IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 75 OF 2010

MRS. HUBA HASHIM KASIM ---------- PLAINTIFF

VERSUS

M/S TONDA EXPRESS LTD ---------- 1ST DEFENDANT

BENSON LWENDO ---------- 2ND DEFENDANT

AND

NIKO INSURANCE (TANZANIA) LIMITED ----------3rd Party

JUDGEMENT

Date of last order: 29.01.2020

Date of Judgement: 14.05.2020

EBRAHIM, J.:

The Plaintiff, Mrs Huba Hashim Kassim, the administratrix of the estate of the late **Hashim Kassim Nkya (exhibit P1 letters of administration**) instituted a claim against the 1st and 2nd defendants jointly and severally for payment of Tshs. 500,000,000/- with interest being damages for loss of life, loss of income, burial expenses, family support and general damages. Gathering from the Plaintiff's averments in her plaint, the late Hashim Kassim Nkya died on 23rd March 2009 as a passenger following

an accident occasioned by the 2nd defendant while driving a motor vehicle Yu Tong bus with registration number T.470 AXV owned and operated by the 1st Defendant at Mufindi along Iringa – Mbeya High way. She averred further that as a result of the said accident, the late Hashim Kassim Nkya died from circulatory failure and hemorrhagic shock caused directly by the grievous wounds inflicted on his body.

In the cause of proceedings, the 1st defendant joined the 3rd Party through 3rd Party Notice filed on 1st April 2014 claiming for indemnification. The plaintiff places the claim to the 1st defendant by virtue of being the employer of the 2nd defendant hence vicariously liable. Thus, the plaintiff prays for Judgement and Decree against the defendants as follows:

a) That the defendants pay the plaintiff the sum of Tshs. 500,000,000/- together with interest from the date of filing the suit up to the date of judgement

b) The defendants to pay interest on the decretal sum at Court rate up to the date of payment

c) General damages for the severe psychological damage suffered by plaintiff due to the loss of companion and bread winner

d) Costs

e) Any other relief(s) deems just by the court.

In the course of proceedings, the 2nd defendant on 1st April 2014 filed a Third Party Notice claiming indemnification and accordingly the 3rd Party NIKO Insurance (TANZANIA) Limited (herein after referred to as NIKO Insurance) was joined.

In this case, the 2nd defendant neither filed his written statement of defense nor did he enter appearance.

The 1st defendant upon being served with the plaint, she filed written statement of defense disputing almost each and every allegation putting the Plaintiff to strict proof thereof. She however noted the contents of paragraphs 1,2,3 of the plaint; partly admitted the contents of para 6 of the plaint on the ownership of the motor vehicle and the rest was disputed; noted the contents of para 7 of the plaint and did not dispute on the jurisdiction.

On her side, the 3rd party, save for the addresses denied each and every allegation on the plaint and 3rd party notice. She averred that even if the plaintiff could have been entitled to the compensation, the amount claimed is extremely exaggerated and contrary to the rationale behind compensation for damages.

On 24.08.2018, this court issued exparte order against the 1st and 2nd defendants following their none appearance to defend the case despite being procedurally and accordingly summoned.

In this case the Plaintiff was represented by Mr. Victor Kikwasi assisted by Mr. Henry Kauki both learned advocate. The 3rd Party (NIKO Insurance) preferred the services of advocate Mudhihiri Magee.

In proving their case, the Plaintiff side called one witness **(PW1)**, Mrs. Huba Hashim Kassim. PW1 is the administratix of the estate of the late Hashim Kassim Nkya and she tendered six exhibits. Niko Insurance called one witness as well, Ms. Sara Haule, the assistant manager of Sanlam General Insurance (Niko Insurance).

I took over this case on 03.12.2019 after PW1 had already partly testified in chief following the re-assignment by judge in-charge. I therefore proceeded from where the predecessor judge, hon. Mgonya, J, ended.

On 05.12.2019, this court ordered parties to file their final submissions on/before 31.12.2019 of which I shall consider them in the course of addressing substantive issues. Both parties adhered to the set schedule.

