REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAKURU

Civil Appeal 150 of 1995

JOSEPH KIMANI MWEGA.....…….....APPELLANT

AND

SELINA F. OKUNE (SUING AS PERSONALREPRESENTATIVE OF THE ESTATE OF

PHILEMON MUGA OKUNE.....….....RESPONDENT

(Appeal from the judgment and decree of the High Court of Kenya at Nakuru (Mr. Justice D.M. Rimita) dated 8th December, 1993

IN

NAKURU HCCC NO. 344 OF 1992)

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JUDGMENT OF THE COURT

The principles on which this Court would interfere with the trial judge's assessment of damages are now well settled. The court will only do so where it is shown that the Judge has taken into account an irrelevant factor or has failed to take into account a relevant factor or short of these, that the damages awarded are so inordinately low or high that an error of principle must be assumed. We do not think the learned trial Judge committed any of these errors. Mr. Maraga for the appellant says that the Judge ought not to have used a multiplicand of Shs.10,000/= per month on the basis that there was no proof of the deceased's income. We do not think that is right. The widow of the deceased gave evidence that the deceased used to send to her between Shs.3000/= and Shs.4000/= per month. She was cross examined on that point but no evidence was called by the appellant to contradict her. We are not satisfied that the cross-examination of Mr. Maraga so much discredited her evidence on this point that she could not be believed. Again there was evidence that the deceased was living with and educating their five children in Nairobi. It cannot be said that he had no income to enable him do so. The learned judge believed her evidence and in these circumstances we are not convinced that the Shs.10,000 per months used by the trial Judge was based on no evidence. Perhaps if we, or any of us, were sitting in the High Court we might have used a slightly lower figure but that is not the basis upon which the court interferes. Nor do we find any substance in the complaint that the multiplier of 12 years used by the judge was excessive. The deceased was, if we may put it so, some kind of a businessman. He was 48 years old at the time of his death. The learned judge thought he might have worked at his job, whatever it was, until he attained the age of sixty. There is nothing unreasonable in that it would not be right for us to interfere. In our view,

there is no merit in the appeal and that being the stand which commends itself to us, we order that this appeal be and is hereby dismissed with costs.

Dated and delivered at Nakuru this 24th day of September, 1996.

J.E. GICHERU

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR