

# CHAPTER K53 - KWARA STATE TORTS LAW

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### KWARA STATE TORTS LAW

**A Law to provide for the compensation of families and persons killed in accidents, assessment of damages in tort and liability of occupiers of property, etc.**

[KWS 33 of 1991, No. 4 of 2006.]

[Date of commencement: 15<sup>th</sup> August, 1991]

1. Short title

This Law may be cited as the Kwara State Torts Law.

## **2. Commencement**

This Law shall be deemed to have come into operation on the 1st day of October, 1987.

## **3. Interpretation**

In this Law unless the context otherwise requires—

"**court**" means any Court other than a customary court or an Area Court by or before which any claim falls to be determined;

"**damage**" includes loss of life and personal injuries;

"**fault**" means negligence, breach of statutory duty, default or other act or omission which gives rise to a liability in tort or would apart from Part III of this Law give rise to a defence of contributory negligence.

## **4. References to parents**

References to "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother.

## **5. References to child**

References to "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter, a child whose paternity has been acknowledged in accordance with any customary law applicable in Nigeria, a child adopted whether before or after the commencement of this Law, any statute in force in Nigeria or in any other country, and a child *en ventre sa mere*.

[No. 4 of 2006.]

## **PART I**

### *Fatal Accidents*

*Provision for Compensating the Families of Persons Killed in Accidents*

**6. Action maintainable where death caused by negligence**

(1) Whenever the death of any person is caused by the fault of any other person and the fault is such as would (if death had not occurred) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not occurred shall be liable in an action for damages, notwithstanding the death of the person injured.

(2) Every such action shall be for the benefit of members of the immediate family of the deceased person.

(3) For the purpose of this Part "immediate family"—

(a) in relation to a deceased person not subject to a system of customary law, or Islamic law, includes—

(i) husband;

(ii) wife;

(iii) parent;

(iv) child;

(v) brother; and

(vi) sister,

(b) in relation to a deceased person who was subject to system of customary law means, in addition to any of the persons specified in paragraph (a) of this definition, any other relation recognised as such by the customary law to which the deceased was subject;

(c) in relation to a deceased person who was subject to Islamic law, means the persons entitled to share in the award of *diyya* prescribed

by Islamic law.

(4) System of customary law means, in addition to any of the persons specified in paragraph (a) of this definition, any other relation recognised as such by the customary law to which the deceased was subject.

## **7. Persons entitled to bring action**

(1) If the deceased was immediately before this death subject to a system of customary law or Islamic law relating to administration of estates the action shall be brought at the option of his immediate family, by and in the name of such person as the Court is satisfied is under the customary law or Islamic law, entitled or empowered to represent the deceased person or his estate.

(2) The action shall be brought and in the name of the executor or administrator if the deceased person was not subject to a system of customary law or Islamic law.

(3) If-

(a) there is no executor or administrator of the deceased; or

(b) no action is brought within six months after the death by and in the name of an executor or administrator of the deceased,

the action may be brought by and in the name of all or any of the persons for whose benefit the action would have been brought.

(4) Not more than one action shall lie for and in respect of the same subject matter of complaint.

(5) The plaintiff in the action shall be required to deliver the defendant or his legal practitioner full particulars of the persons for whom and on whose behalf the action is brought, and the nature of the claim in respect of which damages are sought to recovered.

## **8. Assessment of damages**

(1) In assessing damage in any action brought under this part of this Law, there shall not be taken into account any insurance money, benefit, pension or gratuity which has

been or will or may be paid as a result of the death of the deceased.

(2) In this section—

**"benefit"** means benefit under the National Provident Fund Act or any corresponding enactment and any payment of a friendly society or trade union for the relief or maintenance of a member's dependants;

**"insurance money"** includes a return of premium; and

**"pension"** includes a return of contribution and payment of a lump sum in respect of a person's employment.

## **9. Payment into Court**

(1) Where a defendant to an action brought under the provision of this part of this Law desires to pay money into court, it shall be sufficient that he pays such money as a compensation in one sum to all persons entitled under this part of this Law, without specifying the share into which it is to be divided by the Court.

(2) Where the sum is not accepted by the plaintiff and an issue is taken up as to its insufficiency and the court finds that the sum is sufficient, the defendant shall be entitled to the findings of the court on that issue.

## **10. Savings**

Nothing contained in this part of this Law shall affect the rights which have accrued to any person before the commencement of this Law under the provisions of any enactment relating to fatal accidents.

## **PART II**

### *Occupiers Liability*

*Provisions for the Liability of Occupiers for Injuries Caused to Persons Lawfully on any Land  
or other Property from Danger due to the State of the Property or Things  
omitted to be done there*

**11. Preliminary**

The provisions of section 12 and 13 of this part of this Law shall have effect, in place of the rules of common law to regulate—

- (a) the duty which the occupier of premises owes to his visitors in respect of dangers due to the state of the premises or things done or omitted to be done on them; and
- (b) the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation he gives (or is treated as giving) to another to enter or use the premises, but shall not otherwise alter the law in force immediately before the commencement of this Law as to the persons on whom a duty is so imposed or to whom it is owed, and accordingly for the purposes of this part of this Law, the persons who are to be treated as an occupier and as his visitors are the same (subject to subsection (3) of this section) persons who would in accordance with the law in force immediately before the commencement of this Law would be treated as an occupier and as his invitees or licensees, respectively.

