



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 316 OF 2009

DOUGLAS OOGA NYANSIMORA (Suing as

The administrator to the estate of

JANET KERUBO NYANSIMORA (DECEASED).....PLAINTIFF

V E R S U S –

SAMMY MUTUNGA MAKAU.....1ST DEFENDANT

CHRISTINE OWUOR2ND DEFENDANT

JUDGEMENT

1) The Late Janet Kerubo Nyansimora was fatally injured as a result of a road traffic accident while aboard motor vehicle registration no. KAX 605U. Douglas Ooga Nyansimora, the legal representative of deceased's estate filed this compensatory suit claiming for damages under both the Law Reform Act and the Fatal Accidents Act vide the plaint dated 11.06.2009 and amended on 13th July 2009. The plaint and the summons were served upon the Christine Owuor, 2nd defendant, who failed to enter appearance nor file a defence. Consequently judgment in default of appearance and defence was entered against the 2nd defendant on 11th June 2010. This suit therefore proceeded for hearing as a formal proof. On 10th July 2015, the plaintiff filed a notice to withdraw the suit as against Sammy Mutunga Makau, the 1st defendant.

2) When this suit came up for hearing, the plaintiff's case was supported by the evidence of two witnesses namely Douglas Ooga nyansimora and Thomas Nyansimora. The first to take the witness stand is Douglas Ooga Nyansimora (PW1) who produced before this court limited letters of administration as an exhibit in evidence to show that he is the legal representative of the estate of Janet Kerubo Nyansimora, deceased. PW1 stated that the deceased was his sister who perished while she was a fare paying passenger aboard motor vehicle registration no. KAX 605U which was involved in a road traffic accident along kaplong-Bomet Road on 11th November 2007. He stated that at the time of the accident the motor vehicle was registered in the name of Christine Awuor, the 2nd defendant and was being driven and or managed by Sammy Mutunga Makau , the 1st defendant. PW1 said that the 2nd defendant is vicariously liable for the negligence of the 1st defendant as her employee and or agent while on the steering wheel of KAX 605U. PW1 also produced in evidence as an exhibit a copy of the receipt issued to him showing that he incurred kshs.10,000/= to obtain limited letters of administration in respect of his deceased sister's estate. He stated that his sister was a trained pharmacy technologist who earned kshs.30000/= per month.

He produced in support of that assertion a copy of the certificate in pharmaceutical Technology. PW1 stated that the deceased was survived by a son by the name Ignatius Ratemo. A birth certificate was tendered in support of this assertion. The plaintiff (PW1) did not tender any documentary evidence to prove that the deceased earned a monthly salary of kshs.30,000/=. PW1 further produced the police abstract together with a receipt for kshs.200/= plus the postmortem report. It is the evidence of PW1 that he spent kshs.7,140/= on media to announce the deceased's obituary. PW1 further produced as an exhibit in evidence of receipts showing that he incurred kshs.4,300/= and kshs.11,000/= as mortuary charges and purchase of coffin respectively. He further produced a bundle of receipts to show that he spent ksh.64,000/= to transport mourners.

3) Thomas Nyansimora (PW2) told this court that the deceased was his daughter who used to pay school fees and upkeep ranging between 20,000 and 25,000/= for her siblings per month. PW2 further informed this court that the deceased left a son aged 8 years. At the close of evidence, the plaintiff's counsel was invited to file written submissions.

4) After a careful consideration of the evidence and the submissions the following issues arose for determination:

First, who is to blame for the accident?

Secondly, what is the quantum of damages?

5) On the first issue of liability, an interlocutory judgment has been entered against the 2nd defendant, Christine Owuor in default of appearance and defence. The plaintiff had enumerated the particulars of negligence on the part of the defendants in paragraph 5 of the amended plaint. It is alleged that the 1st defendant acting as an authorised driver, servant, agent and or employee of the 2nd defendant, negligently drove, managed, and or controlled the said motor vehicle and permitted it to roll and as a result the plaintiff suffered fatal injuries. It is alleged that the driver of motor vehicle registration no. KAX 605U drove at high speed causing the motor vehicle to rear off road. The aforesaid averments remain uncontroverted. PW1 reiterated the aforesaid averments when he testified before this court.

6) PW1 further produced as an exhibit in evidence the police abstract form which shows the accident occurred. On the basis of the uncontroverted averments, I find the plaintiff as having established liability against the defendants.

7) The next question to settle is what is the quantum of damages. On the head of general damages for pain and suffering, the plaintiff proposed payment of kshs.300,000/=. The evidence tendered shows that the deceased passed away while undergoing treatment the same day. It is clear to me that the deceased suffered great pain before she passed on.

The deceased however died on the same day while receiving treatment. I am convinced that a sum of ksh.150,000 would suffice for general damages for pain and suffering.

8) The other proposal the plaintiff has put on the table is general damages for loss of expectation of life. The plaintiff has beseeched this court to grant him kshs.200,000/=. There is no doubt that the deceased was aged 23 years at the time of the accident. In the case of **Wilson Mwangi Kabiro vs= Charles Nyamumbo Mageto (2015) eKLR** Justice Mboghli awarded ksh.150,000/= for a 24 year old. I will award a similar amount in his case.

9) The third prayer for the award for loss of dependency. The plaintiff testified informing this court that the deceased was employed by German Doctors Health Services – Kenya earning a net salary of kshs.30,000 per month. The German Doctors Health Services was based in Ruaraka. Though PW1 did not produce documentary evidence to prove the assertion, I have no reason to doubt the assertion now that there is no contrary evidence to controvert. PW2 stated that the deceased used to send home a sum of between kshs.20,00 and 25,000/= as their upkeep and school fees for her siblings. The plaintiff urged this court to use a dependency ration of 2/3 and a multiplier of 47. The plaintiff proposed payment of

..... for the Plaintiff

..... for the Defendant