On 31.05.2012, the court adopted the proposed issues which are:

1. *Whether the 1st defendant was in employment of the 1st defendant during the time the cause of action arose;*

2. *Whether the 2nd defendant was reckless and/or negligent in the discharge of his responsibilities;*
3. *Whether the accident occurred as a result of the said negligence; and if so*
4. *What relief(s) are parties entitled to.*

In determining this case, I find it apt to firstly look as to *whether the motor vehicle claimed to have caused an accident had a valid insurance policy.*

Testifying in chief **PW1** tendered in court a receipt no. 24592 for a sum of Tshs. 9,080,800/- being payment for Motor Cover Note No. 55527 for the Vehicle with registration no T740 AXV **(exhibit P4)**. PW1 also tendered Motor Vehicle Insurance Interim Cover Note for Cover Note No. 55527 for a vehicle with registration no. T740AXV issued by NIKO Insurance (Tanzania) Ltd on 03.01.2009 for one year Insurance cover beginning from 03.01.2009 to 02.01.2010 **(exhibit P5)**. The alleged accident occurred on 23.03.2009, just two months after the cover has been issued. In adducing evidence before the court DW1 contested to have received any claim in respect of the accident caused by the 1st Defendant but at no time did she deny that the 1st Defendant was not insured by them at the time of the accident. Counsel for Niko Insurance

though challenging the claim for compensation, he admitted in the written submission that the vehicle blamed to have caused the accident had a valid Insurance Policy with Niko Insurance at the time of accident. From the above facts, it is evident that the motor vehicle in question had a valid Insurance Cover at the time of the alleged accident.

Now coming to the first, second and third issues as to *whether the 1st defendant was in employment of the 1st defendant during the time the cause of action arose; whether the 2nd defendant was reckless and/or negligent in the discharge of his responsibilities; whether the accident occurred as a result of the said negligence.* I shall address all these three issues together.

PW1 testified in chief that on 23rd March 2009, her husband the late Hashim Nkya Kassim died in an accident caused by the negligence of the 2nd defendant, driver of the 1st defendant. PW1 tendered in court a letter of 06.04.2009 addressed to Niko Insurance introducing the accident **(exhibit P2)**; and A Motor Accident Form **(exhibit P3)** filled in by the 1st defendant and submitted to Niko Insurance. The Plaintiff claimed at para 3, 6, 7, 8 and 9 that the 2nd defendant is/ was employed by the 1st defendant as a driver during the material time

when the cause of action accrued. He negligently drove the motor vehicle and caused an accident that claimed the life of the deceased who was a passenger in the said bus. She claimed further that the deceased died from circulatory failure and hemorrhagic shock caused by the grievous wounds he sustained. Thus making the 1st defendant vicarious liable by virtue of being the employer of the 2nd defendant.

Niko Insurance noted the contents of para 3 of the plaint at para 1 of her written statement of defense. She averred at para 5 and 6 of the written statement of defense that the deceased never died of the car accident and put the Plaintiff to a strict proof. She averred further that even if there would have been a police investigation, the Plaintiff would still not be entitled to an exaggerated amount of money. Niko Insurance also noted without admission of liability the contents of para 1 and 2 of the Third Party Notice that the death of one Hashim Kassim Nkya was caused by a road accident, the deceased being a passenger in a bus property of Tonda Express Ltd at Iringa.

Again, the 1st defendant also noted the contents of para 3 of the plaint and at para 5 of her written statement of defense she admitted the ownership of the alleged vehicle but denied that the accident was caused by the negligence of the 1st defendant. At para 6 of the Written

Statement of Defense, she noted the contents of para 7 of the plaint which qualified the plea that the deceased died from *"circulatory failure and hemorrhagic shock directly and immediately connected to the grievous wounds unnecessarily inflicted on his body".*

Counsel for Niko Insurance in his final submission vehemently disputed the occurrence of the accident on the basis that there was no Police Form No. 90 and 115, charge sheet or judgement that was tendered in court to prove that the accident occurred and it caused the death of the deceased. He contended that Niko Insurance cannot be called to indemnify the 1st defendant because there is no proof that motor vehicle with registration no T 470 AXV YU TONG BUS caused the accident which claimed the life of the deceased. He cited the provisions of **section 110 of the Evidence Act Cap 6 RE 2002** on the position of the law that *whoever desires Court to give any legal right which depends on the existence of facts must prove the existence of those facts.* To cement his position he referred to the case of **Abdul – Karim Haji Vs Raymond Nchimbi Alois and Joseph Sita Joseph** [2006] TLR 419, CA at Zanzibar. He concluded on the point that the Plaintiff failed to prove that the accident was caused by the 1st defendant's motor

vehicle under the control of the 2nd defendant hence she is not entitled to indemnity for the loss of life.

