

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-OO-CV-CS-0804-2006

KABALE EDRIS BUYONDO :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

KAMYA GODFREY MUTUMBA :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT:

The plaintiff is the husband/widower of one Nakiwala Florence (deceased). He brought this action seeking damages for his own benefit and for the dependants of the said deceased, Seruyange Hamza 6 years old, and Kabale Buruhan 3 years old (at the time of filing in December 2006) under the Law Reform (Miscellaneous Provisions) Act, Cap. 79.

The facts upon which the action is founded are contained in paragraphs 4 – 7 of the plaint and the viva voce evidence of the plaintiff, Kabale Edris Buyondo (PW1).

Those facts are briefly that on 9th December 2005 at 2200 hours (11.00 p.m. Local time) at Kikubampanga, Hoima Road, while the deceased was standing off the road, preparing to cross the road, she was knocked and fatally injured by the defendant's motor vehicle Reg. No. UAG 615T Isuzu Elf Truck. There is on record a Police Extract Report and sketch plan. The said defendant's vehicle was at the time being driven on the far side of the road, to the pedestrian walk-way. The vehicle was abandoned at the scene of accident but later on taken by Police to Kakiri Police station. The defendant on being summoned

to Kakiri Police Station declined to disclose nor produce the driver of the defendant's vehicle on the fateful night.

The plaintiff contends that the accident was caused by the negligence of the defendant and gives particulars of negligence in paragraph 7 (h) – (g) of the plaint.

The defendant was served with summons by substituted service but no defence was filed. Accordingly, an interlocutory judgment was entered under O.9 r.8 of the Civil Procedure Rules and the case was only placed before me for assessment of damages.

The principles governing the assessment of damages in cases of this nature are now well established. They were reviewed in **BAT (U) LTD vs SELESTINO MUSHONGORE SCCA NO. 26/94** (reproduced in **[1995], KALR 80**). The first step, as learned counsel for the plaintiff has correctly submitted, is to establish the last known earnings of the deceased out of which is to be assessed the pecuniary benefit regularly accruing to the dependants.

In the instant case, the evidence of the plaintiff is that the deceased used to earn Shs.30,000/= per day from her business as a food vendor and that she spent Shs.5,000/= per day on the dependants. Assuming this to have been the true state of affairs at the time, the earnings would amount to Shs.150,000/= per month; Shs.1,800,000/= annually. This would therefore be the annual dependency.

In a case like this, notwithstanding that the plaintiff's evidence was unchallenged for reasons known to the defendant, it is difficult to ascertain clearly what the deceased was earning at the time, what with some spouses not disclosing to one another their sources of income.

From the evidence of the plaintiff, his wife was a food vendor. I am of the considered view that for a person of that social background, income amounting to Shs.30,000/= per day is on the higher side and an exaggeration. I would think, in the absence of any

records maintained by the deceased to the contrary, that a sum of Shs.3,000/= per day and therefore Shs.90,000/= per month would be realistic. This would give rise to Shs.1,095,000/= as the annual dependency (that is, Shs.3,000 x 365 days).

The next step in the assessment of damages is to establish an appropriate multiplier, which is the number of years the dependency would have continued during the balance of the deceased's life.

I would accept the submission of learned counsel for the plaintiff that the general working life expectancy in Uganda is 55 years. The deceased's age as per paragraph 11 of the plaint and the evidence of PW1 Kabale Edris Buyondo was 24 years. This was also stated in the Medical Certificate of death, an attachment to the plaint. The difference between the working life expectancy of 55 years and the deceased's age of 24 years is 31 years. This would be the balance of the deceased's working life. The total amount for 31 years would be Shs.3,000 x 365 x 31 which amounts to Shs.33,945,000/=.

Taking into account the fact that the dependency of the children would terminate at age 21 years for the two boys, and also taking into account the other uncertainties of life such as death by natural causes, a multiplier of 23 years would be appropriate. This would give a total dependency of Shs.25,185,000/= (that is, Shs.3,000 x 365 x 23).

Judgment in the sum of Shs.25,185,000/= and costs of the suit is entered for the plaintiff against the defendant.

In accordance with S. 6 (2) of the Law Reform (Miscellaneous Provisions) Act, Cap. 79, the award shall be apportioned to the dependants as follows:

- a). 35% to Seruyange Hamza, that is, Shs.8,814,750/;
- b). 35% to Kabale Buruhan, that is, Shs.8,814,750/;
- c). 30% to the plaintiff/widower, that is, Shs.7,555,500/.

Orders accordingly.

Yorokamu Bamwine

JUDGE

24/04/2009

24/04/2009:

Mr. Angaret for plaintiff

Plaintiff absent.

Court:

Judgment delivered

Yorokamu Bamwine

JUDGE

24/04/09