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IN THE HIGH COURT FOR ZAMBIA **2007/HP/914**

HOLDEN AT LUSAKA

[*Civil Jurisdiction*]

BETWEEN

KASAMBA KALINDA **1st Plaintiff**

ROY KALINDA **2nd Plaintiff**

AND

Dr. SALTINOVA **1st Defendant**

TEBA MEDICAL CENTER **2nd Defendant**

CORAM : **Honorable Mr. Justice Mubanga Kondolo , SC**

MARSHAL : **Ethel Phiri**

For the Plaintiffs : **Mr. Stephen Lungu of Messrs Shamwana & Co**

For the 1st Defendant : **Dr. O. Banda of Messrs O. M. M. Banda & Co**

For The 2nd Defendant : **Mr. I. Ngonga of Messrs I.C. Ngonga & Co.**

J U D G E M E N T

AUTHORITIES

LEGISLATION & PUBLICATIONS

1. **Halsbury`s Laws of England 4th Edition**

CASES

1. **Bolam v Friern Hospital Management Committee (1957) 2ALLER 118**

2. **Bolitho (deceased) v City Hackney HA (1993) P.I.Q.R. P334**
3. **Roe v Ministry of Health (1954) 2 QB 66 or (1954) 2 ALL ER**
4. **Salamon v Salamon (1897) A.C**
5. **Duff Kopa Kopa (Suing as next friend and Administrator of the Estate of Chuubo Kopakopa) v Univesity Teaching**
6. **Hospital Management Board (2007) pages 59,60, 72 & 73**
7. **Rosemary Bwalya v Zambia Consolidated Copper Mines Limited (Mufulira Division) Markom Watson Hospital & Dr. Y.C. Malick (2005) Z.R**
8. **Thake v Maurice (1986) 1 ALL ER. P.497**
9. **Cassidy v Ministry of Health (Fahani, third party) (1951) 1. ALL ER P.574**
10. **Jonathan.W.M Kalonga And Zambia Printing Company Limited v Titus Chisamanga And Joyce Vinkumba (1988 - 1989) Z.R. 52 (S.C.)**
11. **Manfred Kabanda And Kajema Construction v Joseph Kasanga (1992) S.J. 15 (S.C.)**
12. **Ndola Central Hospital Board Of Management v Alfred Kaluba & Priscilla Kaluba (1997) S.J. 38 (S.C.)**

This is a matter in which the Plaintiffs issued summons against the two Defendants for the following relief;

1. *Damages for negligence resulting in the death and loss of the Plaintiff's baby boy.*
2. *Damages for mental anguish and pain as result of the loss of the said infant.*
3. *Interest thereon.*
4. *Any other relief the court may deem fit.*
5. *Legal Costs.*

When this matter commenced the Defendants were jointly represented by Mr. Chakoleka of Messrs Mulenga Mundashi & Co. During the course of the DW1's testimony, the learned defence counsel suffered a conflict of interest and decided to recuse himself from the matter.

PW1-Kasamba Kalinda

The Plaintiffs` first witness, PW1 was Kasamba Kalinda the 1st Plaintiff who testified that she was 37 weeks pregnant and after waking up on 23rd March, 2007 around 09:00 hours feeling uncomfortable, she decided to go to Teba Hospital where she'd been attending pre-natal. She was examined by sister Phiri. PW1 explained that the "SHOW" had come out but sister Phiri didn't think PW1 was in active labour and advised her to go back home and return when the contractions were stronger.

PW1 explained to Sister Phiri that during her last two pregnancies she had given birth within 3 hours of starting contractions and sister Phiri admitted her and told her to wait for Dr. Sultanova, the 1st Defendant. During prior visits, the 1st Defendant had established that the baby was big and after examining the 1st Plaintiff she administered some medication and told her that they might have to perform a caesarian the following morning. She departed and left PW1 in the care of the mid-wives, this was around midday.

PW1 informed the court that she started feeling pain between 17:00 and 18:00 hours. Round about that time her aunt who happened to be a mid wife came to stay with her at her bedside. PW1 started feeling strong contractions around 22:00 to 23:00 hours and her aunt called the nurse on duty. The nurse came and examined her and then said they could call her from the other room if she was needed but decided to stay after PW1's aunt expressed concern.

Shortly after that PW1's labour progressed until she felt the urge to push and she was moved to the delivery bed. She started giving birth and the baby presented its head. She continued pushing but the baby was not moving and the nurses called the reception to call the Doctor [DW1]. The clinics General Practitioner was also present but they failed to dislodge the baby.

The receptionist who had been asked to call DW1 came and informed the nurses that she could not get hold of the DW1 because their phone had no talk time and they had to use one of PW1's phones.

DW1 arrived about 45 minutes after the baby had first presented its head and she dislodged the baby quite quickly. DW1 screamed at the nurses asking them why they had not called her earlier.

PW1 testified that nobody told her anything until she asked whether her baby was okay and DW1 told her that the baby had died. PW1 was discharged the next morning with some medication. She said her pelvic area was so sore that she couldn't get off the bed on her own for two days.

PW1 lamented that this was a ***"very, very difficult time for me; I've never felt so much pain before both physical and emotional ..... Nobody at the hospital even explained what had happened. I felt the need to know that someone cared but nobody spoke to me."***

PW1 felt the hospital was responsible because DW1 knew the baby was big and should have treated her case as a high risk pregnancy, taken proper precautions and spent more time with her to ensure a safe delivery. She also said that the fact that she was left alone showed that they were not really there for her.

PW1 further explained that the experience had left her paranoid which resulted in her not having any emotional attachment to her next pregnancy because she was scared of the possibility of losing it and even after the child was born she kept on checking if the baby was breathing all because of her last experience. PW1 further said she was asking for damages for the torture she experienced as well as damages for negligence.

Under Cross examination PW1 said when she arrived at the clinic she was in labour but not precipitate labour. She said neither Sister Phiri nor DW1 told her she was in labour, but after examining her, the DW1 recommended that she be placed under observation.

PW1 further said that this incident occurred 3 weeks before her expected date of delivery and she went into active labor between 17:00 to 18:00 hours and though she was examined by a nurse after that time, by 23:00 hours the nurse was not in the delivery room.

PW1 agreed that she was monitored around 22:00 hours and couldn't remember if she was monitored around 23:00 hours and later around 00:00 hours. She however denied that she was closely monitored because she was left alone in the building with a family member and said that the nurse should have been within easy reach.