Defending their position, Counsel for the Plaintiff submitted that both the 1st defendant and Insurance Company noted the contents of the 3 para of the plaint that the 2nd defendant was the driver of the vehicle which caused the accident who was in the cause of employment the property of the 1st defendant. Hence that fact was neither disputed by the 1st or 2nd defendant. He stated further that the 2nd defendant was arraigned at the District Court of Iringa and charged with a traffic case of negligence/reckless driving and causing injuries to twelve people and deaths of three people of which he was convicted on his own plea. He prayed for the court to take judicial notice of the judgement against the second defendant and thus the 2nd defendant negligently and recklessly caused the accident which resulted into the death of the late Hashim Kassim Nkya.

Before I proceed to determine the three issues pointed out above, I find it important to talk on the argument by the Counsel for the Plaintiff wanting the court to take judicial notice of the judgement against the 2nd defendant. This assertion prompted me to ask myself which judgment is the Counsel for the Plaintiff referring to? Firstly the issue of

traffic case, the judgement and plea of guilty are new facts as they were neither pleaded nor addressed by PW1 in giving out her evidence. The law i.e. **Section 58 and 59 of the Law of Evidence Act, Cap 6 RE 2002** provides for the facts which the Court can take judicial notice. The sections read as follows:

> *"58. No fact of which a court takes judicial notice need be proved.*
>
> *59.-(1) A court shall take judicial notice of the following facts–*
> *(a) all written laws, rules, regulations, proclamations, orders or notices having notice the force of law in any part of the United Republic;*
>
> *(d)* ***all seals of all the courts of the United Republic duly established and of notaries public, and all seals which any person is authorized to use by any written law;***
>
> ***(3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."*** (emphasis is added)

From the above provisions of the law, it is obvious that for a Court to be able to take judicial notice of the judicial decision, the party must produce that decision for the Court to see and recognize the seal of the Court. Otherwise the Court would not be in a position to automatically know the case and expected to call for records seeking for the judgement supposedly concerning the 2nd defendant for its recognition. That is ludicrous! More so as the law requires if the Plaintiff wishes to

base her case on the judgement to establish cause of action as she is trying to do now, she was supposed to plead it and not bring the issue at the submission stage as facts from the bar. Worse still, even the case no is unknown and was also not pleaded. Therefore the assertion that the 2nd defendant was convicted on his own plea of guilty and sentenced to pay fine or serve two years imprisonment is unknown to this court and I hasten to say that it has not been proved. Therefore there is nothing of the sort for this court to take judicial notice.

I am aware that the 2nd defendant did not file the defense. Still it is not an admission of the claim and the Plaintiff has a duty to prove that there was a traffic case ruled against the 2nd defendant – see the cited case of **ABDUL- KARIM HAJI Vs RAYMOND NCHIMBI ALOIS AND JOSEPH SITA JOSEPH (supra)** which held that *"it is an elementary principle of that he who alleges is the one responsible to prove his allegations"*. Infact it is upon the Plaintiff to prove the existence of the negligence of the 2nd defendant after being found guilty at the traffic case. **Section 112 of the law of the Evidence Act, Cap 6 RE 2002** provides so as it reads:

> ***"112.*** *The burden of proof as to* ***any particular fact lies*** *on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person."*

It follows therefore that the judgement of the traffic case would be among the proof of the fact that the 1st defendant's car caused an accident and the 2nd defendant was indeed found negligent. The relevance of the judgement is well provided under **section 43A of the Law of Evidence Act, Cap 6 RE 2002** that:

> "43A. **A final judgement of a court in any criminal proceedings shall**, after the expiry of the time limit for an appeal against that judgement or after the date of the decision of an appeal in those proceedings, whichever is the later, **be taken as conclusive evidence that the person convicted or acquitted was guilty or innocent of the offence to which the judgement relates"** (Emphasis is added).

Thus the criminal judgement would be important proof to show that the 2nd defendant was found guilty of the offence that he was charged with. It would have implied the negligence part because negligence in civil case cases requires its definite proof.

