

Ogutu v Makairo 3Bs Trading Co Ltd

High Court, at Nairobi June 13, 1985

O' Kubasu J

Civil Suit No 3003 of 1984

Cases

1. Abdullah v Githiny [1974] E A
2. Nahashon Kihara Waweru v Kenya Railways Corporation HCCC 1883 of 1978– unreported,
3. Maurice Miriti v Firoze Constructions Co Ltd HCCC No 50 of 1981- unreported

Statutes

1. Fatal Accident Act (cap 32)
2. Law Reform Act (cap 26)

June 13, 1985, O' Kubasu J delivered the following Judgment.

The plaintiff Cosmos Ndire Obiero brings this suit under the Fatal Accident Act (cap 32 Laws of Kenya) and Law Reform Act (cap 26 Laws of Kenya) seeking judgment for general and special damages against the defendant Makairo 3 BS Trading company Limited.

The deceased Johannes Ogutu Ndire was the son of the plaintiff who died at the age of 10 years. The deceased was in standard two. It was on Sunday, November 1 1981 when the plaintiff and his son (deceased) were on their way to attend church service when the deceased was hit by a vehicle as they crossed the road. The vehicle which hit the deceased was registration number KTH 532. The deceased died as a result of this accident. The accident was reported to Sondu police station. The plaintiff testified that he incurred funeral expenses and he produced some receipts to prove this.

This is a case in which the plaintiff lost his son aged 10 years in a traffic accident. In assessing damages to be awarded the court is dealing with uncertainties and discretion. We do not know how far this child would have gone with his education. He might have made it to university had he lived. But he might also have joined other school drop outs. He might have become a very prominent leader but the chances of his becoming a liability to his parents cannot be completely ignored. He might have become a successful businessman. What I am trying to say is that the court has to consider all these possibilities in an attempt to assess what assistance he might have given to his parents. Ordinary wananchi fail to understand why parents of a child who has died in a road accident are awarded only a small amount as general damages while victims who survive such accidents receive large sums of money by way of general damages. This comes about because the law is attempting to commutate into money from the aftermath of a calamity. The courts of today are guided by previous decisions and hence that is why a trend has developed to the effect that dependency of the plaintiff to the victim has to be considered. But in a case of this nature what we know is that life has been lost. In my view no amount of money can compensate the feelings of the parents of a young child. What we can do is to award a token amount just to ameliorate the sad feelings. What would be appropriate general damages in the present case?

In Abdullah v Githiny [1974] E A Kneller J (as he then was) awarded Kshs 8,000 to the father of a girl who was killed in a road accident. The little girl was in Std 1 and his father hoped that she would be a doctor. In Nahashon Kihara Waweru v Kenya Railways Corporation HCCC 1883 of 1978 – unreported, Muli J (as he then was) gave an award of Kshs 50,000 as general damages to the father of the boy aged 13

years who was lured by a pool and who died while swimming the water logged stone quarry.

In *Maurice Miriti v Firoze Constructions Co Ltd* HCCC No 50 of 1981- unreported – Nyarangi J (as he then was) gave as award of Kshs 70,000 for general damages in respect of a Nursery School boy. It is difficult to say what would be appropriate figure for general damages but the three cases I have cited above would give us a rough idea of the general pattern to be allowed in cases of this nature. As I said earlier money cannot compensate life however much we try. The conventional figure of Kshs 20,000 as general damages for a young child has been overtaken by events. Inflation has to be considered and so is, the improvement in our health services. Now children are more likely to reach age of majority than before when medical services were poor. As we assess damages the courts should take a moderate approach. In view of what I have said above I would now award a sum of Kshs 70,000 as general damages. In addition I award now Kshs 6,400 claimed as special damages. Hence the final position is that the plaintiff is awarded a total of Kshs 76,400 I award costs of this suit to the plaintiff.

These figures will of course add interest at court rates.

Order accordingly.