When asked if it was unreasonable to expect to have a nurse there all the time, PW1 responded by saying that in a maternity ward there should be a nurse throughout.

She reiterated that one of her mobile phones was used to phone the DW1 and agreed that she had not presented any proof of that. She said she was not aware that DW1 was called by the clinics` General Practitioner.

When asked if she had complained to the Medical Council, she said her husband PW2 had and all he'd been told was that the matter was being investigated and had heard nothing further.

PW1 said she had not furnished evidence to prove emotional pain and when asked if she knew that if it was not for DW1, she would have bled to death she said she didn't. She said she was in a position to authoritatively describe the pregnancy as high risk because the DW1 had told her that the baby was very big at 4.9 Kg.

Under re-examination PW1 said she was not surprised that she went into labour three works early because during her previous two pregnancies, she delivered at 37 weeks.

PW2 - Roy Kalinda

PW2 was Roy Kalinda, the PW1`s husband who testified that his wife was pregnant and he took her to and left her at Teba clinic between the 23rd and 24th March, 2007 because labour was threatening. He visited her in the evening and found her still admitted and he went back home.

His now deceased aunt, Mrs Pamela Simwinga who was by PW2'S bedside phoned him around midnight telling him that the baby was stuck and couldn't come out. PW2 went to the clinic and asked for the Doctor who had admitted her but was told that the nurses had been trying to contact her but she hadn't yet appeared.

Th Doctor finally arrived about 30 – 40 minutes after PW2's arrival at the clinic and brought out the baby who was already dead. The Doctor showed PW2 a black spot on the baby's forehead and said the baby had been exposed for a long time. He also said that the Doctor explained that the baby was too big and that his wife had needed a caesarian operation.

PW2 named the Doctor as Dr. Sultanova, the 1st Defendant, and said he told her he was going to sue the hospital. He said that he decided to sue the Defendants because his wife was left under the care of nurses when it should have been the Doctor and there were no emergency measures in place such as rushing his wife to a bigger hospital if an emergency arose. He said he would have expected the Doctor to continuously monitor his wife every 30 minutes but this was not done and it was the nurses who had to call the Doctor. He felt this amounted to negligence because a hospital should have emergency measures. He said in this particular case the Doctor was not there and there was no ambulance.

Under cross examination PW2 said he was aware that deliveries are normally conducted by midwives but that the Defendants should have evacuated PW1 to a bigger hospital when the baby was stuck. He said he however didn't know the time frame within which a baby in that situation can die if not successfully delivered. PW2 agreed that the only complication was that the baby got stuck by the shoulders.

PW2 said he was not aware that the Doctor, DW1 was a part time employee of the 2nd Defendant.

The Plaintiffs closed their case after calling PW1 and PW2.

DW1 – DR. Sultanova Zumrad

DW1 was the 1st Defendant, Dr. Sultanova who testified that she was a Doctor and consultant Obstetric Gynecologist with 39 years of practice and her job entailed attending to pregnant women's medical needs. She said she started attending to PW1 on 15th September 2006 when she was 10 weeks pregnant.

PW1 said she developed a personal relationship with PW1 and they became friends. She told PW1 that she only worked for the 2nd Defendant part time, wrote her mobile number on the back of PW1's ante natal card and kept her phone on at all times.

She further testified that on 23rd March around 10:00 hours, sister Phiri informed her that PW1 was at Teba Hospiital feeling discomfort and DW1 went there and examined her around 12:00 hrs. PW1 was not in labour but was experiencing false labour pain. She was only 37 weeks pregnant, her cervix was closed and was not experiencing regular contractions.

DW1, however, admitted PW1 on account of a history of precipitate labour in her earlier pregnancies. DW1 gave her medicine to help her and the baby rest and told her that the baby was bigger but she was not in labour. DW1 also told PW1 that if anything arose like bleeding, contractions or anything draining she should call DW1 who lived very near the hospital.

DW1 said that Dr. Feroza, the 2nd Defendants' G.P. phoned her after midnight and so did a mid-wife. DW1 arrived at the hospital within 5 to 7 minutes of the call and found Dr. Feroza with 3 mid-wives and PW1's aunt. She was informed that the baby was stuck and she found the baby

already dead. She told them that, as she'd told them earlier, they should have called her immediately there were signs of labour.

DW1 explained that the baby was strangled because its head was outside whilst the body was inside and the mothers private parts clamped the neck and it only takes 2 minutes for a baby to die from strangulation. DW1 further explained that she pulled out the baby and it come out together with the placenta and had she come any later, PW1 would have died because the placenta was already separated from the uterus. DW1 said this is a very rare complication and since 1995 she had only encountered it thrice.

DW1 said that even though the baby was big and she had previously indicated the possibility of a caesarian birth, on the morning of 23rd March, there was no indication for a caesar because the pregnancy was only 37 weeks and PW1 was not in labour. She only admitted PW1 for rest and observation.

DW1 told the court that she understood how PW1 felt because she had also lost a child after it was vaccinated and though it was sad that they lost the baby, she was happy that PW1 survived.

At this point, learned counsel for the Defendants, Mr. Chakoleka told the court that DW1's testimony had placed his clients in direct conflict and he was thus withdrawing from the proceedings.

Dr. O Banda and Mr. I Ngonga assumed conduct on behalf of the 1st and 2nd Defendants respectively.

DW1 continued with her examination in chief and said that all private hospitals have full time gynecological specialist and she gave examples of **CFB, MUMS**, **MEDCROSS** and **VICTORIA PROGRESS** who all had full time gynecology specialists. She said that she worked for the 2nd

Defendant part time and the time of this incident the 2nd Defendant didn't have a full time gynecology specialist and still did not have one.

DW1 said that before she left the clinic she told sister Phiri to inform her if there was anything like normal labour because the baby was big and she planned to conduct a caesar.

DW1 concluded her examination in chief by saying that when she got to the hospital, the baby was already dead and she didn't understand why she had been sued.

DW1 was cross examined by Mr. Lungu, learned counsel for the Plaintiffs. DW1 stated that a full term pregnancy is 40 weeks and the Plaintiff was at 37 weeks when she attended to her. She said at 37 weeks a baby is fully formed, weighs about 2.5Kg and can survive premature birth. PW1's baby was 4Kg.

DW1 said she didn't conduct a Caesar earlier because PW1 was not in labour at the time. She testified that it was a bad surprise when she was told that PW1 was having problems and she didn't know why they didn't call her in good time. DW1 further testified that she wanted to be called because delivering a big baby is complicated and she even gave her number to PW1 and to PW2.

Under further cross examination DW1 said that after she admitted her, she left PW1 in the observation ward but after she was called back to the clinic, she was surprised to find PW1 in the maternity ward. She didn't know who had transferred her and why she was not called when PW1 started having contractions.

DW1 said she did not produce a report of this incident and that there was no requirement to do so. She said Dr. Salim, the owner of Teba hospital was responsible for paying her wages.

DW1 was then cross examined by Mr. Ngonga, learned counsel for the 2nd Defendant and she stated that midwives were allowed to deliver babies. She also said that the large size of the baby was documented in her notes after her last diagnosis of PW1 and a caesar would have been conducted after the onset of labour and the cervix was open (dilated) but when she saw PW1 there was no indication for caesar. When asked if she had recorded the fact that the baby was to be delivered by caesarian section DW1 agreed, but said had she been at the clinic, she would have delivered the baby without a caesar.

DW1 said monitoring a patient was very important and it was the mid wives responsibility. When asked about precipitate labour, DW1 said precipitate labor can result in injury to the baby's head and may cause post natal bleeding. She said it was not possible for any doctor to anticipate shoulder dystocia and that it was a rare complication that can occur even under normal labor.

When cross examined further, DW1 said a baby who suffers shoulder dystocia can be saved by pulling it out in the proper manner and a doctor is required for that. She said she should have been called because the baby was big.

DW1's cross examination closed with her saying that her full time employer was the Ministry of Health and she had no written contract with Teba Hospital who used to pay her immediately after every job. She added that nobody supervised her at Teba Hospital.

Under re-examination DW1 said the 2nd Defendant did not contact her between the time PW1 was admitted and when they called to tell her there was an emergency.

DW2 - Christine Phiri

DW2 was Christine Phiri one of the mid wives in the employ of the 2nd Defendant at the time and who was on duty when PW1 was admitted. She testified that that she knew DW1 as a

visiting consultant gynecologist at the 2nd Defendant clinic. DW2 said she attended to PW1 around 09:00hrs on 23rd March, 2007 when she went to the clinic complaining of abdominal pain. Even though PW1's abdominal pain had ceased by the time she examined her, DW2 decided to keep her until DW1 came because she had a history of precipitate labour.

She testified that DW1 came around 12:00 hrs, examined PW1 and wrote that she be given I.V fluids and medicine to make her rest. She said PW1's expected date of delivery was 14th April, 2007 and she documented all that had transpired and handed the notes to her colleague before she knocked off at 13:00 hours.

Under cross examination by Mr. Lungu, DW2 stated that she examined PW1 and listened to the baby's heart beat thrice before PW1 was admitted by DW1 around 12:00 hours. After handing over to her colleague DW2 started doing some administrative work. DW2 admitted that she had made a mistake on the Blood Pressure reading by indicating 110/70 instead of 120/70 which she said was still within the same historic range.

Under cross examination by Dr. Banda, learned counsel for the DW1, DW2 said that when she knocked off she left PW1 in the observation ward. She also said that as the one who signed the pictogram, she was responsible for it.

DW3 – Justina Sampa Katontoka

DW3 was Justina Katontoka also in the employ of the 2nd defendant as a mid wife at the time of this incident. She testified that when she reported for work at 18:00 hours on 23rd March, 2007 she took over from a mid-wife Matongo and DW2 and found PW1 in the maternity ward. At that time PW1 was not in labour and she continued monitoring her and listening to the faetal heart every 30 minutes and she recorded her observations.

DW3 further testified that PW1 went into labour around 22:00 hours and she transferred her to the delivery bed around 23:00 hours and started encouraging her to bear down (push) but

noticed that the baby's head was not coming out any further. She told her friend to call DW1 who came after 10 minutes and took over the delivery. DW3 later documented the event in a summary of labour document.

Under cross examination by Mr. Lungu, DW3 confirmed that DW1 neither visited the patient nor phoned the clinic between the time DW3 reported for work at 18:00 hours and when they phoned her to come to the clinic. She never phoned during that period.

She said that the only alert she had on the patient was her history of precipitate labour and though the file indicated that the baby was big she did not read the file as PW1 was not in labour.

DW3 further stated under cross examination that nobody told her that DW1 had left instructions that she should be called when the patient went into labour. She explained that such instructions had to be documented and that wasn't done; had it been documented DW3 would have called DW1.

DW3 said she didn't expect PW1 to go into labour and only called DW1 when they noticed a problem because the clinics GP, who was present, had no idea about gynecology.

DW3 said there was no placenta abruption; the baby came out first and the doctor left her delivering the placenta.

Under further cross examination by Dr. Banda DW3 said she read the doctors notes around 18:00 hrs. She also said that she did not call DW1 because as a senior mid-wife with 40 years experience who had delivered babies of up to 4.8 Kg she thought she could deliver this particular baby.

She further said she called DW1 when the baby got stuck because that was a problem. DW3 reiterated that had written instruction been left she would have called DW1 when labour began. DW3 confirmed that when they wanted to phone the DW1, the 2nd Defendants mobile phone had no airtime and they were unable to call from the extension so they used the phone which is at the front of the hospital.

The defence closed its case after DW3's testimony and all learned counsel involved agreed to file written submissions which they have since done and I thank them for their submissions.

Learned counsel for the 1st and 2nd Plaintiffs, Mr. Lungu, identified the following three issues as forming the basis of the controversy between the parties;

1. Whether the 1st and 2nd Defendants acted negligently in their conduct towards the 1st Plaintiff and her unborn child;
2. Whether it is possible for a medical practitioner to be held liable for medical negligence;
3. Whether the 1st and 2nd Defendants should both bare the blame for the loss of the child.

1. Whether the 1st and 2nd Defendants acted negligently in their conduct towards the 1st Plaintiff and her unborn child;

Mr. Lungu submitted that the Defendants owed the Plaintiff a duty of care because she was a patient attending antenatal clinics at the 2nd Defendant Hospital and the 1st Defendant was her Doctor. Mr. Lungu further submitted that the 1st Defendant breached this duty when she left the 1st Plaintiff despite having diagnosed her with false labour, which she knew could progress into full labour. In support of this assertion he cited **Professor John Cooke, The Law of Tort [1]at p31,** which states that:

> *"In order for a claimant to succeed in an action for negligence, they must show that the defendant owed them a duty of care, that there was a breach of that*

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[1] *The Law of Tort Eighth Edition, Essex: Longman and Pearson, 2007*

duty of care for which they have suffered injury. Further, that the injury must be closely linked to the breach."