Beginning with whether the 2nd defendant was an employee of the 1st defendant at the time of accident. Both Niko Insurance and the 2nd defendant noted the fact averred at para 3 of the plaint that the 1st defendant was a driver at the time when the cause of action arose. The 1st defendant also admitted ownership of the vehicle but denied that the accident was not cause by the negligence of the 2nd defendant. It is clear here that the 1st defendant does not dispute that her motor

vehicle was involved in an accident. What is disputed is whether it was the 1st defendant's car that caused the accident due to the negligence of the 2nd defendant. Again in filing the 3rd Party Notice, the 1st defendant claimed to Niko Insurance at **para 3 (a) and (b)** that the motor vehicle with registration no. T740 AXV Yutong Model No. ZK 610 6D property of Tonda Express Limited insured by Niko Insurance was involved in an accident on 23rd March 2009 at Iramba village (Kinegembasi area) Mufindi District, Iringa Region. He claimed further that the motor vehicle was in its usual commercial business trips transporting 22 passengers and the deceased Hashim Kassim Nkya was among them when the 2nd defendant overtook the lorry and the bus overturned due to slippery road caused by rain; hence causing the death of Hashim Kassim Nkya.

From the above assertion by the 1st defendant to Niko Insurance, there is no dispute that while in the course of his employment the 2nd defendant was involved in an accident by the 1st defendant's motor vehicle which claimed the life of the late Hashim Kassim Nkya. PW1 testified to have been informed by a group of people that her husband died from an accident in Iringa. I therefore hasten to answer the first issue in affirmative that the 1st defendant was in employment with the 2nd

defendant during the time of accident hence making the 1st defendant vicariously liable. It is also indisputable that the said accident claimed the life of the late Hashim Kassim Nkya.

Another issue is on the negligence on part of the 2nd defendant in discharge of his duties hence causing the accident; which brings to the issue of indemnity by Niko Insurance.

Counsel for the Plaintiff had relied on the offence of reckless driving and negligence that the 2nd defendant was convicted on his own plea. However as already ruled out above, there is no such proof of conviction produced before the court. Such assertion is a mere story from the bar.

Counsel for Niko Insurance has persistently contended that the Plaintiff is not entitled to indemnity for the loss of life since the same failed to prove the existence of the accident and who caused the same.

I have already ruled out above that indeed the accident occurred while the 2nd defendant in the cause of his duty was driving the 1st defendant's car. What is still to be determined is whether the accident was caused by the 1st defendant and whether the Plaintiff is entitled to be indemnified?

On the other hand PW1 tendered in court **exhibit P2 and exhibit P3** which could add relevancy on discussion of the matter. Exhibit P2 was a letter addressed to Niko Insurance introducing the accident. When adducing evidence DW1 told the court that they do not know about exhibit P2 and did not receive it because if it was received in their office there would be a stamp to acknowledge receipt. Taking closer look at exhibit P2, it is a mere letter addressed to NIKO Insurance by Tonda Express Limited acknowledging the accident and the fatality and also requesting for payment. Nevertheless, this letter does not have any endorsement from Niko Insurance the 3rd Party's office acknowledging its receipt. Unfortunately, the Plaintiff side has not provided with any proof that they indeed sent the letter and it was received by the adverse party. I therefore agree with DW1's testimony that exhibit P2 was not sent/received by NIKO Insurance as there is no proof for the same.

As for exhibit P3, DW1 also denied to have received the same as there is no stamp or date from NIKO Insurance; hence they have not received any claim concerning the Plaintiff.

Exhibit P3 is a form issued by the Niko Insurance. DW1 did not deny that it is their form. This form is filled in by the insured giving out the vehicle

details, particulars of the driver and the name of the passenger who died on the accident, which in our instant case is Mr. Hashimu Kassim Nkya. The document was also filled in by the Traffic Police Vehicle Inspector verifying the inspection of the licence of the driver after the accident. This Form was to inform the Insurer about the accident and the fatalities. DW1 admitted that they did not conduct investigation on the present case. It is true that the document has no any endorsement of Niko Insurance to acknowledge receipt of the same but it is their form. The question comes, would the none endorsement of the said documents negate the fact that the accident occurred hence the valid indemnity claim towards the Plaintiff?

The purpose of insurance is to mitigate the risk and offer protection to a person in case of mishaps in our everyday life.

Firstly it is mandatory that every vehicle subject to the limitation set by the written law must have an insurance cover. In many countries in the world our country with no exception, it is mandatory for any vehicle to be insured against third party risks.

