

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 720 OF 1989



BETWEEN:

E R M'MADI NTELERA PLAINTIFF
:
and

SABOT HAULIERS LTD. DEFENDANT

Coram: D F Mwaungulu, REGISTRAR
Nyirenda, of Counsel for the Plaintiff
Msaka, of Counsel for the Defendant

ORDER

This is an action under Section 7 of the Statute Law (Miscellaneous Provisions) Act, Cap. 5:01 of the Laws of Malawi, by the widow of Mbwana Mmadi Ntelera. Ntelera died in a car accident on the Zomba-Lilongwe road on the 27th of October 1988. The widow is suing for loss of dependency for herself and seven children of the marriage, Mary aged 15, Aubrey aged 13, Linda aged 11, Elaton aged 9, Oscar aged 7, Chikondi aged 5 and Madalo aged 3. There is also a claim of special damages comprising of funeral expenses and damages to the deceased's clothes.

I do not think that the special damages can be recovered. They have not been proved and proved to have been incurred by the dependants.

The deceased was a businessman. His earnings have not been established. The widow, however, is able to establish the dependency. She has not mentioned how much was spent on her clothes annually. She knows how often the children were clothed. She could not state how much was spent. Looking at her husband's earning a provision of K600 per annum could be made. The dependency per month raised by the evidence is:

Provisions	K130.00
Maize	K 24.00
Wash Powder	K 11.00
Soaps	K 6.00
Rent	K 25.00
	<u>K202.00</u>



The deceased paid K3.50 for each of the children in school. This gives an annual dependence of K2,888.00. The deceased was aged 42 years at the time of death. His working life was open up to the age of fifty-five, according to decisions of this Court.

In arriving at the award, the Courts endeavour to come up with a figure which by reduction from capital and income generated by interest accruing from investment of the funds, gives an annuity equivalent to the one lost for the time when the dependency would have continued. Courts have generally used the multiplier/multiplicand approach (actuarial tables, although can be used to cross-check, have been rejected by Courts). The multipliers assume interests of 4-5 per cent because commercial rates reflect inflationary pressures. In some cases courts have spelt out the multiplier. In a majority of cases, however, the multiplier has to be deduced. The appropriate multiplier in this case is 10. The dependency having been proved at K2,888, I award K28,880 to the plaintiff. At the rate of 4 per cent the fund will be exhausted in the thirteen years in which the deceased would have continued to work. The dependency would have continued up to the time the deceased attained 55 years.

Apportionment is part of the judgment. The principles on which it is to be done are not clear. In Bulmer vs. Bulmer (1883) 25 Ch.D the apportionment was based on actual and proven loss of dependency. This approach may be difficult generally and in this case in particular where it cannot be said precisely what share each had in things that were consumed together in the household. In Sanderson vs. Sanderson (1877) 36 L.T. 847 apportionment was based on the Statute of Distribution. In the United Kingdom, the practice, which should be the case here, is to award the greater part of the total to the widow, on the reasonable assumption that she will maintain the children so long as they are dependant, and to award comparatively small sums to the children. Usually, though not always, a younger child is awarded more than an older child because the period of expected dependency is greater (Report on the Committal on Funds in Court (July 1959 Imnd 818 paragraph 15). In Benson vs. Biggs Wall & Company Limited (June 1980) it was held that the apportionment between mother and son had to be made in such a way as to reflect the actual dependency of the son. Apportionment should take into account the prospect actual or otherwise of the re-marriage of the widow. This should be obvious from Thompson vs. Price (1973) Q.B. 838. The widow here was 33 years at the death of her husband. When asked about the prospect of re-marriage, she jested whether a suitor would want to take her and her seven children. I would think the prospect of re-marriage is a faint possibility. It can conveniently be ignored.

Up to now, on apportionment of damages to children, I have proceeded on how many years remained before the child would not be dependent on the parent. This in Malawi is 21 years.

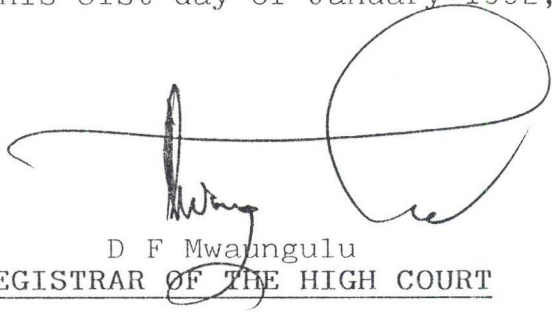
The average has been worked and awards made on the basis of the years each child had remaining before he became 21. The criticism to this approach is that the elder children may have more pressing needs like entry into college, where more fees are paid. This is balanced by the huge awards made to the parent. The parent should be able to address such pressures. It would be unwise to cut into the younger child's portion because a younger child's future is more uncertain and precarious, although it may be argued that the younger child may benefit from the income generated because it will be way in the future when the money may be used.

I make the following distribution:

Widow	K 9,627.00
May Mmadi	K 1,375.00
Aubrey Mmadi	K 1,834.00
Linda Mmadi	K 2,292.00
Elaton Mmadi	K 2,750.00
Oscar Mmadi	K 3,209.00
Chikondi Mmadi	K 3,667.00
Madalo Mmadi	K 4,126.00
	<u>K28,880.00</u>

The award to the children should be paid into court for investment.

Made in Chambers this 31st day of January 1992, at Blantyre.


D F Mwaungulu
REGISTRAR OF THE HIGH COURT