REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 135 OF 2017

NGUKU JULIUS alias JULIUS KIOKO NGULI.....APPELLANT

VERSUS

STEPHEN MUSAU KILONZO and NDULULU MUSAU KILONZO

(Suing on behalf of the Estate of MATHIAS

MULI-DECEASED).....RESPONDENTS

(Being an Appeal from the Judgment of Hon.A. Lorot H.R (MR)

SPM delivered on 8th September 2017 in Machakos CMCC No. 465 of 2015)

BETWEEN

STEPHEN MUSAU KILONZO and NDULULU MUSAU KILONZO

(Suing on behalf of the Estate of MATHIAS

MULI-DECEASED).....PLAINTIFFS

VERSUS.

NGUKU JULIUS alias JULIUS KIOKO NGULI.....DEFENDANT

JUDGEMENT

1. By a plaint dated 8th June, 2015, the Respondents herein instituted a suit on their own behalf and on behalf of the estate of Mathias Muli (deceased) against the Appellant herein claiming Special Damages in the sum of Kshs 39,950/- General Damages, Costs and interests.

2. The Respondent's suit was premised on the fact that on or about 2nd November, 2013, the deceased was lawfully walking off Kaundatini-Ulu Road when the appellant either by himself or through his authorised driver so negligently drove the Appellant's motor vehicle reg. no. KAY 711E that the said vehicle was caused to veer off and hit the deceased from the rear as a result of which the Respondent sustained fatal injuries. The particulars of the negligence, particulars pursuant to statute and special damages were pleaded.

3. On 27th July, 2016, the parties recorded a consent on liability in which judgement was entered in favour of the Respondent against the Appellant in the ratio of 80:20 and the mater proceeded to assessment of damages based on the documents attached in support of the claim.

4. After considering the evidence on record, the learned trial magistrate awarded the plaintiffs Kshs 20,000.00 as pain and suffering though he appreciated that there was no evidence adduced in this respect. However, the deceased died the same day hence he inferred that he must have died on the spot. As regards the loss of expectation of life, the court considered that since the deceased was aged 34 years old and was only survived by his parents, he had a lot of years ahead of him. Consequently, the court awarded him Kshs 150,000.00 on this head.

5. Regarding the loss of dependency, the court took into account the fact that there was no evidence regarding the deceased's income and adopted Kshs 10,954/70 suggested by the Appellant as the minimum wage applicable. Since the parties agreed that the appropriate retirement age would be 60 years the learned trial magistrate adopted the same. Since the deceased's parents depended on him, the court adopted the ratio of 2/3rds. The total award under this head was therefore calculated in the sum of Kshs 2,278,577.60. The special damages were awarded in the sum of Kshs 39,950/- bringing the total award to Kshs 1,990,822.08.

6. The Appellant is aggrieved by this award has raised the following grounds of appeal:

> ***1. That the learned Magistrate erred in law and in fact in adopting a dependency ratio of 2/3rds while there was no evidence of such dependency given by the Respondent during the trial.***
>
> ***2. That the learned Magistrate erred in law and in fact in failing to appreciate that the issue of dependency can only be proved on evidence by facts and hence he had nothing to rely on in making his award for loss of dependency as the respondent never testified nor produced proff of dependency.***
>
> ***3. That the learned Magistrate erred in law and in fact in adopting a dependency period of 26 years without considering the age of the deceased parents who were the only dependants of the deceased and who were of an advanced age and had few years of depending on the deceased.***
>
> ***4. That the learned Magistrate erred in law and in fact in failing to deduct the award under loss of expectation of life from the award made under loss of dependency thereby making a double award to the respondent.***
>
> ***5. That the learned Magistrate erred in law and in fact in failing to appreciate the already set down jurisprudence on making awards under Fatal Accidents Act and the Law Reform Act where a deceased has no surviving wife or children.***

7. In this appeal it was submitted on behalf of the appellant that the Learned Trial Magistrate adopted dependency ratio of 2/3 whereby the Respondents, who are the parents to the Deceased, depended on the Deceased yet the Respondents did not testify to prove the alleged dependency. In this regard the appellant relied on **s**ection 2 **of the** ***Insurance (Motor Vehicle Third Party Risks) Amendment Act*** which provides for **"dependency" as** "that part of the deceased's earnings that he/she spent on the maintenance or financial support of his/her dependants." The appellant cited the case of **Benedeta Wanjiku Kimani vs Changwon Cheboi & Another [2013] eKLR** where the court therein relying on HCCC No 1438 of 1998 - **Beatrice Wangui Thairu vs. Hon Ezekiel Bargetuny.**

