THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.48 OF 1997.

[CORAM; C.M. KATO, JA. A.E. MPAGI-BAHIGEINE, JA;

J.P. BERKO, JA.

SELVANO ASABA…….. 1ST APPELLANT

STEPHEN KAROLE…….. 2ND APPELLANT

VERSUS

VIRGINIA BALISANGA……. RESPONDENT

(Appeal from the decision of His Lordship Mr. Justice J.B.A. Katutsi of the High Court given on 10.9.97 in original C.S. No.MFP DR 12/96)

JUDGMENT OF A.E. MPAGI-BAHIGEINE, J.A.

This is an appeal contesting the quantum of damages awarded by Katutsi,J, in his decision dated 10th September, 1997 at Fort Portal. The learned judge ordered the appellants to pay to the respondent the sum of Shs.6, 938,000/= as general damages for the loss consequent upon her husband's death in a motor accident, for which both appellants were responsible.

The appellants contended inter alia that the award of damages was excessive in that the judge had adopted an erroneous multiplier, and had failed to allow an arithmetically adequate deduction in respect of the deceased's expenditure on the family maintenance.

The deceased was aged 48 years at the time of his death. He was being employed as a foreman at Kasese Hima Cement Factory and earning Shs.159, 240/= per month, which the judge approximated at Shs.150, 000= p.m. He used its run a side cement business on partnership basis, from which he used to earn Shs.130, 000/= p.m. The respondent herself used to

earn Shs.100, 000= p.m. from a food stall she used to run, with capital provided by the deceased. She would apply this to family maintenance; though she did not know and could not tell the court how much the deceased used to spend on the family. Under the circumstances the learned judge after aggregating the deceased's income, estimated the family's living expenses to be at Shs.150, 000= per month. The judge took the multiplier of 7 years to represent the deceased's expectation of life. After all the appropriate deductions, the resulting sum was Shs.6, 938, 000/=.

The memorandum of appeal comprised two grounds which were argued together:

(1) The learned judge erred in awarding an inordinately high amount of damages so as to make the amount an entirely erroneous estimate of the damage which the respondent suffered.
(2) The learned judge acted on wrong principle of law and fact in assessing the quantum of damages awarded to the respondent

. Mr. Mugenyi for the appellant raised the following issues.

(a) That the deceased must have spent only (two-thirds) of his salary on the family and suggested a figure of about 50,000/= since the cost of living up-country was much lower.
(b) That the seven (7) children pleaded by the respondent were never produced in court nor were their birth certificates produced.
(c) That the respondent never knew how much the deceased spent on the family.
(d) That the learned judge erred when he relied on the life expectancy of 55 years instead of 50 years.
(e) That the appellant paid Shs.290,000= for funeral expenses which should be deducted from the award. He prayed court to reduce the award and base it on 50 years life expectancy. He suggested an award of Shs.2 million.

Mr. Didas Nkurunziza for the respondent pointed out that the respondent correctly testified as to the deceased's salary and allowances only that she did not know how much the deceased used to spend on the family. Her evidence on this issue was never challenged.

The learned judge declined to take the gross figure of Shs.250,000= but rather reduced it to a more realistic expenditure of Shs.150,000= per month.
Mr. Nkurunziza pointed out that the respondent's evidence regarding the children was never challenged at all. He maintained that the learned-judge acted on the right principle and did not err in adopting the retirement age of 55 years.

I will start with the multiplier of 7 adopted by the learned judge.
In **S.C. Civil Appeal No.7/93 Christopher Kiggundu & Anor v. UTC**
(1975) Ltd, Manyindo, DCJ, observed:
"Courts of this Country have taken the position that normal working life expectancy is 50 to 55 years."
Also see **S.C. Civil Appeal No.26/1994 B.A.T. 1984 (U) Limited v Selestino Mushongore** where Odoki,Ag. DCJ, as he then was, remarked:

"... I do not think that the learned judge was wrong in holding that working life in Uganda is put at 55 years. That used to be the mandatory retirement age for civil servants, until it was recently increased to 60 years. For a man in the deceased's occupation, I cannot say that the learned judge was wrong to take 55 as what would have been his normal working life."

There can be no doubt therefore that the judge was correct to base the award on 55 years and properly adopted a multiplier of 7.
Regarding the issue of the lower cost of living up-country raised by Mr. Mugenyi, it is my view that in order to determine a person's expenditure on his family, the practice is to consider his earnings rather than the general cost of living. Basically people spend according to their earnings and not according to the cost of living.
Another matter that was raised by Mr. Mugenyi was that the sum of Shs.290,000/= the appellant paid towards the funeral expenses should be deducted. I think it would be quite wrong to accede to this argument. If the respondent had claimed it, by law, it would have been allowed, but she did not. The appellants should not overlook the fact that they were solely responsible for this sad event.

The question of interfering with damages awarded by the lower courts is very clearly dealt with in **Flint v. Lovell 50 TLR 127** where the Court of Appeal in reviewing the damages awarded by a judge on the ground that the damages were excessive expressed the view inter alia, that since an appeal was a rehearing by the Court with regard to all the questions involved in the action, including the question what damages ought to be awarded, the Court of Appeal would be disinclined to reverse the finding of the trial judge with regard to the amount of damages merely because the court thought that if they had tried the case in the first instance they would have given a lesser sum. The court would only interfere if satisfied that in assessing damages complained of the judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of damages to which the plaintiff was not entitled.

In **Associated Architects v. Christine Nazziwa, Civil Appeal No.1 of 1981**, the Court of Appeal declined to interfere, although on the face of them the awards were high but not so high as to justify the court' s interference.