He also cited **Paragraph 54, Halsburys Laws of England, 4th Edition, Volume 34[2] at p46** as follows;

"The burden of proof in an action of damages for negligence rests primarily on the plaintiff, who, to maintain the action must show that he was injured by a negligent act or omission for which the defendant is in law responsible"

Learned counsel for the Plaintiffs pressed further by arguing that the Defendants had failed to prove that they did all they could to avoid the injury caused to the Plaintiffs and their baby. He argued that the circumstance of this case warranted that the plaintiffs defend themselves in that regard and in support of this cited **Paragraph 56, Halsburys Laws of England 4th Edition**[3], which states that;

"If the plaintiff proves injury resulting from conduct which can be reasonably explained only by attributing to the defendant a breach of duty, or which points prima facie to a breach of duty on the defendants' part, the burden of proof is shifted, and it is then for the defendant to show that he has taken all reasonable precautions to avoid the act complained of."

2. *Whether it is possible for a medical practitioner to be held liable for medical negligence;*

Mr. Lungu argued that the failure by the Defendants to call expert testimony to help validate their conduct meant that the Defendants had failed to discharge their burden to prove that their conduct was in conformity with accepted, approved medical practice. In this regard he cited the case of **Bolam v Friern Hospital Management Committee**[4] as decided that;

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[2] *Halsbury Laws of England 4th Edition, Volume 34*
[3] *Halsbury`s Laws of England 4th Edition*
[4] *Bolam v Friern Hospital Management Committee (1957) 2ALLER 118*

> *"A doctor is not negligent, if he is acting in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view."*

He also cited the case of **Bolitho (deceased) v City Hackney**[5]**;** particularly the appeal to the House of Lords, Lord Brown –Wilkinson stated that:

> *"The effect of the Bolam test is that the defendant must live up to the standard of the ordinary skilled man exercising and professing to have special skills. The court has to subject the expert medical evidence to scrutiny and to decide whether the practice is reasonable. The issue of reasonableness is for the court and not for the medical profession."*

In consonance with the cited case, learned counsel for the Plaintiffs argued that it is no longer prudent to weigh the medical practitioner`s actions to that of other skilled men professing a similar skill, but rather to view each case on its own merit. This is for the sole reason that a lot of medical practitioners get away with a lot of negligent acts all under the guise of support from professional opinion.

He augmented his argument by pointing out that it is trite law that an employer can be held liable for the negligence of an independent contractor and recalled that in **Roe v Ministry of Health**[6] the House of Lords, as regards a hospital and an independent contractor stated that *"an anesthetist was a servant or agent of the hospital authorities who were, therefore, responsible for his acts".* He submitted that likewise, *in casu*, the 2nd Defendant was vicariously liable for the conduct of the 1st Defendant because even though she was an independent

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[5] *Bolitho (deceased) v City Hackney HA (1993) P.I.Q.R. P334*
[6] *Roe v Ministry of Health (1954) 2 QB 66 or (1954) 2 ALL ER*

contractor, her work could be imputed to that of the 2nd Defendant. [1] ***The Law of Tort Eighth Edition, Essex: Longman and Pearson, 2007.***

Learned Counsel for the 1st Defendant, Dr. O. Banda, in defence of his client pointed out that the 1st Defendant was not at the 2nd Defendant`s hospital when the 1st Plaintiff went into labour and that she was not called on time to attend to the 1st Plaintiff. He further opined that the 1st Defendant was called in too late to save the baby but she managed to save the 1st Plaintiff`s life who otherwise could have died.

Dr. Banda submitted that for the 1st Defendant to be held liable there must be evidence demonstrating that she did not act according to the mandate given to her by the 2nd Defendant, which mandate was to attend to patients such as the 1st Plaintiff. He said that no such evidence was adduced by the Plaintiffs.

Learned counsel for the 1st Defendant stressed that the 2nd Defendant was a Limited Liability Company and a legal person distinct from its employees. He said the 1st Defendant was a mere employee engaged as a specialist in gynecology and she was merely performing her duties on behalf of the 2nd Defendant, her employer. He cited the cases of **Salamon v Salamon**[7] and **William and Another v Natural Life Health Foods Ltd and Another** where it was held respectively that:

> *"A corporate entity is vicariously liable for acts of its agents or servants if the same are committed in the course of the performance of their official duties for and on behalf of their principal or employer."*
>
> and that;
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> *"A director of a limited company would only be personally liable to the Plaintiffs for the loss which they suffered as a result of negligent advice given to them by*

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[7] *Salamon v Salamon (1897) A.C*

the company, if he had assumed personal responsibility for that advise and the plaintiffs had relied on that assumption of responsibility. Whether there had been such an assumption of responsibility was to be determined objectively, so that the primary focus had to be on exchanges (including statements and conduct) between the Director and franchises. Moreover, the test of reliance was not simply reliance in fact, but whether the Plaintiffs could reasonably rely on the assumption of responsibility. In the instant case, there had been no personal dealing between M and the plaintiffs and no exchanges or conduct between them which could have conveyed to the plaintiffs that M was willing to assume personal liability to them; indeed there was no evidence even that the plaintiffs had believed that M was undertaking personal responsibility to them. It followed that the circumstances were insufficient to make M personally liable to the plaintiffs."

The 2nd Defendant was represented by learned counsel, Mr. Ngonga who outlined the following issues as those that required consideration;

1. Whether either the 1st Defendant or the 2nd Defendants` servants were professionally negligent to cause the death of the Plaintiffs` unborn baby when the 1st Plaintiff was in custody and care of the Defendants' before and during labour;
2. Whether the cause of death of the unborn infant of Plaintiffs was precipitate labour or shoulder dystocia;
3. Whether the Plaintiff had gathered sufficient legal opinion to establish medical negligence as the cause of death of the unborn infant and
4. Whether the 1st Defendant who was employed in the service of the Ministry of Health was also a servant or employee of the 2nd Defendant by virtue of 2nd defendant having engaged her as a part time consultant gynecologist.

