and 25 as a reasonable multiplier. Mr Kiambo for the defendants submits that the figure of shs 5000/- is speculative and that deceased's net earnings should be calculated from his monthly earnings of shs 1,440/- or from the national monthly average wage of shs 800/- and that the reasonable multiplier would be 15.

The plaintiff is a Senior Primary teacher. It seems from the submissions by Mr Asige that the claim is for the estate of the deceased but not for the dependants of the deceased. It is stated that the deceased was training as a mason and was expected to start his own business after qualification and earn about shs 5000/- a month. But the plaintiff conceded that the deceased was not a trained mason at time of his death.

The plaintiff does not say that the deceased was undergoing an apprentice course and has not shown any documents that the plaintiff was indeed undergoing a masonry course. If those were the intentions of the

deceased, he had finished Form IV 4 years before his death and could have finished the masonry course.

There is also no concrete evidence of the earnings of the qualified mason. The case is unlike the *Stella Muga* case HCCC 1870/84 (NRB) where the accused was a proven gifted artist already in university or the case of *Sheida Mushtaq Hassan*, CA 123/85, where the deceased had been accepted by University to study architecture and evidence was called to show earnings of a qualified architect in private practice.

The reality is that the deceased was employed as unskilled labourer and the claim that he could have qualified as a mason and start his own business where he would be able to earn shs 5000/- a month is mere speculation which should be rejected.

Depending on the availability of work, the deceased was earning shs 1,440/ - a month. Damages for lost years under Law Reform are calculated in the same way as loss of dependency under Fatal Accidents Act and under the latter Act, the amount of living expenses is conventionally assessed at no more than 1/3 of the net earnings. That principle should apply in assessing loss of earning in “lost years” except in cases where the deceased expended the whole or part of his net earning on living expenses for the joint benefit of himself and his dependants in which case a different principle should apply – see *Harris v Empress Motors Ltd* [1983] 3 All ER 561.

That would leave net earnings of shs 960/- a month. But deceased was about to marry and living expenses were bound to increase. At the same time, the wages would not remain static but one cannot say with any certainty that there would be a drastic increase in earnings. I consider a monthly net earnings of shs 600/- as reasonable which yields an annual loss to the estate of shs 7,200/-.

The deceased was 24 years at time of death. The average life expectation in Kenya is about 58 years. If all was well the deceased had a working life of 34 years.

In *Isabella Kwamboka v Henry Wangami & Anor* – HCCC 330/86 NRB, Mbaluto J, applied a multiplier of 21 to a 24 year old female clerk in the civil service.

In *Sera Dora Juma v BAT (K) Ltd*, [1978] KLR 40, a multiplier of 20 was applied to a man aged 29 at the time of death who was apparently a low income wage earner.

I agree that the deceased’s work was heavy manual work and was arduous but nevertheless consider a multiplier of 18 as reasonable. That brings the loss of earnings in the “lost years” to shs 139,600/-.

The conventional award for loss of expectation of life in case of adults is shs 60,000/-. The funeral expenses of shs 10,000/- was not proved by receipts. The deceased’s body was not transported.

The claim is excessive and I allow shs 3000/- as funeral expenses and shs 100/- for police abstract – total shs 3,100/-.

I give judgment for the plaintiff on behalf of the estate as follows:-

1. Loss of earnings in the “lost years” for the benefit of the estate shs 139,000.
2. Loss of expectation of life shs 60,000.
3. Special damages shs 3,100.

Total shs 202,700 Costs of the suit to the plaintiff.

The shs 199,600 representing the deceased’s estate to be paid to Messrs Asige Kiverenge & Anyanzwa, Advocates, and be held by them until the Grant of Letters of Administration and until the determination of the heirs of the deceased by a Succession Court.

Dated and Delivered at Mombasa this 4<sup>th</sup> Day of May, 1990

**E.M. GITHINJI**

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**JUDGE**