

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

APPELLATE JURISDICTION

PC. CIVIL APPEAL NO 17 OF 2016

*(Arising from **Meatu** District Court and Original Civil Case No. 12 of 2013)*

SALUM SALUM KHAMISAPPELLANT

VERSUS

HELGONI KINGU.....RESPONDENT

JUDGEMENT

11.10.2018 and 28.12.2018

Ebrahim, J.:

The appellant in this case, Salum Salum Khamis has lodged this appeal raising three ground of appeal. However, going through them it could be gathered that the appellant is basically claiming that the award of Tshs. 45,000,000/- as general damages did not take into consideration and deliberation of the evidence on record; and that the trial court grouped together special damages and general damages.

When the case was called for hearing, there was no proof of service to the respondent, hence the court ordered the appeal to be disposed by way of

written submission. The schedule was set and both parties adhered to the schedule.

The genesis of the matter as could be gathered from the records is that the appellant on 18. 07. 2015, around 19:45 hours was driving a motor vehicle with registration no. T.743 ABG Toyota Land Cruiser at Nkoma Village. He knocked down the deceased, one Kingu Ngangalu and caused his death. The appellant was found guilty and convicted accordingly vide Traffic Case No. 4/2012.

Traffic case proceeded exparte. After hearing the Plaintiff's case, the trial Magistrate found that the specific damages claimed were not proved but were he placed them in general damages. He further awarded general damages to the tune of Tshs. 45,000,000/- after taking into account the economic, social and psychological loss. He also granted costs to the Plaintiff.

Aggrieved the Plaintiff filed the present appeal.

In his written submission, Counsel for the appellant, Mr. Paul Kaunda argued grounds of appeal together. He made reference to the Court of Appeal case of **Anthony Ngoo and Davis Ngoo Vs Kitinda Kimaro**,

Civil Appeal No. 25 of 2014(Unreported – CA Arusha) on the principle that general damages are awarded by the court after consideration and deliberation of evidence to justify the award with assigned reasons. He challenged the trial court for not observing such principle and that the magistrate assumed that special damages can be mixed up with general damages. He prayed for the court to quash the decision of the trial court.

Responding to the argument by the counsel for appellant, Mr. Shilinde Ngalula, advocate for the respondent while conceding to the principle in the cited case of **Anthony Ngoo**, he vigorously denied that the trial Court did not consider evidence on record. He stated that the appellant's counsel did not state the nature of evidence that was not considered to justify the award of Tshs. 45,000,000/-. He stated further that the trial Magistrate considered the evidence of both parties in record along with the issues framed. He also took into account economic, social, psychological and cost incurred during mourning, contended Mr. Shilinde.

As on the assumption of mixing general and special damages, Mr. Shilinde averred that court by way of advice included specific damages in general damages. He prayed for the appeal to be dismissed with costs.

In determining this appeal I find it apt to begin with the last part that the trial magistrate by way of advice included specific damages that were not substantiated in general damages.

Out-rightly I do not agree that it was correct to do so because it is indisputable that specific damages must be specifically stated and strictly proved - **Zuberi Augustino Vs Anicet Mugabe** [1992] TLR 137. It goes therefore that once a party fails to prove special damages as the law requires and the court rules out so, the court cannot go back again and include the amount of special damages in general damages. Without wasting much time, the decision of the trial court of taking unproved amount of special damages and adding to the general damages was absurd and against the principles of law. I accordingly allow such ground of appeal.

The appellant claims that the trial Magistrate awarded general damages to the tune of Tshs. 45,000,000/- without considering the principle stated in the cited case of **Anthony Ngoo and Davis Ngoo Vs Kitinda Kimaro (supra)**.

General damages are those elements of injury that are the proximate and foreseeable consequence of the defendant's conduct. It was stated in the case of **Anthony Ngoo & Another V Kitinda Maro**, Civil Appeal No. 25/2014 that *"general damages are those presumed to be direct or probable consequences of the act complained of"*.

I am alive to the principle that general damages are awarded by the court after consideration and deliberation on the evidence on record able to justify the award. The court has discretion in the award of general damages, the discretion that must be exercised judiciously, by assigning reason.

