



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Case 39 of 2008

PHOEBE WAMBUI WAWERU (Suing as the administrator of Estate of

FRANCIS KIONGO WAWERU – DECEASED).....PLAINTIFF

VERSUS

ARMED FORCES CANTEEN ORGANIZATION.....DEFENDANT

JUDGMENT

By the plaint dated 14th April 2008, PHOEBE WAMBUI WAWERU, the legal representative of the Estate of Francis Kiongo Waweru, deceased, sued the Armed Forces Canteen Organization, the defendant herein, claiming both general and special damages for the fatal injuries the deceased suffered as a result of a road traffic accident which occurred on 22nd April 2007 involving motor vehicle registration No. KAQ 672Q and the Defendant's motor vehicle registration No. KAN 020C. The Defendant filed a defence denying the Plaintiff's claim. On 9th July 2009, the parties recorded a consent order in the following terms:

1. *“By consent judgment on liability was entered on 9th July, 2009, at 50%: 50% between the Plaintiff and the Defendant.”*

2. *Damages under The Law Reform Act.*

(a) *“By consent judgment be entered against the Defendant for Kshs.100,000/= for loss of expectation of life.”*

(b) *Pain and suffering before death.*

“Judgment be entered for the Plaintiff at

Kshs.30,000/=.”

(c) *Special damages.*

*“Judgment be entered for the Plaintiff for
Kshs.360,000/=.”*

3. *Damages under The Fatal Accidents Act for loss of dependency.*

*“Parties to file submissions and supporting documentation
for the court to assess damages.”*

4. *The case to be fixed for mention for purposes of taking a judgment date.*”

This judgment therefore relates to the award on the loss of dependency under the Fatal Accidents Act.

The Plaintiff urged this Court to apply a multiplier of 13 years at a monthly pay of Kshs.59,707. On this head the Plaintiff asked for Kshs.6,209,528 arrived at as follows:

$59,707 \times 12 \times 13 \times \frac{2}{3} = 6,209,528/=.$

The Defendant on its part proposed a multiplier of 5 years at a monthly income of Kshs.42,854. The Defendant proposed an award of Kshs.857,080 on this head arrived as follows:

$42,854 \times 12 \times 5 \times \frac{2}{3} = 1,714,160$ less 50% contribution = Kshs.857,080/=.

I have considered the rival proposals. There is no doubt that the deceased died at the age of 62 years. He was a trade unionist holding the post of Deputy General Secretary of Kenya Plantation and Agricultural Workers Union earning a monthly pay of Kshs.45,000/=. He also served as a fund Trustee for COTU earning a monthly allowance of Kshs.14,707/=. The post held by the deceased was an elective post in which he was eligible to a re-election. It is said that the deceased enjoyed a robust health. The Plaintiff is of the view that the deceased could have had an active life upto the age of 75 years while the Defendant is of the view that the deceased could have had an active life upto the age of 70 years. The Plaintiff has suggested that the deceased's monthly income was Kshs.59,707/= whereas the Defendant is of the view the deceased's monthly income is Ksh.42,854/=. I have perused the documents tendered by the Plaintiff and I am convinced that the deceased earned a salary of Kshs.35,000/= plus a conveyance allowance of Kshs.10,000/= while he served as the Deputy General Secretary of the Kenya Plantations and Agricultural Workers Union. There is also a confirmation that the deceased received a monthly allowance of Kshs.14,707 from the Central Organization of Trade Unions where he served as a First Trustee. I have looked at the payslip issued by Kenya Plantations and Agricultural Workers Union and it is clear that the deceased received a net pay of Kshs.32,854 plus the conveyance allowance of Kshs.10,000/=. The Defendant did not present any documents to support its proposal. On this head the monthly income received by the deceased is $Kshs.42,854 + 14,707 = 57,561/=$. I will apply a multiplier of 8 years. The end result is that I will award

the Plaintiff a sum of Kshs.3,683,904/= calculated as follows:

$57,561 \times 12 \times 8 \times \frac{2}{3} = 3,683,904/=$.

In the end, judgment is entered for the Plaintiff as against the Defendant as follows:

- | | | |
|---------------------------------|---|--------------------|
| (i) Loss of expectation of life | - | 100,000/= |
| (ii) Pain and suffering | = | 30,000/= |
| (iii) Special damages | = | 360,000/= |
| (iv) Loss of Dependency | = | 3,683,904/= |
| Gross total | = | 4,173,904/= |
| Less 50% contribution | = | 2,086,952/= |
| Net Award | = | <u>2,086,952/=</u> |
- (v) Plus cost and interest at court rates from the date of judgment until the date of payment.

Dated and delivered at Nyeri this 7th day of May 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kiminda holding brief Miss Mwai for the Plaintiff. No appearance for the Defendant.