In view of the foregoing, I am of the opinion that under the circumstances of this case the award of Shs.6, 938,000/= ought not to be disturbed. It is not too high a nor is it too low. The correct principles were carefully considered and followed by the learned judge. I would therefore dismiss the appeal, with costs to the respondent, here and below.

Dated at Kampala this 30th day of November 1998

A.E. Mpagi-Bahigeine

JUSTICE OF APPEAL

JUDGMENT OF J.P. BERKO, J.A.:

On the 14th April 1996 Simon Balisanga was a fare-paying passenger in a motor vehicle belonging to the First defendant and being driven by the Second defendant in the course of employment as a Servant or agent of the First defendant. He was severely injured in a motor accident and died as a result of the injuries he sustained. The motor accident was due to the negligence of the Second defendant. The widow for herself and as administratrex of his estate

claimed damages against the defendants. Liability is admitted. Damages only are in issue. The trial Judge awarded the widow Shs. 6,938,000/= to be apportioned among the dependants. That figure is hotly disputed. The defendants say it is too much and should be only Shs. 2 million.

The award is challenged on four main grounds

The first ground is that the deceased was employed as a production foreman at the Hima Cement Factory. At the time of his untimely death his salary was Shs. 159, 240/= per month. The Judge used the sum of Shs. 150,000/= as the amount the deceased spent on his dependants per month. This was said to be unrealistic, as the deceased could not spend the whole of his salary on the family.

The second complaint is that the deceased and his family lived in a rural area where cost of living was low and therefore the deceased could not have spent 150,000/= per month on his family.

The third argument was that the seven years life expectancy was too high. It was said the deceased was aged 48 years at the time of death. The Judge should have taken 50 years life expectancy in Uganda. On that basis the Judge should have used 2 years life expectancy.
Finally, it was contended that credit ought to have been given to the sum of Shs. 290,000/= the defendants paid towards the deceased's funeral expenses.

The respondent has urged us to affirm the award.
On the first issue, there is unchallenged evidence on record that apart from his salary, the deceased was receiving Shs. 130,000/= per month as overtime allowance. He had a food stall ran by his widow with capital provided by himself. From that food stall he was making about Shs. 100,000/= per a month. Besides, there is evidence that he was dealing in cement business in partnership of some sort with a friend. Therefore it was wrong for the defendants to say that the deceased depended solely on his Salary. I am unable to find any sound reason to query the figure of Shs. 150,000/= per month chosen by the Judge.

Closely related to the above, is the argument that the deceased could not have spent Shs. 150,000/= per month on his family as they lived in a rural area. In my view that argument is faulty in at least two respects. Firstly, no evidence was led to establish the cost of living in that area. Secondly, cost of living is essentially a matter of taste and life style. A person in a rural area may indulge in a life style higher than one living in the City of Kampala. I see no merit in that argument.

With regard to the multiplier of Seven years adopted by the Judge, there are authoritative decisions on the point. In **Christopher Kiggundu and Another Vs. U T C (1975) Ltd Civil Appeal,** Manyindo D.C.J. observed.

"Courts of this country have taken the position that normal working life expectancy is 50 to 55 years."

A similar position was taken by Odoki Ag. D.C.J. (as he then was) in **B A T 1984 (U) Ltd. Vs. Salestino Mushong & Another Civil Appeal No. 26 of 1994.**

The deceased was said to be 48 years at the time of death. There is no evidence about his state of health. But I have no doubt he could have continued to work up to the age of 55 years**,** or even more. Consequently the Judge was right in choosing a multiplier of seven years.

The general principle, undoubtedly is, that the plaintiff should be compensated so far as money can do it, the prospect of future financial support which she has lost following the death of the bread winner and not speculative possibilities. The award is made to compensate her and not to punish the wrong doer. She should therefore give credit for all sums which she receives in diminution of her loss, save in so far as it would not be fair or just to require her to do so. It was accordingly fair and just to give credit to the Shs. One million that was paid by the defendants' insurers. It was for such eventuality that the dependants purchased the insurance policy. But it would obviously not be fair or just to reduce the award by reason of Charitable gifts made to her: **See Redpath vs. Belfast & County Down Rly Co. (1947) N1 r 167 approved by the English Court of Appeal in Peacock v Amusement Equipment Co. Lt. [1954) 2 Q B 347.**

In my view, the contribution made by the defendants towards the funeral expenses is in the nature of charitable gift: See **Browning vs The War Offire and Another [1963] 1 QB. 750.** In any event, that expenditure arose directly from the act of the defendants. The plaintiff could have claimed it as special damages, but she did not, presumably because she had already received it. The Judge was therefore right for not deducting that amount from the award.

Accordingly, I agree that the appeal should be dismissed.

J. P.BERKO

JUSTICE OF APPEAL

JUDGMENT OF C. M. KATO, J. A.

I have had the benefit of reading the judgment of Bahigeine, J.A. in draft. I agree with it.

The main complaint in this appeal was that the learned trial judge wrongly assessed the damages awarded to the respondent resulting in awarding her “inordinately high amount”. It is trite law that an appellate court will only interfere with damages awarded by the trial court if the trial judge applied the wrong principle in his assessment of damages or where the damages awarded are so excessive or low that there is a miscarriage of justice. In the case under consideration the judge applied the correct principles and the amount awarded was neither too high nor too low so as to result in miscarriage of justice. Since Berko J.A also agrees, this appeal is dismissed with costs in this court and in the high court to the respondent.

C.M.KATO

JUSTICE OF APPEAL