

KABWE INTERNATIONAL TRANSPORT LTD AND MADISON INSURANCE COMPANY
(Z) LTD v MATHEWS NJELEKWE (1998) S.J. 46 (S.C.)

SUPREME COURT
NGULUBE C.J., SAKALA, AG. D.C.J., AND LEWANIKA, J.S.
JUNE, 1998 AND 11TH SEPTEMBER, 1998
(S.C.Z. JUDGMENT NO. 12 OF 1998)

Flynote

Damages - whether the amount awarded by the deputy registrar was unreasonably high
Evidence - Judicial notice - Rate of inflation

Headnote

The deceased a four year old child, while playing at a neighbour's house, was run over by a truck and trailer driven the first appellant's servant in the course of his duties. The respondent in this appeal obtained judgment in default of appearance. Subsequent to the default judgment the respondent applied for assessment of damages. This appeal is against the award of K15 million damages by the District Registrar for loss of expectation of life under the Law Reform (Miscellaneous Provisions) Act of 1967. The court further awarded the respondent a sum of K400,000 as special damages

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Held:

(i) The sum of K15,000,000 was too high and utterly unreasonable

Cases referred to:

- (1) Administrator General v Lucas William Albassini (1971) Z.R. 10
- (2) The Attorney General v The Administrator General (Re schulle Deceased) (1987) Z.R. 1
- (3) Litana and Another v The Attorney General, S.C.Z. Judgment No. 16 of 1987
- (4) Kabanda, Kajema Construction v Kasanga S.C.Z. Judgment No. 2 of 1992
- (5) The Attorney General v Jumbe, S.C.Z. Judgment No. 18 of 1995

For the appellant: Mrs J L Kabuka, of Kabuka and Company

For the respondent: Dr J Soko of Josias and Partners

Judgment

SAKALA, Ag. D.C.J.: delivered the judgment of the court.

The respondent in this appeal obtained judgment in default of appearance. Subsequent to the default judgment the respondent applied for assessment of damages. This appeal is against the award of K15 million damages by the District Registrar for loss of expectation of life under the Law Reform (Miscellaneous Provisions) Act of 1967. The court further awarded the respondent a sum of K400,000.00 as special damages. At the hearing of the assessment only the respondent gave oral evidence. The appellant relied on written submissions.

The brief facts of the case are that on 18th January 1993, the deceased a four year old child, while playing at a neighbour's house, was run over by a truck and trailer driven by the first appellant's servant in the course of his duties.

In his evidence the respondent testified that he incurred funeral expenses in the sum of

K600,000.00 and paid K15,000.00 for a coffin. He also bought food at the funeral. The learned District Registrar considered the evidence on record and the submissions. The court examined a number of English authorities in which damages for expectation of life have been awarded. The court also considered the Zambian authorities specifically the cases of Administrator General v Lucas Williams Albassini (1) in which a modest award of K800.00 was made and Attorney General v Administrator General (2) (Re: schulle (Deceased)) in which a sum of K1,500 was awarded. The District Registrar noted that in the case of children of very tender years there is so much uncertainty about their future that no confident estimate of future happiness can be made. The court considered the sum of K15,000,000.00 as a moderate figure taking into account the deceased's age and the value of the Kwacha. The total award given was K15,400,000.00. The sum of K400,000.00 was awarded as special damages. Mrs Kabuka who filed five grounds of appeal abandoned three of the grounds and only argued two namely, that the award of K15 million was so high as to be utterly unreasonable and an entirely erroneous estimate of damages payable and that the court erred in awarding K400,000.00 assumed special damages for funeral expenses which were not proved at the hearing.

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In support of the submissions on ground one counsel relied on this court's decisions in the cases of Litana And Another v The Attorney General(3) in which a sum of K3,000 was awarded, Kabanda, Kajema Construction v Kasanga (4) where a sum of K25,000 was awarded and in the case of Attorney General v Jumbe (5) in which a sum of K300,000 was recommended after this court considered racing inflation being experienced at that time and set aside the trial court's award of K1.5 million as being inordinately high and unrealistic. In all these cases the deceased were all of tender ages. Counsel submitted that even taking into consideration all the inflationary factors since the decision in the Jumbe case in 1995, an award of K15,000,000 was an outrageously high figure, utterly unreasonable and not supported by this court's decided cases.

In reply to the submissions on ground one Dr Soko on behalf of the respondent informed the court that he was unable to run away from the principles and reasoning set out in the Jumbe case; but that it was always difficult to quantify the loss of infants or children of tender age. He conceded that on the facts of the present case and the decided authorities the award of K15,000,000.00 was on the higher side. He however, suggested that a figure of K10,000,000.00 would be an appropriate award.

We have considered the arguments and submissions on this ground by both learned counsel. We agree with them that on the authorities of this court, the recent one being the Jumbe case decided in 1995, a sum of K15,000,000.00 was too high and utterly unreasonable. We accordingly set it aside. In 1995 this court recommended an award of K300,000.00 after considering the racing inflation being experienced at that time. We take judicial notice that the racing inflation has not in fact reduced if not even faster now than in 1995. In our view we would now recommend an award of K1,000,000.00 after taking into account the accelerated racing inflation of the Kwacha now. On ground two Mrs Kabuka contended that an award of K400,000.00 assumed special damages was not supported by any evidence and therefore the District Registrar fell into error by hazarding a guess. Dr Soko urged the court to uphold the award of K400,000 notwithstanding the absence of receipts to support the award.

In dealing with the award of K400,000.00 as special damages, we take note that the respondent pleaded special damages in the sum of K600,000.00. Judgment in default of appearance was entered in favour of the respondent. At the hearing of the assessment the respondent gave evidence to the effect that his son was run over on 18th January 1993. He was buried on 22nd January 1993. He incurred funeral expenses of about K600,000.00. He booked four trucks for transport at the funeral but that he did not get receipts for booking transport. He paid K15,000.00 for the Coffin and he bought food for the funeral but that he did not obtain receipts. While we cannot take judicial notice of the actual funeral expenses, the respondent's evidence of the funeral expenses was not seriously controverted. The District Registrar's hazardous guess of K400,000.00 as special damages for funeral expenses was not in our view unreasonable. It was an intelligent guess. We uphold it.

The net result is that this appeal is successful on ground one but unsuccessful on ground two. Each party will therefore bear its own costs.

Appeal partly allowed