8. In this case, it was submitted, the Respondents had not placed before the Trial Court any evidence material or otherwise, to demonstrate that they were dependent on the deceased and the extent of the dependency so as to justify the dependency ratio adopted by the Learned Trial Magistrate. Further reliance was placed on **Chania Shuttle vs. Mary Mumbi [2017] eKLR, Godana Guyo Halake & Another vs. Patrick Ndeli Ndoli & Another [2017] eKLR, Mugo –vs- Ngari HCCC No. 5087 of 1990** and **Anne Njoki Njenga –vs- Umoja Floor Mills and Another Nakuru HCC No. 149 of 2003,** and it was submitted that the learned Trial Magistrate had no evidence before him to justify how the 1st and 2nd Respondent's being the parents of the deceased who died aged 34 years old and a single man, both aged 60 and 52 years respectively, at the time of the accident were depending on him. According to the appellant, no testimony was made in court as to the deceased's nature of work and how much of his income or material support was set aside for the Respondents. While appreciating that parents do rely on their middle aged children, it was submitted that such dependence must be proved through evidence. In the absence of such evidence the Trial Magistrate was at a loss to determine the ratio of dependency and this court to reverse his decision and apply a dependency ratio of 1/3.

9. The appellant faulted the decision of the learned trial magistrate to rely on the submissions of the parties and submitted that any court of law is charged with the responsibility of going far and beyond to arrive at a just decision and the court is not bound by the parties' submissions in determining the award to be made. It was therefore submitted that the Learned Trial Magistrate's failure to apply the celebrated principles of making fatal awards and simply applying what parties have submitted resulted in an erroneous judgment which ought to be set aside. According to the submissions, counsel who then acting in the matter on behalf of the Appellant indicated a dependency period of 26 years instead of 16 years which he intended to.

10. It was submitted that had the trial court applied these principles this appeal would not be necessary and this court was urged to apply them as submitted herein to arrive at a fair and just decision.

11. With respect to the multiplier, it was submitted that the Learned Trial Magistrate adopted a dependency period of 26 years, without considering the age of the Deceased Parents who were the only alleged Dependants of the Deceased and were advanced in age with few years depending on the Deceased. In this regard the appellant cited the case of **Pleasant View School Limited vs. Rose Mutheu Kithoi & Another [2017] eKLR,** where the court upheld the multiplier of 20 years adopted by the Learned Trial Magistrate where the deceased was aged thirty six (36) years of age. He also relied upon the case of Elizabeth **Chelagat Tanui & Another vs. Arthur Mwangi Kanyua [2013] eKLR** where the court adopted a multiplier of eighteen (18) where the deceased was aged thirty six (36) years while in ***Anne Njoki Njenga*** **(supra) the court adopted a multiplier of 14 where the deceased was aged 36 years.**

12. Based on the foregoing, the appellant was of the view that a multiplier of 20 years is most reasonable considering the advancement of age of the Deceased Parents as well as the exigencies and vicissitudes of life. To the appellant, while considering the period of dependency the age of the Dependants is a very important factor in that one can only depend on the other when they are alive and for a certain period when the dependency is available, in this matter the Respondents were aged 60 and 52 years respectively at the time of the accident and the learned trial magistrate in adopting 26 years of dependency assumed the deceased would have continued to support the Respondents at the same rate and that the Respondents would live for that period up to 76 and 70 years respectively. While appreciating that one cannot tell long the Respondents would have lived, it was submitted that it is highly unlikely that human beings of advanced age would live that long especially with life expectancy in Kenya set at below 50 years. Further it is well settled that once a man settles down and finds a family his contribution is more focused on his family thereby greatly diminishing the ratio which other Dependants were enjoying. In this case it was submitted that

that the deceased was at a stage in his life where he was expected to be settling down meaning the dependency of the Respondents would have diminished significantly. In the appellant's view, the computation on loss of dependency based on the foregoing ought to have been as follows:

