

night of 8th October 1997, at 4a.m or thereabouts, the deceased who was living with -her sister, Immaculate Kateera (P.W.1) went out of the house to answer the call of nature. On her way back to the house, she was shot and-killed by one Okiror Simon, an employee of the respondent. The appellants contended that the killing of their mother was unlawful and/or negligent.

The respondent denied that their employee was negligent. At the trial two issues were framed for resolution namely:

1. Whether the killing amounted to an act of negligence.
2. If so what are remedies plaintiffs are entitled to.

The trial judge answered the first issue in the affirmative and awarded the sum of Shs 1,500,000/ to the appellants at court rate from the date of judgement till payment in full. They were also awarded the taxed costs of the suit.

Being dissatisfied with the award, they lodged the instant appeal. The memorandum of appeal has one ground namely:

1. The trial judge erred in the exercise of his discretion when he awarded the appellants the inordinately inadequate amount of one million five hundred thousand shillings (1,500,000/=) between them as general damages.

When the matter was placed before us for final disposal, Mr. Nkurunziza, learned counsel for the appellant submitted that the amount of money awarded was too low to amount to an error in the exercise of discretion. He pointed out the appellants were introduced to the trial judge. The oldest was 14 years and the youngest 3 years. He conceded that there was no evidence of how much the deceased was earning and how much she was spending on her dependants. However, he contended that the award of was inordinately low, it amounts to error in the exercise of discretion. He argued that the error was caused by the omission on the part of the trial judge to use the guidelines in assessing loss of dependency set out in **Akamba Public Road Services Ltd v Babita CA No.19/98** (unreported). He invited us to follow the case of ***Akamba*** and find that working life in Uganda is 60 years.

Mr. Bogere learned counsel for the respondent did not agree with the above submissions. He submitted that at the trial it was stated that the deceased was doing some business. The nature and character of the business was not stated and the income was not stated. He argued that no evidence was led of gainful employment; therefore no financial loss was occasioned to the dependants. He contended that for a court to arrive at a decision that the amount is too low or too high there must be a comparable figure. He further contended that the appellants should have provided a figure that should have been specifically pleaded. He also stated that the trial judge was not availed an opportunity of a multiplier and therefore the judge cannot be faulted for not addressing himself on the matter. It was his contention that the trial judge was not called upon to act on principles that counsel for the appellants cited.

I think the law is settled that an appellate court will not interfere with the exercise of discretion by a trial court unless it is convinced that either the judge acted upon some wrong principles of law, or that the amount awarded was extremely high or so very small as to make it an erroneous estimate of the damages to which the plaintiff is entitled. See *Flint v Loveell (1935) 1 KB 354* *Bank of Uganda v Fred Masaba & Others SCA No.3/98 Impressa Ing Fortunato Federici v Dr Wambete & Another CACA No.28/9* and *Mbogo v Shah [1968] EA 93*.

In the instant appeal, it is true the evidence given at the trial about the income of the deceased was unsatisfactory. There was also no evidence of how money she was spending on her dependants. But as was observed by this court in the case of *Akamba Public Road Services Ltd v Aisha Babita* (supra) the court should take what is reasonable and a more realistic multiplicand. This court was following the decision of the Supreme Court in the case of *B.A.T (U) Ltd Selestino Mushongere CA No.26/96* where the evidence as to the income of the deceased the amount he paid to his dependants was unsatisfactory and grossly exaggerated. The Supreme Court reduced his daily income that had been put forward from Shs 60,000/= to 10,000/= out of which 5,000 was estimated to be what he spent on his dependants.

Using the above authorities as a guide, I now turn to the facts of this appeal. The testimony given at the trial was that the deceased was doing some business. The nature of the business was neither disclosed nor the amount of money that the deceased was spending on her dependants. To me I think this was understandable because the children who could have testified to the income

and the expenses were still young. But there is no doubt in my mind that the deceased was earning income with which she used to take care of her 5 children. The deceased was aged 37 years at the time of death. If the age of 60 is taken to be the working life in this country, she still had 24 years of working or earning life. I would estimate the amount she was earning at 200,000/= shillings per month and put the amount she spent on the children at shs 100,000/= per month.

The learned trial judge did not take this into consideration when assessing damages to be awarded to the appellants. It is also correct as Mr. Bogere submitted that the authorities that Mr. Nkurunziza cited to us were not referred to the trial judge for consideration by the advocates who appeared before him: It was, however, his duty to refer to them in order for him to reach a just decision. Failure to refer to them occasioned a miscarriage of justice. It cannot be said that he exercised his discretion judiciously. For that reason this court has a duty to interfere.

In the *Akamba* case (supra) Okello JA after quoting a number of authorities said:

***“It seems to me that, in fixing a multiplier, regards must be had to the remaining expectation of earning life of the deceased, the ages of the various individual dependants and the duration of the dependencies will terminate after different intervals, some sort of average must be struck: then, when the apportionment is made, the adjustment between the various dependants can be made.*”**

In the instant appeal, the remaining expectation of the deceased working life was 24 years. The appellants were introduced to court at page 9 of the record. Unfortunately their gender was not stated. I shall therefore, use the age of 18 for all of them to determine their dependency and loss of expectation of life. This would be the multiplier, although I would reduce it to 16 to take care of improbabilities of life.

- (1) Reagan was aged 14 years.
- (2) Druce aged 12 years.
- (3) Gabunga aged 10 years.
- (4) Sharon aged 8 years.

(5) Davis aged 3 years.

I shall now try to assess loss of financial dependency for each child. The first child was aged 14. I take it that the deceased was spending on average 20,000/= shillings on each child. This will give a figure of $20 \times 12 \times 4 = 960,000/=$. The second one was aged 12 and was left with 6 years to attain the age of majority. He/she would be entitled to $20 \times 12 \times 6 = 1,440,000/=$. The third child was aged 10 years. She/he would be entitled to $20 \times 12 \times 8 = 1,920,000/=$. The fourth child was aged 8. She/he would be entitled to $20 \times 12 \times 10 = 2,400,000/=$. The last child was aged 3 years. She would be entitled to $20 \times 12 \times 15 = 3,600,000/=$ this would give a total of Shs 10,320,000/=

Consequently I would set aside the award given by the trial judge and substitute it with the sum of shs 10,320,000/=. This sum will carry interest at court rate from the date of this judgement till payment in full. The appellants would have the costs of the appeal.

JUDGMENT OF S.B.K. KAVUMA, JA.

I have read in draft the judgment of Hon. Lady Justice C.K. Byamugisha, JA.

I fully and the orders made therein. I have nothing useful to add.

JUDGEMENT OF A.E.N. MPAGI-BAHIGEINE, JA

I have read the lead judgement of C.K. Byamugisha JA. I agree with the assessment and apportionment of the damages and would have nothing more to add.

Since Kavuma JA also agrees, the appellants are entitled to the orders as proposed by Byamugisha JA.

Dated at Kampala this 5th day of September 2005.

C.K. Byamugisha

Justice of Appeal

S.B.K. Kavuma

Justice of Appeal

A.E.N. Mpagine-Bahigeine

Justice of Appeal