

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 3311/2020

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: <u>26/04/24</u> SIGNATURE: 	

In the matter between:

BALOYI RAMOKONI LINA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

KGANYAGO J

- [1] On 28th February 2019 Richard Chabalala (deceased) was a passenger in an insured motor vehicle B when it was involved in a collision with insured motor vehicle A. The deceased died as a result of the injuries that he had sustained during the accident. The plaintiff is the mother of the deceased, and had instituted an action against the defendant for a claim for loss of support. The plaintiff in her particulars of claim has stated that the deceased was principally contributing towards her maintenance according to his financial position.
- [2] The defendant had defended the plaintiff's action. The defendant in its plea had denied that the deceased was maintaining the plaintiff. The defendant had further pleaded that if there was a duty to maintain the plaintiff, that duty fell on all of the plaintiff's children and not only the deceased.
- [3] Regarding merits, the defendant had made an offer to the plaintiff in terms of Rule 34(1) of the Uniform Rules of Court offering merits 100% in favour of the plaintiff. The plaintiff has accepted the offer on merits by the defendant. What this court is called upon to determine, is whether the deceased was having a legal duty to support the plaintiff and whether the deceased was supporting the plaintiff at the time of his death.
- [4] The plaintiff has testified under oath. He testified that the deceased was her biological son. She was staying with the deceased in the same house for a long time. At some stage the deceased had left her home and went to stay with one Agnes Setena even though they were not married. They have never went to Agnes family to go and negotiate lobola for her. The deceased was working, even though she did not know where the deceased was working. She was informed that the deceased was working at Multilock Door System in Pretoria. She did not know how much was the deceased earning.

- [5] The deceased was staying with her and buying food for her. The deceased was also giving her money to pay monthly contributions for burial societies. In her homestead she was staying with Tumi Baloyi, Lucas Baloyi and the deceased. The money which the deceased was giving her was sufficient to support the whole family. She is also receiving social grant in the amount of R1800.00. She is paying for 4 burial societies. She used to work as a farm labourer until all her children grown up. After the deceased had passed away, she got confused and she had not recovered up to date. When the deceased was still alive, she was living a fine life as she could afford anything that she wanted. After the deceased had passed away she is now struggling to afford what she used to during the deceased lifetime. At the time of his death the deceased was no longer staying with Agnes, but with the plaintiff. Even when the deceased was staying with Agnes, he was giving the plaintiff R2000.00 per month. At times the deceased will increase that amount.
- [6] The plaintiff was cross-examined and she stated that Tumi and Lucas are her grandchildren and that their mother had passed away whilst they were still young. She had 3 children who were the deceased, Daniel and Edward who have all passed away. The plaintiff's husband had pre-deceased the deceased long time ago. The plaintiff stated that the deceased had two children with Agnes Setena. The plaintiff stated that the deceased and Agnes have separated a long time ago. It was put to the plaintiff that sometimes and not always, the plaintiff will go to the place where the deceased and Agnes were staying together to ask for mealie-meal, and the plaintiff disputed that. Under re-examination by his counsel, the plaintiff stated that they have paid part of the lobola to Agnes family just to know the family. That concluded the plaintiff's evidence and she closed her case.

- [7] The defendant called Agnes Mokgethi Setena as its only witness who testified under oath. She testified that she knows the plaintiff, and that the plaintiff is her mother-in-law. She and the deceased were married to each other by tradition on 31st December 2006. After the lobola was paid for her by the deceased family, she and the deceased stayed together in Mokgoopong. She and the deceased had 3 children born of their marriage. However, one of the 3 children was born before she and the plaintiff got married.
- [8] The deceased was employed at Multi Lock Door System in Pretoria. The deceased was earning R6000.00 per month. The deceased was sleeping at the plot where he was working. Sometimes she would visit the deceased in Pretoria. There was no stage where she and the deceased have separated. She is not employed and was never employed. The deceased was giving her R3000.00 per month, and that amount never changed. The plaintiff is lying when she testified that the deceased was giving her R2000.00 per month. It was impossible for the deceased to have afforded that since he was earning R6000.00 per month, and out that he will give her (plaintiff) R3000.00.
- [9] When the plaintiff had run out of mielie-meal, she will come to her (Agnes) and ask for assistance. However, that was not a daily thing. She is in good terms with the plaintiff and do not have issues with her. She is just surprised when the plaintiff testified that the deceased was giving her R2000.00 per month. The deceased was buried by the plaintiff and she did not attend the burial of the deceased, but her children have attended. The deceased was not hiding anything from her, and if the deceased was giving the plaintiff R2000.00 per month, she would have known that.