(2) The provisions of this part of this Law in relation to an occupier of premises and his visitors shall also apply, in a like manner and to the likely extent as principles applicable under any law in force immediately before the commencement of this Law to an occupier of premises and his invitees or licensees would apply, to regulate—

- (a) the obligations of a person occupying or having control over any fixed or movable structure, including any vessel, vehicle or aircraft; and
- (b) the obligation of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

(3) A person entering any premises in exercise of rights conferred by virtue of an access agreement is not, for the purposes of this part of this Law, a visitor of the occupier of those premises.

## **12. Extent of occupier's ordinary duty**

(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the purposes of subsection (2) of this section include the degree of care, and want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an



independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

- (c) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).
- (d) Where the occupier fails or neglects to discharge the common duty of care to a visitor, and the visitor suffers damage as the result partly of that failure or neglect and partly of his own fault, the provision of Part III of this Law shall apply.
- (e) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

### **13. Effect of contract on occupiers liability to third party**

(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligation under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

(3) Where by the terms or conditions governing any tenancy (including a statutory tenancy) either the landlord or the tenant is bound though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant

(4) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Law, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

(5) In subsections (1) and (2) of this section, **"strangers to the contract"** means persons not for the time being entitled to the benefit of the contract as parties to it or as the successors by assignment or otherwise of parties to it, and accordingly includes parties to the contract who have ceased to be so entitled.

#### **14. Landlord's liability in virtue of obligation to repair**

(1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all person who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission but without any contract.

(2) Where premises are occupied under a sub-tenancy, the foregoing subsection shall apply to any landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for the maintenance or repair of the premises is put by the sub-tenancy, and for that purpose any obligation to the occupier which the sub-tenancy puts on a mesne landlord of the premises, or is treated by virtue of this provision as putting on a mesne landlord, shall be treated as put by it also on any landlord on whom the mesne landlord's tenancy puts the like obligation towards the mesne landlord.

(3) For the purposes of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not

debarred by his acquiescence or otherwise from objecting or from enforcing his objection, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier, or, in the case of a superior landlord whose actual obligation is to an inferior landlord his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) This section shall not put a landlord of premises under a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way or of rights conferred by virtue of an access agreement.

(6) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(7) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "**tenancy**" includes a statutory tenancy and also any contract conferring a right of occupation, and "landlord" shall be construed accordingly.

(8) This section applies to tenancies created before the commencement of this Law, as well as to those created after its commencement.

## **15. Implied term in contracts**

(1) Where persons enter or use, or bring or send goods to any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right shall be the common duty of care.

(2) The foregoing subsections shall apply to fixed and moveable structures as it applies to premises.

(3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the commencement of this Law.

## **16. Occupier**

In this Part unless the context otherwise requires the occupier may be—

- (a) a person who is in physical possession of premises; or
- (b) a person who has responsibility for, and control over the condition of premises, the activities conducted on those premises and the person allowed to enter the premises; and
- (c) for purposes of this Law, there may be more than one occupier at the same premises.

## **PART III**

### *Contributory Negligence*

#### *Provisions Relating to Contributory Negligence*

## **17. Appointment of liability**

Where any person suffers damage as the result of partly his own fault and partly the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

Provided that—

- (a) this section shall not operate to defeat any defence arising under a contract; and

(b) when any contract or enactment providing for the limitation of liability is applicable by the claim, the amount of damage recoverable by the claimant by virtue of this section shall not exceed the maximum limit so applicable.

**18. Total damages to be found and recorded**

Where damages are recoverable by any person by virtue of the foregoing section subject to such reduction as is therein mentioned the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

**19. Applications of Part IV when two or more persons liable**

Part IV of this Law shall apply in any case when two or more persons are liable or would, if they had all been sued, be liable by virtue of section 16 in respect of the damage suffered by any person.

**20. Application in case of fatal accidents**

Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons and, if, (had death not ensued) the damages would be reduced under section 16, any damage recoverable in an action brought for the benefit of the dependants of that person under Part I of this Law shall be reduced to a proportionate extent.

**21. Effect of pleading limitation**

Where in any case to which section 16 applies one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover damages or contributions from that other person or representative by virtue of the said section.

**PART IV**

*Proceedings against and Contribution between Tort-Feasors*

*Provisions Relating to Proceedings against and Contribution between Tort-Feasors*

## **22. Proceedings against, and contribution between joint and several tort-feasor**

Where damage is suffered by any person as a result of a tort (whether also a crime or not)—

- (a) judgement recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;
- (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it is suffered, or for the benefit of the estate or for the wife or wives, husband, child or parent of the person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgment given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgement first given, and in any of those actions, other than that in which the judgement is first given, the plaintiff shall not be entitled to costs unless the Court is of the opinion that there was reasonable ground for bringing the action;
- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

## **23. Proceedings for contributions**

In any proceedings for contribution under this Part of this Law, the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

## **24. Extent of Application**

(1) Nothing in this Part of this Law shall—

- (a) apply with respect to any tort committed before the commencement of this Law;
- (b) affect any criminal proceedings against any person in respect of any wrongful act; and
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this Law had not been passed.

(2) For the purposes of this Part of this Law reference in section 22 to "the judgement first given" shall, in a case where that judgement is reversed on appeal be construed as a reference to the judgement first given which is not so reversed and, in a case where a judgement is varied on appeal, be construed as a reference to that judgement as varied.

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[No. 4 of 2006.]

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## CHAPTER K53

### KWARA STATE TORTS LAW

#### SUBSIDIARY LEGISLATION

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*No Subsidiary Legislation*

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