Interference of the awarded general damages by the appellate court has been discouraged in numerous decisions of the Court of Appeal unless where the appellate court is satisfied that the trial court in assessing the damages applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account of some relevant one); or the amount awarded is inordinately low or inordinately high that it must be a wholly erroneous estimate of the damage. The said principle was illustrated in the case of **Henry Hidaya Ilanga Vs Manyema Manyoka** [1961] EA 705 a position which was cited with approval in the case of **Peter Joseph**

Kilibika and Another Vs Patric Aloyce Mlingi, Civil Appeal No.37 of 2009, CA (Unreported); **The Cooper Motor Corporation Vs Moshi/Arusha Occupational Health Services (1990) TLR**; and **Musa Mwalugala Vs Ndeshe Hota** [1998] TLR, to mention but a few.

Moreover, as it has been stated in the above mentioned cases the purpose of general damages is to put the plaintiff in the same position as far as money can do. Therefore, this court has to look on whether the trial court in assessing the damages used a correct principle of law.

Coming to our instant case, the trial court directed itself into addressing and determining as to whether the Plaintiff is entitled for payment of special and general damages for the loss suffered from the death of the deceased. In doing so, the court as stated earlier rejected special damages as they were not strictly proved. On the general damages he said that he considered economic, social and psychological loss and loss incurred during mourning and burial expenses. Of course as I have already ruled out it was wrong to consider mourning and burial expenses. However, in his judgment the trial magistrate did not state how the evidence adduced made him take into consideration those economic factors to make him reach the decision he reached.

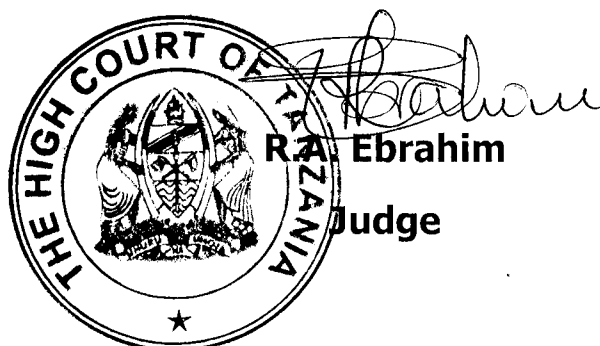
I have gone through the evidence on record. PW2 said that the deceased had 14 children dependent on him and 5 wives. He also said that they are now experiencing difficult life. First of all, no age of those children was shown because as it could be the respondent was 31 years old when giving out his evidence. Thus in no way by that age he was the dependent of the deceased. The evidence did not also reveal the means of income of the deceased as to whether he was working or not. Thus I find that the trial magistrate only made blanket observation and indeed did not evaluate evidence on record to substantiate his findings.

From the above observations therefore, in mind of not misapprehending the facts, but considering the circumstances of the case, infact the plaintiff claimed Tshs. 2,000,000/- as specific damages. More so there is evidence of DW1 and DW2 that the appellant paid money to the respondent and traditional settlement was agreed by parties. Putting all those factors into consideration, the award of Tshs 45 million as general damages in my considered opinion is inordinately high considering the requirement of the law. Thus, I am of the view that the **sum of Tshs. 5,000,000/-** (say Tanzania Shillings five Millions only) would be adequate.

In the whole and for the above reasons, the appeal partly succeeds only to the extent that:

1. General damages is reduced from Tshs. 45,000,000/- and the appellant shall now pay the respondent Tshs. **5,000, 000/-** as general damages.
2. Interest on the decretal amount at the rate of 7% per annum from the date of judgment to the payment in full.
3. I give no order as to costs.

Accordingly ordered.



Shinyanga
28.12.2018

Date: 28/12/2018

Coram: Hon. C. S. Uiso, Ag DR



Appellant: Absent

Respondent: Absent

B/C: Grace, RMA

Court: Matter coming for judgment both parties are absent. Judgment delivered in the absence of both parties.

Court: Right of Appeal explained.

The seal of the High Court of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and a star at the bottom.

S. Uiso
Deputy Registrar
28/12/2018