[10] The witness was cross-examined and she stated that the plaintiff is her mother-in-law because she is the mother of her husband. She stated that the deceased family had negotiated lobola for her in the amount of R6000.00 plus extra R500.00 for the damages. R5000.00 of the lobola was paid by the deceased family leaving a balance of R1500.00. The witness stated that all the 3 children are that of her and the deceased. The witness stated that the deceased was also giving their children pocket money when going to school but did not know how much. That concluded the evidence of the defendant and it closed its case.

[11] The question which this court is called upon to determine is whether the deceased owed the plaintiff a duty of support before he died, and also whether the deceased was supporting the plaintiff at the time of his death. It is trite that a child has a duty to support his parents if they are indigent. A claim for loss of support suffered as a result of a breadwinner's death is recognised at common law as a dependants' action. The purpose of the remedy is to place the dependants of the deceased regarding maintenance in the same position they would have been had the deceased not been killed. (See *Paixao v Road Accident Fund*¹).

[12] In *Fosi v Road Accident Fund*² Dlodlo J said

"African law obliges a child who is financially able to do so to provide maintenance to his/her needy parents. When an African (black) provides support and education to his/her son/daughter, he/she is not under a duty to do so on the strength of the South African legal system, but custom obliges such a parent. In fact, in African tradition to bring up a child is to make for oneself an investment in that when the child becomes a grown-up and is able to participate in the labour market, that child will never simply forget about where he comes from.

¹ 2012 (6) SA 377 (SCA) at para 12

² 2008 (3) SA 560 (CPD) at para 16

That child, without been told to do so, will make a determination (taking into account the amount he/she earns, her travelling to and from work, food to sustain himself and personal clothing, etc) of how much he must send home to the parents on a monthly basis. This duty is inborn and the African child does not have to be told by anybody to honour that obligation. In fact, that is the trend in almost all black families in rural areas including so-called urban black communities. In each family there would invariably be one or two sons or daughters who is/are employed. Those children in employment provide their individual parental home with the hope in life in that they monthly and without fail send money to their parents so that basic necessities of life are afforded by the latter...The duty of a child to support a needy and deserving parent is well known in indigenous/customary law. It is observed by such children. There is always an expectation on the part of the parent that his child will honour that duty".

[13] The plaintiff was married to her husband who had passed away. She and her deceased husband had 3 children who have also all passed away. The plaintiff is currently living with her two grandchildren whose parents have passed away. The plaintiff used to work as a farm labourer until all her children were grown up. She is now receiving social grant in the amount of R1800.00 which she had to support her herself and her two grandchildren. The plaintiff only source of income is the social grant of R1800.00 which had to feed three mouths. In my view, the plaintiff is indigent, and the deceased owed the plaintiff a duty of support according to his financial means. At the time of the deceased death, the deceased was the only surviving child of the plaintiff, and there was no other child of hers who would have been liable to take care of her except the deceased.

[14] The deceased was employed at Multilock Door System earning a basic salary R4000.00 per month, and with some overtime work will earn up to R6779.00. There seems to be some exaggerations with what the deceased was giving the plaintiff and his wife Agnes per month. According to the plaintiff, the deceased

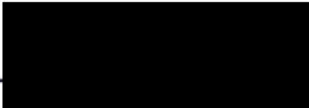
was giving her R2000.00 per month, whilst Agnes has testified that the deceased was giving her R3000.00 per month. Overtime work is not guaranteed, it is as and when there is need. According to the version of the plaintiff and Agnes, the deceased was spending R5000.00 on both of them every month. On top of that the deceased will give his children pocket money. That was already way over his basic salary, and that had created a shortfall. Even if he had worked overtime he will be left with nothing.

[15] Agnes had testified that the deceased was buying grocery of R500.00 for himself, and when the deceased travels to Mookgopong he will spend R420.00 on transport. The deceased was therefore spending more than what he was earning, and it was not explained how he was making up of the shortfall. The deceased even though he was taking care of both the plaintiff and Agnes, it cannot be true that he was giving them the figures they have testified about. Agnes has also testified that when the plaintiff had run out of mealie-meal, she will come to her for assistance. That on its own is proof that the deceased was supporting the plaintiff and the plaintiff was partly dependant on them on some of the necessities of life, hence when she run out of mealie-meal, she will go to the deceased wife for assistance. The exaggeration by both the plaintiff and Agnes in relation to what the deceased was giving them, does not in any way affect the deceased duty of support towards them. The plaintiff is therefore entitled to claim the loss of support arising out of the death of her son the deceased, since she is indigent and was partly dependant on the deceased.

[16] In the result the following order is made:

16.1 The deceased had a legal duty of support towards the plaintiff and was supporting the plaintiff at the time of his death.

16.2 The defendant to pay the plaintiff's costs on party and party scale.


KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Counsel for the plaintiff	: Adv LF Makgopa
Instructed by	: MJ Maponya Attorneys
Counsel for the respondent	: MC Mafiri
Instructed by	: State Attorney Polokwane
Date heard	: 14th March 2024
Electronically circulated on	: 26th April 2024