Section 4 (1) and 5 (b) of the Motor Vehicle Insurance Act, Cap 169 provides as follows:

"4(1) Subject to the provisions of this Act ***it shall not be lawful*** *for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be,* ***such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.***

5. In order to comply with the requirements of section 4 the policy of insurance must be a policy which–

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person ***caused by or arising out of the use of the vehicle on a road:****" (emphasis added).*

From the above provisions of the law, it is clear that our laws have made it mandatory that no car should be in the road without a valid insurance policy. No such insurance or security has to cover the third party in the course of the use of the motor vehicle. Therefore I can safely say that insuring a third party in a motor vehicle is mandatory and the right of the third party in a motor vehicle is protected by law.

Now coming to our instant case, the argument presented by the other party is that in the absence of proof of negligence by the 2nd defendant, the Plaintiff has no right of indemnity. In so far as the facts

and circumstances of this case are concerned, I do not agree to such assertion for the reasons that I shall explain.

I would wish to point out here that in our jurisdiction, the traffic cases are criminal cases whereby the complainant is the Republic. The victim is a mere witness. That being said in-case of the third party the issue as to whether the perpetrator has been arraigned to court or not lies completely within the discretion of the Republic.

Nevertheless, as pointed out earlier on the mandatory requirement of the insurance policy, it is indisputable that any passenger vehicle must have insurance covering the passengers boarding their vehicles on accidents and other calamities. That being the position therefore the premium for passengers' vehicle is covered in terms of seats. That is to say a passenger is covered by virtue of the proof that she/he boarded the vehicle and was actually travelling in the respective motor vehicle when the accident occurred. Thus, the liability (indemnity) towards the passenger who is a third party in an insurance cover is strict and the 3rd Party derives his/her right from the Insurer of the insured vehicle because without even repeating myself here, the insurance policy covers a third party (passenger).

I am alive to a faulty (tort) principle where the role of the victim plays a role e.g. road user, cyclists etc. I would not dwell much on discussing the issues of the role of victim at this juncture; nevertheless in my considered opinion it is wrong to use a faulty principle to a passenger of a vehicle who is deemed insured from the moment he boards the vehicle. Thus, the coverage of a third party particularly in our instant case has no nexus with either the negligence/reckless/faulty of the driver or mechanical failure of the motor vehicle but the fact that he was a passenger in the motor vehicle with registration No. T470AXV.

More-so in ensuring the protection of the third party the law i.e. **section 10(1) of the Motor Vehicle Insurance Act, Cap 169** has imposed a duty to the insurer to satisfy judgements against persons insured in respect of third party risks. Section 10(1) states as follows:-

> *"10. (1) If, after a policy of insurance has been effected, judgment in respect of any liability as is required to be covered* ***by a policy under paragraph (b) of section 5 of this Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy****, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy,* ***the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability****, including any amount payable in*

respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments." (emphasis added).

Therefore the insurer subject to the liability found by the court shall be liable to pay the decreed adjudged sum.

It is also true to the position that while the right of the third party is protected by law; the right of the insured is protected by the contract between the insurer and the insured which as well is imported from the liability against the 3rd party which in essence is a public liability.

That being the position therefore the liability of the passenger in a motor vehicle in this case is fault free considering my earlier findings that the accident occurred on a passenger vehicle a property of the 1st defendant while driven by the 2nd defendant an employee of the 1st defendant and was insured by the 3rd Party (NIKO INSURANCE). Again the accident claimed the life of the late Hashim Nkya. Cumulatively the Plaintiff has a right of indemnity contrary to the assertion by the Counsel for Niko Insurance. The stated documents would have added into evidence on the occurrence of accident. Still there is evidence to prove the same; hence the right of claim is intact.

The last issue now is relief(s) that parties are entitled to which is also predicated on the issue as to whether the Plaintiff is entitled to the payment of Tshs. 500,000,000/-.

Counsel for the Defendant has heavily contested the stated amount of compensation on the bases that the amount is so exaggerated and the Plaintiff has failed to proof funeral expenses, loss of income and justification of general damages. He referred to the case of **Attorney General Vs Roseleen Kombe,** Civil Appeal No. 80 of 2002, (CAT); and the Kenyan cases of **Kenya Breweries Ltd Vs Kaimbu General Transport Agency Ltd**, Civil Case No.9 of 2000; and **Shabani Vs Nairobi City Council** (1982-1988) 1 KAR 681 on the principle that *in claim for damages it is the claimant's duty to prove them.* He also cited the provisions of **Section 4(2) of the Law Reform Fatal Accident and Miscellaneous Provisions Act** that damages must be awarded and divided to the dependents of the deceased's only.