10,954.70 x 12 x 20 x 1/3= 876,376.00

13. As regards the issue of double award, the appellant relied on the case of **Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another vs. Lubia & Another (No 2) [1985] eKLR** as read with section 2(5) of the Law Reform Act and submitted that what section 2(5) of the ***Law Reform Act*** means is that a party entitled to sue under the ***Fatal Accidents Act*** still has the right to sue under the Law Reform Act in respect of the same death. In the appellant's submissions since the words used in s. 4(2) of the Fatal Accidents Act are "taken into account" and not necessarily deducted, it is enough if the judgment of the lower Court shows that in reaching the figure awarded under the ***Fatal Accidents Act*** it bore in mind or considered what he had awarded under the ***Law Reform Act*** for the non-pecuniary loss. However, at no point did the Learned Magistrate indicate having taken into account the awards under the ***Fatal Accidents Act*** and those under the Law Reform Act. As such this Court was urged to deduct the award made under the ***Law Reform Act*** from that made under the ***Fatal Accidents Act*** so that due consideration can be given as provided by the act and to further avert unjust enrichment to the Respondents noting that both awards are going to the same persons.

14. In conclusion the appellant submitted that based on the foregoing, this court should vary the judgment of the Learned Trial Magistrate by setting aside and/or vacating the sum of Kshs. 1,990,822.08 and award the tabulation as follows:

1. Pain and Suffering……..…...KShs.20,000.00
2. Loss of expectation of life……..…….KShs.150,000.00
3. Loss of dependency (10,954.70 x 12 x 20 x 1/3)……..…..KShs.876,376.00
4. Special damages……..….KShs.39,950.00

Sub-total…….……KShs.1,086,326.00

Less double award…….…...Kshs. 170,000.00

Balance……..…**Kshs. 916,326.00**

Less 20% agreed contribution…….…KShs.183,265.20

Total……..**KShs.733,060.80**

Plus costs and interests.

15. In opposing the appeal, the respondents submitted that deceased was aged 34 years at the time he met his death. The Respondents proposed a multiplier of 36 years while the Appellant proposed 26 years in their submissions. In his judgment the trial Magistrate adopted the multiplier of 26 years as proposed by the defence. Accordingly, this court was urged to find this ground of appeal unmerited.

16. As regards dependency ratio, it was submitted that the trial court had the opportunity of seeing and hearing the Respondent's testimony. It is not in dispute that the deceased left behind his father and mother and that the Appellants acknowledged that the Respondents are old, aged 60 and 52 years. It is therefore not in doubt that the Respondents must have fully relied on the deceased for support. Dependency is a question of fact and the fact that the Respondents are too aged justifies a dependency ratio of 2/3 and reliance was sought in **Chania Shuttle vs Mary Mumbi (2017) eKLR** where the court held:-

> **"……indeed, a dependency ratio of 2/3 can still be applied even where there is a single Dependant irrespective of whether or not such Dependant is an adult, if evidence is adduced to demonstrate that such Dependant relied on the deceased to such an extent…"**

17. The Respondents therefore argued that the trial Magistrate cannot be faulted for having adopted a ratio of 2/3.

18. With respect to failure to deduct the award under the Law Reform Act from loss of dependency, the Respondent relied on section 2(5) of the Law Reform Act and submitted that the section does not provide for any deduction of the awards. The Appellants have even acknowledged in their submissions that the Section does not necessary mean deduction. Further, in their submissions before the trial court, the Appellants did not attempt to make any deductions and in fact in their tabulation, they proposed the award under the ***Law Reform Act*** in addition to the award under Loss of dependency. Accordingly, this ground of appeal lacks merits and ought to fail.

19. It was therefore submitted that the Appellants have not demonstrated any wrong principle of law taken into account by the trial court or that the award was inordinately high so as to merit the disturbance of this Honourable court and this court was urged to dismiss the Appeal with costs to the Respondents.

Determinations

20. In this appeal, the appellant is only challenging the quantum of damages. The Court of Appeal in **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55** set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

> **"It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."**

21. It was therefore held by the same Court in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457** that:

> **"The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect…A member of an appellate court when naturally and reasonably says to himself "what figure would I have made?" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own…"**

22. Similarly, in **Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47**, the Court of Appeal held that:

> **"In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."**

23. The principles which ought to guide a court in awarding damages in fatal accident claims under the head of loss of dependency was dealt with by **Ringera, J** (as he then was) in **Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989** where it was held that:

> **"The court must find out as a fact what the annual loss of dependency is and in doing so, it must bear in mind that the relevant income of the deceased is not the gross earnings but the net earnings. There is no conventional fractions to be applied, as each case must depend on its own facts. When a court adopts any fraction that must be taken as its finding of fact in the particular case and in considering the reasonable figure, commonly known as the multiplier, regard must be considered in the personal circumstances of both the deceased and the defendant such as the deceased's age, his expectation of working years, the ages of the dependants and the length of the dependant's expectation of dependency. The chances of life of the deceased and the dependants should also be borne in mind. The capital sum arrived at after applying the annual multiplicand to the multiplier should then be discounted by a reasonable figure to allow for legitimate concerns such as the widow's probable remarriage and the fact that the award will be received in a lump sum and if otherwise invested, good returns can be expected."**

24. The same Judge in **Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another – Nairobi HCCC. No.1638 of 1988 (unreported)**, in which **Ringera J.** as he then was, held at page 248 that:

> **"The principles applicable to an assessment of damages under the Fatal Accidents Act are all too clear. The court must in the first instance find out the value of the annual dependency. Such value is usually called the multiplicand. In determining the same, the important figure is the net earnings of the deceased. The court should then multiply the multiplicand by a reasonable figure representing so many years purchases. In choosing the said figure, usually called the multiplier, the court must bear in mind the expectation of earning life of the deceased, the expectation of life and dependency of the dependants and the chances of life of the deceased and dependants. The sum thus arrived at must then be discounted to allow the legitimate considerations such as the fact that the award is being received in a lump sum and would if wisely invested yield returns of an income nature."**

25. In this case, the appellants have taken issue with the dependency ratio. In this case, the pleadings are clear that the deceased was 34 years old while his only dependants were his parents who were aged 60 and 52 years respectively. In **Beatrice Wangui Thairu –vs- Hon. Ezekiel Barngetuny & Another** (supra) the court:

> **"…constrained to observe that there is no rule of law that two thirds of the income of a person is taken as available for his family expenses. The extent of dependency is a question of fact to be determined in each case (underline mine). When a trial court adopts two thirds of the income to value of dependency, this is no more than a finding of fact that such is reasonable in the particular case. Unfortunately those findings of fact have for long masqueraded as holdings on points of law and counsel appearing before courts may be forgiven for assuming them to be the law. They are not. It takes a discerning court to put the law back to track."**

26. In **Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47**, it was the opinion of the Court of Appeal that:

> **"There is no two-thirds rule as dependancy is a question of fact. The sum to be awarded is never a conventional one but compensation for pecuniary loss…**"**Dependancy" or "dependency" is the relation of a person to that by which he is supported…The extent to which a family is being supported must depend on the circumstances of each case and to ascertain it the Judge will analyse the available evidence as to how much the deceased earned and how much he spent on his wife and family. There can be no rule or principle of law in such a situation…But for people with smaller incomes, certain expenses are constant, such as food, school fees and the like. Therefore, the realistic rate of dependency would be greater in proportion to the total family income than would be in the case of a highly paid person…In the instant case one fifth was far too low, even though its effect was mitigated by a generous multiplier and that it represented a wholly erroneous estimate. A just figure of dependency here would have been one half."**

27. As regards the multiplicand, **Ringera, J** (as he then was) in **Marko Mwenda vs. Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993** held that:

> "In adopting a multiplier the Court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased… The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

28. In my view the learned trial magistrate ought to have taken into account the fact that the deceased was unmarried and there was a possibility that he would with time marry and have his own family. Accordingly, whereas parents have an expectation of being assisted by their children, I agree that 2/3rd dependency ration was on the higher side. However, being unmarried it is not unreasonable to assume that he could have been contributing to his parents ½ of his income. Accordingly, I adopt the one half as the dependency ratio.

29. As regards the multiplier, the parties agreed on 26 years. It is now contended that what was meant by the appellant's then counsel was 16 years. With due respect if the appellant wanted to adduce new evidence, he should have taken the necessary steps to do so instead of attempting, quite mischievously in my view, to adduce fresh evidence through the backdoor in submissions. In my view the multiplier is a matter of fact based on the evidence presented before the court and where parties consent to having a case determined by way of written submissions without adducing evidence they must take the risk that the trial magistrate in arriving at its decision may rely on the submissions of the parties. If it decides to do so none of the parties ought to cry foul. Parties and their legal advisers ought to take the advice of the Court of Appeal in **James Njoro Kibutiri vs. Eliud Njau Kibutiri 1 KAR 60 [1983] KLR 62; [1976-1985] EA 220** that the ingenious lawyers are advised that short cuts are fine, as long as you are absolutely sure they won't land you in a ditch. In **Lehmann's (East Africa) Ltd vs. R Lehmann & Co. Ltd [1973] EA 167** it was however, held that:

> **"The supposed short-cuts in procedure almost always confuse and obscure the true issues and almost always result in prolonged litigation and unsatisfactory decision. However, if the parties to a civil suit agree to adopt a certain procedure and the judge, however wrongly permits such a course, then there is little that a Court of Appeal can do other than seek to make the best of an unsatisfactory position."**

30. I agree with **Ringera, J** in **Marko Mwenda vs. Bernard Mugambi & Another Nairobi HCCC No. 2343 of 1993** that:

> "In adopting a multiplier the Court has regard to such personal circumstances of both the deceased and the dependants as age, expectations of earning life, expected length of dependency and vicissitudes of life. The capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased… The multiplier approach is just a method of assessing damages and not a principle of law or dogma. It can, and must be abandoned, where the facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as the age of the deceased, the ages of the dependants, the net income of the deceased, the amount of annual or monthly dependency and the expected length of the dependency are unknown or are knowable without undue speculation. Where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a court of justice should never do. Such sacrifice would have to be made if the multiplier approach was insisted upon in this case."

31. However, a factual finding of a trial court can only be overturned where the appellant satisfies the appellate court that the same was wrong. In this case the mode of hearing adopted by the parties left the trial magistrate with no option but to make a decision one way or the other. The court could either agree with the plaintiff or the defendant and having agreed with the defendant, the same party cannot now turn round and take issue with its own position before the trial court. Accordingly, there is no basis upon which I can find that the deceased's dependants could not have possibly survived up to 70 years and beyond as the appellant wishes this court to find. As was held in **Marko Mwenda vs. Bernard Mugambi & Another** (supra):

> **"Like in every African child, the deceased child is expected to continue assisting her parents financially many years into the unknown future.**"

32. In the premises the award for loss of dependency ought to have been as follows:

10,954.70 x 12 x 26 x ½ = 1,708,933.20

33. In the premises the total award should be as follows:

(1) Pain and Suffering……Kshs 20,000.00

(2) Loss of Expectation of Life…….Kshs 150,000.00

(3) Loss of Dependency……..…….Kshs 1,708,933.20

(4) Special damages……..…….Kshs 39,950.00

Sub total…….. Kshs 1,918,882.20

34. As regards the double award, as stated in **Marko Mwenda vs. Bernard Mugambi & Another** (supra) the capital sum arrived at by applying the multiplicand to the multiplier is then discounted to allow for the fact of receipt in a lump sum at once rather than periodical payments throughout the expected period of dependency. The object of the entire exercise is to give the dependants such an award as would when wisely invested be able to compensate the dependants for the financial loss suffered as a result of the death of the deceased. Similarly, the Court of Appeal in **Eliphas Mutegi Njeri & Another vs. Stanley M'mwari M'atiri Civil Appeal No. 237 of 2004** held that:

> **"As regards the failure of the Superior Court to take into consideration the award under the Fatal Accidents Act when arriving at the award under the Law Reform Act the principle is that the award under the Fatal Accidents Act has to be taken into account when considering awards under the Law Reform Act for the simple reason that the dependants under the Law Reform Act are the same beneficiaries of the estate of the deceased in the latter Act. Although section 2(5) of the Law Reform Act states that the damages under this Act are in addition to those made under the Fatal Accidents Act the fact that the same parties benefit from awards under both Acts cannot be ignored. If this is not done then there is a danger of duplication of awards…Accordingly, the award of Kshs 890,000/- reduced by Kshs 100,000/- to Kshs 790,000/-."**

35. What is required of the court is therefore not to deduct one award from the other but to take into account the possibility of double compensation. Following in the footsteps of the Court of Appeal I would similarly discount Kshs 100,000.00 from the total award leaving a balance of Kshs 1,818,882.20. Less 20% agreed contribution leaves a sum of Kshs 1,455,106.56, plus costs and interests.

36. Accordingly, the appeal succeeds to that extent.

37. Since the appellant has not succeeded in all aspects, each party shall bear own costs of this appeal.

38. It is so ordered.

Read, signed and delivered in open Court at Machakos this 20th day of June, 2019

G V ODUNGA

JUDGE

Delivered the presence of:

Miss Wambugu for Mr Karanja for the Appellant

Mr Muumbi for Ms Kavita for the Respondent

CA Geoffrey