Mr. Ngonga questioned the conduct of the 1st Defendant for having left the Plaintiff, her patient, around 12:00 hours without bothering to check on her progress by visiting her and not even phoning the hospital to find out how her patient was faring.

Learned counsel for the 2nd Defendant discounted any negligence on the part of the 2nd defendants midwives because the evidence showed that shoulder dystocia was a rare condition that was not caused by precipitate labour or a child merely being big and could therefore not have been foreseen. He said that DW3 testified that that she had previously delivered patients with big babies without complications and there was nothing to point to negligence on the part of the midwives.

Mr. Ngonga opined that if there was anyone to blame for professional negligence it should be the 1st Plaintiff on account of her expertise, professional acumen and ability to predict what might happen in precipitated labour and a big baby in relation to shoulder dystocia. He however argued that, in any event, shoulder dystocia is a rare and unforeseen maternal complication which is not caused by human error of medical practitioners and medical negligence could therefore not arise. In aid of this submission he cited the case of **Duff Kopa Kopa (Suing as next friend and Administrator of the Estate of Chuubo Kopakopa) v Univesity Teaching Hospital Management**[8]**.**

Mr. Ngonga further argued that the Plaintiff had failed to present any expert opinion to support that any claim of a negligent error and that it was not enough to merely allege that the midwife nurse was in another room or that DW1 was not called in good time. He relied on the case of **Rosemary Bwalya v Zambia Consolidated Copper Mines Limited (Mufulira Division) Markom Watson Hospital & Dr. Y.C. Malick**[9] where in relation to the Bolam test, the Supreme Court stated at paragraph 10 that:

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[8] *Duff Kopa Kopa (Suing as next friend and Administrator of the Estate of Chuubo Kopakopa) v Univesity Teaching Hospital Management Board (2007) pages 59,60, 72 & 73*

[9] *Rosemary Bwalya v Zambia Consolidated Copper Mines Limited (Mufulira Division) Markom Watson Hospital & Dr. Y.C. Malick (2005) Z.R*

"Here the bolam test becomes relevant. The negligence had to be established in accordance with the generally accepted principles and tests for the determination of professional liability with specific reference to alleged medical negligence. In these cases it is usual and normal to expect that Plaintiff will have expert evidence which supports that any error made was a negligent error. It is therefore, of the highest importance in such cases for the Plaintiff to assemble competent opinion."

Learned counsel for the 2nd Defendant further submitted that medicine is complex and not an exact science and recalled the words of **Neil L.J** said in the case of **Thake v Maurice**[10]**;**

"Furthermore I do not consider that a reasonable person would have expected a responsible medical man to be intending to give a guarantee. Medicine, although a highly skilled profession, is not generally regarded as an exact science. The reasonable man would have expected the Defendant to exercise all the proper skill and care of a surgeon in that speciality, he would not in my view have expected the Defendant to give a guarantee of one hundred percent success."

Mr. Ngonga argued that the 1st Plaintiff was an independent contractor because she was independent and self supervised and therefore personally liable for errors made in her performance of her duties to her patients as a consultant. To this end he quoted Lord **Denning** in **Cassidy v Ministry of Health (Fahani, third party)**[11];

"The liability of hospital authorities for negligence of a doctor on the permanent staff of the hospital does not depend on whether he is employed under a contract of service or under contract for service. It depends on who employees him. If the patient himself selects and employs the Doctor, the hospital authorities are not liable for his negligence, but whether the Doctor, be he a consultant or not, is employed and paid, not by the patient, but by hospital authorities, the hospital authorities are liable for his negligence in treating the patient."

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[10] *Thake v Maurice (1986) 1 ALL ER. P.497*
[11] *Cassidy v Ministry of Health (Fahani, third party) (1951) 1. ALL ER P.574*

From the onset it is important to point out that the only medical practitioner who presented evidence was the 1st Defendant. The plaintiffs did not lead any expert medical opinion to support its claim of negligence or rebut the expert assertions of DW1 and DW3. The age old adage, *"he who alleges must prove"* remains true even here. Further, in the case of **Rosemary Bwalya v Zambia Consolidated Copper Mines Limited (Mufulira Division) Markom Watson Hospital & Dr. Y.C. Malick *(supra*)** the supreme court had this to say;

> *"..... In these cases it is usual and normal to expect that the Plaintiff will have expert evidence which supports that any error made was a negligent error. It is therefore, of the highest importance in such cases for the Plaintiff to assemble competent opinion."*

The evidence shows that having diagnosed the 1st Plaintiff with false labour, and on account of her history of precipitate labour, the 1st Defendant admitted the Plaintiff and left instructions with the nurse to call her if anything arose like bleeding, contractions or anything draining. The 1st Defendant also gave her mobile number to the 1st Plaintiff to call if she needed her.

In a strict medical sense the obvious question that would arise from a strict application of the **Bolam test**[12] as regards the conduct of the 1st Defendant is whether the 1st Defendant acted *"in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art".* As earlier indicated the Plaintiffs led no evidence to show that the 1st Defendant did not act in accordance with accepted practice.

During examination in chief the 1st Defendant testified that before she left the clinic she told sister Phiri, DW2, to inform her if there was anything like normal labour because the baby was big and she planned to conduct a caesar. However, the 1st Defendant did also say that on the

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[12] *Ibid*

morning of 23rd March, there was no indication for a caesar because the pregnancy was only 37 weeks and the 1st Plaintiff was not in labour and she only admitted her for rest and observation.

On behalf of the 2nd Plaintiff, DW3 said she had seen no instructions to the effect that the 1st Defendant should be called as soon as PW1 went into labour. She said she proceeded to deliver the baby because she had the requisite experience and when she noticed that a problem had arisen, she immediately called for the 1st Defendant who arrived within 10 minutes.

I have considered the evidence of the parties to this action and my immediate observation is that the negligence, if any was not the result of negligent handling of a medical procedure, negligent administration of medicine or negligent handling of some other direct medical issue.

The negligence herein, if any, is purely related to the 2nd Defendants administrative protocol and procedure in recording and handing over information between shifts and between doctors and nurses.

The evidence also demonstrated that the 2nd Defendant Hospital had a somewhat ineffective method for communicating with personnel when they were away from the premises. The receptionist was unable to phone the 1st Defendant because the hospital phone had no airtime. PW1 also testified that the hospital actually borrowed her phone to call the 1st Defendant whilst DW3 confirmed that the 2nd Defendants mobile phone had no airtime and said they were unable to call from the extension so they "used the phone which is at the front of the hospital". The 1st Defendant said she was phoned by Dr. Feroza, the general practitioner and also by a midwife.

Traditionally, the standard of proving negligence against medical practitioners is quite high and would ordinarily require a peer to examine his colleagues conduct and testify as to whether or not it was within the norms of medical practice.[13]

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[13] *Bolam v Friern Hospital Management Committee (1957) 2ALLER 118*

However, in the already cited case of **Bolitho (deceased) v City Hackney**[14]**;** the House of Lords said that the court would subject the testimony of the peer *"to scrutiny and to decide whether the practice is reasonable. The issue of reasonableness is for the court and not for the medical profession."*

The reason as to why the bar for proving medical negligence is high was aptly summed up by Lord Denning in **Roe v Minister of Health**[15]**,** in the unfortunate matter where two men were paralyzed after being exposed to contaminated spinal anesthetic;

> *"The two men had suffered terrible consequences that there was a natural feeling that they should be compensated, But we should be doing a disservice to the community at large if we were to impose liability on hospitals and doctors on everything that happens wrong. Doctors would be led to think more of their safety than the good of their patients. Initiative would be stifled and confidence shaken. A proper sense of proportion requires us to have regard to the conditions in which doctors and hospitals have to work. We must insist on due care for the patient at every point, but we must not condemn as negligence, that which is misadventure."*

The evidence shows that in casu, time was of the essence. The 1st Defendant said that a child who suffers shoulder dystocia can die from strangulation within two minutes. Under the circumstances even if the 1st Defendant had been called within seconds of the mid wife, DW3, realising that the baby had shoulder dystocia, it is unlikely that the 1st Defendant would have made it to the hospital in time to save the baby. From that perspective, the death would be classified as misadventure.

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[14] *Bolitho (deceased) v City Hackney HA (1993) P.I.Q.R. P334*
[15] *Roe v Ministry of Health (1954) 2 ALL E.R. 131*

The 1st Defendant testified that shoulder dystocia is a condition that cannot be predicted. It occurs without warning and death can follow within minutes if, when it happens in the absence of a qualified person to deal with it. In the case of **Gregg vs Scott**[16] it was held as follows;

> *"A patient must prove that a doctor's action, or lack of it, caused the patient to suffer injury and not just the chance of avoiding an injury. In practical terms this means that a doctor failing to diagnose a case of cancer in which a patient has only a 25% chance of survival would not be found negligent. Only if the chance of survival was over 50%, i.e. a probability of a cure rather than a chance of a cure, would negligence be found."*

In casu, there was no way of predicting that shoulder dystocia would occur and therefore the failure to specifically prepare for it was not negligent on the part of the Defendants. The Plaintiffs claim however goes beyond the shoulder dystocia by alleging causation or loss of chance akin to the following;

> *If the 1st Defendant, as per her own request, had been informed that the 1st Plaintiff was in labour, she would have come to the 2nd Defendant hospital to deliver the baby, by caesarian section and the shoulder dystocia would not have occurred and the child would have had an almost 100% chance of survival or if per adventure, the delivery was done normally and the shoulder dystocia occurred, the baby would have still had an almost 100% chance of survival because the 1st Plaintiff would have easily dealt with the problem. In short, had the 1st Plaintiff been at the hospital, the child would not have died.*

The issue of loss of chance was discussed at great length by the House of Lords in the case of **Greg v Scott**[17] in which the 50% barrier of probabilities test alluded to above was laid down. No loss of chance award has been made for a medical negligence case in the United Kingdom and,

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[16] *Gregg v Scott (2002)*

[17] *Greg v Scott*

even in **Gregg v Scott**[18], the House of Lords rejected it, though it must be said by a slim ratio of 3:2. I am equally not aware of any loss of chance award for a medical negligence case having been made in Zambia.

Loss of chance causation permits a plaintiff who cannot satisfy the balance of probability standard to nevertheless succeed by allowing a claim that the defendants fault deprived the plaintiff of some chance of not suffering the harm in question. Causation, on the other hand, requires a plaintiff to prove, on the balance of probabilities that were it not for the defendants fault, the plaintiff would not have suffered the harm in respect of the claim being made.

In casu, the evidence on record shows that the balance of probability for the babies survival, had the 1st Defendant been there, is almost 100% and this places legitimacy on this claim squarely in the realm of causation.

Causation in clinical negligence is generally determined in the same way as all other negligence cases of which the two fundamental concepts are factual causation and legal causation. In clinical negligence, the overriding concept is factual causation.

Factual causation is determined by the standard *"but for" test* which poses the question, *"but for" the defendant's negligence, would the claimant's loss have occurred?* If the answer is yes, there is no factual causation and if the answer is no, factual causation is established. The 2008 case of **Bailey v Ministry of Defence**[19] widened the scope of the "but for" test to incorporate "material contribution" which is to the effect that where medical science is unable to apportion a percentage value on the contribution of the alleged negligence to the injury and even though it was impossible to establish probability, providing it could be found that the inappropriate care was "more than negligible" in contributing to the injury, then the test would be satisfied.

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[18] *Ibid*

[19] *Bailey v Ministry of Defence*

In casu, the 1st Defendant alleged that she told the 1st Defendant to call her if anything arose like bleeding, contractions or anything draining. The 1st Defendant said she lived very near the hospital. The point is, the 1st Plaintiff was under the medical care of the 2nd Defendant and could not be legitimately given the task of determining whether or not to contact the 2nd Defendants employees and phone them. This would be to presume that the 1st Plaintiff was even in a condition to remember to do so.

The 1st Defendant was unable to show the court where she recorded that she should be called if the 1st Plaintiff went into labour but she said that she left those instructions with DW2. DW2 did not pass on to DW3, the message to call the 1st Defendant in the event that PW1 felt, or showed sign of labour. DW3, the mid wife, thereby proceeded to deliver the baby in the absence of the 1st Plaintiff.

I find as a fact that the 1st Defendant told the 2nd Defendant to inform her if there was anything like normal labour because the baby was big and she planned to conduct a caesar. I also find as a fact that the 1st Defendant did not record anywhere that she must be contacted in the event that the 1st Plaintiff felt or showed any signs of labour.

Though the shoulder dystocia could not have been foreseen, the absence of the 1st Defendant when the child was being delivered had a direct causal effect on the child dying as a result of the complication not being attended to. Had the 1st Defendant been present, the child had an almost 100% chance of survival.

In keeping with the "but for" test, I hold the view that, but for the failure by the 2nd Defendant to call the 1st Defendant when the 1st Plaintiff went into labour, the 1st Defendant would have attended to the birth and the 1st Plaintiffs child would not have died.

I wish to once again refer to the pronouncement by Lord Brown-Wilkinson in the **Bolitho case**[20] when he said the following;

> *"The effect of the Bolam test is that the Defendant must live up to the standard of the ordinary skilled man exercising and professing to have special skills. The court has to subject the expert medical evidence to scrutiny and to decide whether the practice is reasonable. The issue of reasonableness is for the court and not for the medical profession."*

In the case of **Hucks v Cole**[21], **Sachs LJ**. said as follows;

> *"When the evidence shows that a lacuna in professional practice exists by which risks of grave danger are knowingly taken, then, however small the risk, the court must anxiously examine that*
> *avoided. If the court finds, on an analysis of the reasons given for not taking those precautions that, in the light of current professional knowledge, there is no proper basis for the lacuna, and that it is definitely not reasonable that those risks should have been taken, its function is to state that fact and where necessary to state that it constitutes negligence. In such a case the practice will no doubt thereafter be altered to the benefit of patients."*

The alleged negligence in this case is not specifically in relation to the negligent exercise of any special skill but rather in relation to a chain of events that prevented the 1st Defendant from exercising her expert medical skills which would have saved the life of the 1st Plaintiffs child.

I find that the omissions by 1st and 2nd Defendants to record or otherwise pass on critical information to DW3 were unreasonable and negligent and unnecessarily put the 1st Plaintiffs

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[20] *Bolitho (deceased) v City Hackney HA (1993) P.I.Q.R. P334*

[21] *Hucks v Cole (1993) 4 Med. L.R. 393*

baby at risk with fatal consequences. There was clearly a team failure and the 1st Defendant and DW2 were equally negligent.

The question arose as to who between the two defendants should be liable should the court establish negligence. Dr Banda argued that the 1st Defendant could not be held personally liable for any negligence because she was an employee of the 2nd Defendant which was a legal person and thus vicariously liable for the omissions of the 2nd Defendant. He cited the case of **Salamon v Salamon**[22] which established the fact that corporate entities are legal persons quite separate from its directors and managers and that a *"corporate entity is vicariously liable for the acts of its agents or servants if the same are committed in the course of their official duties for and on behalf of their principal and employer."*

Dr. Banda also relied on the House of Lords holding cited by learned counsel for the Plaintiffs in **Roe v Ministry of Health**[23]**.** In that case it was held that an employer could not be absolved from vicarious liability even if the negligence was committed by an independent contractor, if it could be shown that the independent contractors work could be imputed to that of his employer. I understand this as an alternative argument; that, should the court find the 1st Defendant liable, she should be indemnified by the 2nd Defendant under the doctrine of vicarious liability.

Learned counsel for the 2nd Defendant on the other hand argued that the 1st Defendant was an independent contractor and the 2nd Defendant could not be held liable for her negligence. He pointed out that the 1st Plaintiff testified that she was employed full time by Chainama Hospital that when doing work at the 2nd Defendant hospital she was paid immediately she rendered the service and neither was she supervised by anybody at the 2nd Defendant hospital. He added that that she didn't have a contract of employment with the 2nd Defendant and was thus an independent contractor.

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[22] *Salamon v Salamon (1897) A.C. 22*

[23] *Roe v Ministry of Health (1954) 2 QB 66 or (1954) 2 ALL ER*

The concept of an independent contractors in the medical field was addressed in the case of **Cassidy v Ministry of Health (Fahani, third party)**[24] in which it was said that, *"The liability of hospital authorities for negligence of a doctor on the permanent staff of the hospital does not depend on whether he is employed under a contract of service or under contract for service ..... if the patient himself selects and employs the Doctor, the hospital authorities are not liable for his negligence, but whether the doctor, be he a consultant or not, is employed and paid, not by the patient, but by hospital authorities, the hospital authorities are liable for his negligence in treating the patient."* Having submitted that 1st Defendant was paid by the 2nd Defendant, it is interesting that this case was cited by learned counsel for the 2nd Defendant.

In my view, the evidence on record shows that the 1st Defendant was an employee of the 2nd Defendant, albeit a part time consultant. She only interacted with the PW1 at the 2nd Defendant hospital and relied on the 2nd Defendants full time nurses and midwives. The letter from the 2nd Defendant to the Registrar of the Medical Council of Zambia dated 4th April, 2007 clearly states that the PW1 was their patient and they asked her to see their visiting gynecologist, the 1st Defendant. The term "visiting" does not pre suppose that the gynecologist is an independent contractor and in any event, the 1st Defendants fees for services provided were paid directly to her by the 2nd Defendant.

The 2nd Defendant did not avail the court with any copy of any agreement or terms by which the 1st Defendants services were engaged. The 2nd Defendant did not even produce any witness to rebut the suggestion by the Plaintiffs that the 2nd Defendant was vicariously liable for the 1st Defendants acts.

In the absence of evidence to the contrary, I would lean towards the House of Lords finding in **Roe v Ministry of Health**[25] when it held that *"an anesthetist was a servant or agent of the*

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[24] *Cassidy v Ministry of Health (Fahani, third party) (1951) 1. ALL ER P.574*

[25] *Roe v Ministry of Health (1954) 2 QB 66 or (1954) 2 ALL ER*

hospital authorities who were, therefore, responsible for his acts". Likewise, I find that the 1st Defendant was a servant or agent of the hospital authorities who were, therefore, responsible for her acts.

In response to the assertion that the principle of vicarious liability absolves a negligent employee from liability I refer to the case of **Jonathan.W.M Kalonga And Zambia Printing Company Limited V Titus Chisamanga & Joyce Vinkumba**[26] in which Fredrick Chomba said as follows;

> *"As we shall be stating in dealing with the third ground of appeal, when a servant commits a tort in the course of his employment his master is vicariously liable. However, the party who is injured by such tort is not compelled to sue the master jointly with the servant.* ***At paragraph 241 of the 37th volume of the 3rd edition of Halsbury's Laws of England it is stated as follows under the rubric 'vicarious liability':***
>
> > *"The person who actually commits a tort is in general liable although in committing it he is acting as a servant of another person ……".*

Since the servant is personally liable, the injured party is free to elect to sue either the servant alone or to sue the servant and master jointly." (emphasis mine)

I note that even though I have found DW2, Sister Phiri, negligent, the Plaintiffs did not sue her in her personal capacity but decided to sue the 2nd Defendant for the negligence of its employees and the 2nd Defendant did not join her as a third party to the proceedings. DW2 is not a party to this action and therefore not personally liable for her negligence.

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[26] *Jonathan.W.M Kalonga And Zambia Printing Company Limited V Titus Chisamanga & Joyce Vinkumba (1988 - 1989) Z.R. 52 (S.C.)*

The Plaintiffs seeks damages for negligence for the loss of their child as well as damages for mental anguish and pain as a result of the loss of the said infant.

Damages for the loss of a child, though under different circumstances, was discussed at length by the Supreme court in the case of **Ndola Central Hospital Board Of Management V Alfred Kaluba And Priscilla Kaluba**[27] in which Ngulube, CJ delivered the judgment of the court and said the following;

> *"It seems to us that the now well-established principal of awarding damages for nervous shock can and should be extended to cover the novel situation where the shock resulted from the negligent loss of the baby. The damages should be for the shock and in this regard Mrs. Kunda was right to complain against the basis proposed by the learned trial judge. It is necessary to quote what the learned judge said:*
>
> > *"The loss of a child is not only a great loss but also a traumatic experience. The loss is even the more painful where like in the present disappears in thin air, so to say. What is more painful is that the plaintiff will always live with the memory that their baby may be alive with someone who does not deserve even a bit to have the baby. In such circumstances compensation will not be adequate to compensate for the loss. The damages to be awarded can only go to console the Plaintiffs rather than to compensate them for the loss and disappearance of their baby boy from a well secured baby care unit. Taking into consideration all the circumstances of the case, I find that damages at K40,000,000.00 would fairly console them. I would award that amount."*

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[27] *Ndola Central Hospital Board Of Management V Alfred Kaluba And Priscilla Kaluba (1997) S.J. 38 (S.C.)*

From the passages we have quoted, it is clear that instead of compensating the parents for the severe and lingering traumatic shock, they were to be compensated or "consoled" for the actual loss of the baby. We do not believe that a value can be placed on the baby nor that this was a proper approach to damages for shock. In recognizing that the parents suffered shock, the court recognizes that each one of them suffered injury though not of the physical type. It is for the shock that they fell to compensate, not for the loss of a baby. We do not accept Mr. Chilandu's submissions that there was aggravation or such conduct by the defendant that the damages had to be punitive. It follows from all this that we consider the award to have been made on a wrong principle and to have been, in any event, inordinately high. We set it aside.

We are at large. We bear in mind the facts and the circumstances and accept that the parents suffered in the extreme; they probably continue to suffer. We are alive also to the absence of any medical evidence regarding the shock inflicted upon the parents. However, the circumstances leave no room for doubting but that this was a serious case of unimaginable proportions. We must emphasize that the damages are for the shock suffered and not the loss of the child suffered as such. No amount of money could ever compensate for loss of a child. Doing the best we can, therefore, we consider a global award of K10 (ten) million Kwacha as appropriate for the shock suffered as a result of the defendant negligently losing the parent's baby.

The appeal succeeds to the extent indicated. Costs follow the event and they are to be taxed in default of agreement.

It must be said that though this particular case and the cited case both involve the loss of a child in totally unexpected circumstances, they can be distinguished from each other. The distinguishing factor is that in the cited case there was absolutely no expectation that the child

would go missing whereas in casu, even though there was negligence, there is always the chance and therefore the knowledge that during childbirth a complication resulting in loss of the child can occur.

As earlier stated in this judgment, this case borders on "loss of chance causation", save for the fact that the 1st Defendant testified that had she been in the delivery room, as she should have been, she would have saved the child's life. This makes it a somewhat novel case.

Having said that, I accept that the loss of the Plaintiffs child was a traumatic event because they had no reason to fear they would lose their child on that fateful day. Taking into account the circumstances of this case, I award the Plaintiffs damages for mental anguish and pain arising from the loss of their child. In making this award I note that in the cited case[28], the court considered the sum of K40,000 awarded by the lower court to have been inordinately high and instead ordered damages in the sum of K10,000 for mental shock. That was in 1997, seventeen years ago. I would today, in 2014, consider the sum of K50,000 to be an appropriate award for damages under this head in the present circumstances.

The law is quite clear that human life cannot be accorded a monetary value and there can therefore be no monetary compensation for the loss of life itself. It is the loss of the amenities of life that can be compensated and compensation can also provide a cushion against the effect of the loss of life. In this particular case, the deceased being a baby, the question of loss of amenities of life does not arise. Further, the award given as damages for mental anguish and pain is a sufficient monetary cushion for the effects of the loss of the baby.

With regards to the issue of apportioning liability I relied on the guidance of Gardner, A.J.S when he delivered the Supreme Court ruling in the case of **Manfred Kabanda And Kajema Construction V Joseph Kasanga**[29]

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[28] *Ibid 27*

[29] *Manfred Kabanda And Kajema Construction V Joseph Kasanga (1992) S.J. 15 (S.C.)*

"As to the question of damages, as we have said, we agree with the comments made by Mr. Akaluta as to the improper method used in this case for the allocation of damages. We would also point out that both appellants are equally liable for the whole of the damages and it was wrong for the learned trial judge to allocate damages to be paid partly by one defendant and partly by another in the circumstances of this case".

Having considered the circumstances of this case and having found the 1st Defendant and the 2nd Defendant equally negligent, liability is apportioned equally between the two Defendants and any awards to the Plaintiffs shall be borne equally between the two Defendants.

In the premises I adjudge as follows;

1. **No award is given for loss of the Plaintiffs child's life.**
2. **The claim for damages for mental anguish and pain as a result of the loss of the said child is allowed and the 1st Defendant and 2nd Defendant shall pay the Plaintiffs the sum of K50,000.**
3. **The Plaintiff is awarded interest on the awarded sum with interest at the short term commercial bank lending rate from the date of the Writ until the date of payment and at the rate of 6.5% per annum from the date of Judgment until payment.**
4. **Costs are awarded to the Plaintiffs.**

Dated at Ndola this 19th day of November, 2014.

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Mubanga Kondolo, SC
Judge