PW1 has extensively told the court that she was a house wife and together with her children they depended on the deceased for their welfare. She mentioned that the children were studying abroad but could not proceed with the studies after the death of their father. PW1

also claimed to be paid damages for funeral expenses, transferring the body from Iringa to Dar Es Salaam on a chartered plane and then from Dar Es Salaam to Moshi. She also claimed for the damages of transporting the children from abroad where they were studying to Tanzania for burial services. She prayed to be compensated Tshs. 200,000,000/- as general damages.

PW1 has claimed the amount of Tshs. 500,000,000/- (say Tanzania Shillings Five Hundred Million) being damages for the loss of life, loss of income, burial expenses, family support and general damages for the severe psychological damage suffered due to loss of companion and bread winner. When she was adducing her evidence in court she said that by the time the deceased met his death he was a business man and was also employed by Machines Consultant Limited. She mentioned deceased's shares in Nintro Company Limited and stated that he was the Governor of the Lions Club East and Central Africa. She mentioned also that they have three children Leyla Hashim, Ramuna Hashim and Abubakar Hashim who were all pursuing their studies outside the country. When PW1 was responding to cross examination questions analyzed the payment being Tshs. 200,000,000/- for loss of life,

Tshs. 100,000,000/- burial expenses and Tshs 200,000,000/- as general damages.

Indeed save for the general damages which are awarded at the discretion of the court and I shall venture in its discussion later in the course, the payment of all other damages outlined by PW1 are subject to proof in one way or another.

I must begin by citing the provisions of **section 4(2) of the Law Reform Fatal Accident and Miscellaneous Provisions Act, Cap 310** which requires the amount recovered to ***be divided amongst the afore said parties*** in such shares as the court shall find and direct.

I am inclined to agree with the Counsel for Niko Insurance here that the proof of the dependents is mandatory. However in this case, the Plaintiff apart from merely mentioning the three names as children of the deceased, they have not been pleaded in the plaint to form part of the relief claimed and cause of action; nor have their birth certificates been appended and tendered in court to prove their existence and their age. As such without wasting much time, there is no proof that the deceased left children who depended on him. PW1 claimed that she

was the wife of the deceased; this fact was acknowledged by the 1st defendant in her Third Party Notice.

As for the burial expenses, chartering a plane, funeral expenses and ticket for the purported children, all those are specific damages which the law requires them to be specifically pleaded and strictly proved as held in the case of **Masolele General Agencies V. African Inland Church Tanzania (1994) TLR** 192. In this case there was no such proof as there were no any receipts for hiring of charter plane, tickets for the children or receipt for buying the coffin and provision of food that were tendered in court as the law so requires. Therefore, the claim for those damages also remains unproved.

Another aspect that was strongly claimed by PW1 was payment of damages in respect of loss of life and bread winner. She claimed that the deceased was a businessman and employed. The Court of Appeal in the cited case of **Attorney General Vs Roseleen Kombe(supra)** cited with approval the case of **Davies V Powell Duffryn Associate Colliers Ltd (1942), AC 601** on the principle that in awarding damages for loss of income there has to be basis to work on it meaning that the age and the source of income of the deceased has also to be proved. By this it

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 of the law 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.

Indeed one cannot definitely measure the anguish of a close member of the family in monetary value. However as stated earlier, the rationale is at least to act as a solitude for the anguish suffered. Thus the ultimate determination is to be viewed with objectivity.

In this case one cannot imagine the anguish and pain suffered by the Plaintiff in losing her life companion; nor can it be ignored the fact that the Plaintiff has been seeking for such solitude in a long time now. Thus the approach of this court is broad based. It is on that basis that I find that the Plaintiff is entitled to be compensated general damages for pain and anguish suffered. Accordingly the award Tshs. 100,000,000/-

(say Tanzania Shillings one hundred million only) shall act as solitude in the circumstance of this case.

In the end, the Plaintiff case succeeds only to the extent that:

1. Both the 2nd Defendant and Niko Insurance (Tanzania) Ltd shall jointly and severally pay the Plaintiff the amount of Tshs. 100,000,000/- (say Tanzania Shillings One Hundred Million only) as general damages
2. The adjudged sum to attract interest of 7% p.a from the date of judgement till full satisfaction of the decree.
3. The Plaintiff shall also have her costs.

Accordingly ordered

R.A. Ebrahim

Judge

Dar Es Salaam

14.05.2020