



Kariuki (Suing as the Administrator of the Estate of the Late Onesmus Maina) v Kangemi Matatu Owners Sacco & 2 others (Civil Suit 6067 of 2019) [2023] KEMC 210 (KLR) (28 August 2023) (Judgment)

Neutral citation: [2023] KEMC 210 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 6067 OF 2019
JP ADUKE, SRM
AUGUST 28, 2023

BETWEEN

FREDRICK WANJOHI KARIUKI PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ONESMUS MAINA

AND

KANGEMI MATATU OWNERS SACCO 1ST DEFENDANT
EDWARD KARIUKI 2ND DEFENDANT
MR. KINYANJUI 3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants as the administrators to the estate of the late Onesmus Maina after he sustained fatal injuries due to a road accident which occurred on the 17th November 2017. In the plaint filed on 15th August 2019 the plaintiff avers that the deceased was a pedestrian along Waiyaki Way in Nairobi, when the defendant so negligently drove motor vehicle registration number KBX 486E causing the said motor vehicle to lose control and hit the deceased which resulted to his demise.
2. The plaintiff blames the 2nd defendant and his authorized agents for causing the accident. The plaintiff further avers that the accident was caused solely by the negligence of the defendants.
3. The particulars of the alleged negligence are captured in paragraph 6. The plaintiff prays for general damages under the *Fatal Accidents Act* and the *Law Reform Act*, costs of the suit and interest.
4. Return of service on records shows that the defendants were served with the suit papers. The defendants filed a statement of defence as such the proceedings progressed defended.



5. At the hearing thereof, the Plaintiff called two witnesses who testified under oath. The defendants elected to close their case without calling any witnesses. Parties filed and exchanged written submissions.
6. The issues for determination before this court are two:
 1. Liability;
 2. Quantum;

Liability

7. From the testimony on record, the Plaintiff produced a copy of the Grant of Letters of Administration which confirms that authority to administer the estate of the deceased was vested in the Plaintiff. I have seen a copy of the Abstract from Police Records confirming further details in respect of the accident victim and the said motor vehicle. I have seen a copy of the Post Moterm report on record confirming the cause of death of the deceased. Lastly, I have seen a copy of the Death Certificate confirming the identity of the deceased to be the same as that in the Abstract from the Police Records. Lastly, I have seen a copy of the Motor Vehicle Copy of Records printed on 19th July 2019 ascertaining the ownership of the motor vehicle by the 1st Defendant. This confirmation and chronology from the documents available on the record settles the issue of liability. For the avoidance of doubt, I find liability is in favor of the Plaintiff at a ration of 100:0 against the Defendants.

Quantum

8. With respect to general damages, I have considered all the submissions on record and the authorities cited. I have also considered all exhibits on record. In particular, I have relied on the reasoning of the court in *Wilson Nyamai Ndeto & Anor versus China Wu Yi Limited & Anor* (2017) eKLR where the court awarded damages and outlined the principles to consider in awarding damages under the *Law Reform Act* and the *Fatal Accidents Act*. The deceased in this instance succumbed to fatal injuries when the accident happened. Taking into account the rate of inflation and cost of living, and noting that the deceased did not endure much pain/suffering before succumbing to injuries, I hereby award Kshs. 10,000/- as general damages for pain and suffering.
9. With respect to awards under the *Law Reform Act* and the *Fatal Accidents Act*, I have considered all the submissions on record and note as follows: in deed the age of the deceased is an important factor in such matters. Other factors to be considered include the proven income/earning capacity of the deceased, the dependency ratio of any dependants and the multiplier if any to be used. The deceased herein was an adult citizen, whose potential was known. I have not seen any documentary evidence on record attesting to the deceased's potential and financial obligations if any. However, this does not negate the fact that compensation should be awarded for the untimely demise. Consequently, I hereby award KES 50,000/- for loss of expectation of life. The deceased was of earning age and as such is entitled to award on account of loss of dependency. Consequently, as a matter of common sense and good judgement and noting the absence of proof of earnings from any gainful employment on record, I assume that the deceased would have worked as an unskilled casual and proceed to apply the applicable gazette minimum wage as at the date of the death of the deceased (2017).
10. A general labourer in Nairobi in 2017 earned KES 12,926 per month. Assuming the deceased would have perhaps been enjoying approximately KES 12,926/- for approximately 20 years (life expectancy in Sub Saharan Africa as per 2019 *WHO report*). The deceased was a single man with no wife and children. I am cognizant that at 30 years old, the deceased may have had financial obligations, even though proof



of such financial support is not available on the record as at the date of writing this judgment. I hereby award KES 12,926 x 20x12x1/3 on this account.

11. In conclusion, I enter judgment in favor of the plaintiff as follows;
- a. General damages for pain and suffering Kshs. 10,000.00
 - b. Loss of Expectation of Life 50,000/-
 - c. Loss of dependency 12,926*12*20*1/3
 - d. Costs of the suit
 - e. Interest on a, b,c and d at court rates from the date of judgment until payment in full.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED THIS 28TH AUGUST 2023.

In the presence of:

1. Court Assistant:

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(Name, Signature, Date)

2. Counsel for the Plaintiff-

.....N/A.....

(Name, Signature, Date)

3. For the Defence:

.....N/A.....

(Name, Signature, Date)

