

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2945 OF 2003

BETWEEN:

MASANGO MYABAPLAINTIFF

AND

THE REGISTERED TRUSTEES OF
UNITED DEMOCRATIC FRONT
(A POLITICAL PARTY).....DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Mhango, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages for loss of expectation of life by the deceased herein and for loss of dependency on the deceased by the plaintiff. This assessment is done pursuant to a default judgment dated 16th December, 2003. The notice of hearing of this assessment was duly served on the defendant who never appeared at the hearing. That left the plaintiff's evidence totally uncontroverted. The plaintiff sues the defendant on his own behalf and on behalf of the dependants of his deceased wife, Dorothy Myaba. The deceased aged 23 years at the time of her death died on 31st October, 2002 in a car accident caused by the negligence of the defendant's driver along the Karonga-Mzuzu road.

The deceased is survived by his husband, the plaintiff and 3 children namely Phoebe Myaba aged 7 years, Towonge Myaba aged 5 years and Cecilia Myaba aged 1½ years. The deceased was a strong tobacco farmer. In the farming year she died she had realized K143,582.00 from tobacco sales. The deceased belonged to Tavwasha Club through which she sent her tobacco for auction sale at the Tobacco Auction Floors. The plaintiff would reserve K100,000.00 for home use and leave the remainder for farm inputs.

This court notes that as rightly submitted by counsel there is a plethora of authorities to the effect that damages for loss of expectation of life are awarded to a deceased's estate. See **Rose v. Ford** [1937] A.C. 826. The prime factor to be considered is a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness by the deceased. See **Benham v. Gambling** [1941] A.C. 157. It appears that herein the deceased had a prospective happy life when one considers that she was actively engaged in agri-business. She also had a family, which she was ably supporting.

This court has considered the cases cited by counsel herein of **Thuluwe v. Attorney General** Civil Cause Number 2812 of 2000 and **Libana v. Attorney General** Civil Cause Number 296 of 1998 on the previous awards under the head of damages termed loss of expectation of life. In the circumstances of the present case this court awards the plaintiff the sum of K60,000.00 damages for loss of expectation of life regard having also being had to the effect of inflation on our currency.

With regard to damages for loss of dependency this court uses what can be termed the multiplicand and multiplier formula in arriving at the level of the award. See **Mallet vs. Mc Monagle**. [1970] A.C. 166, 175.

The multiplicand being the deceased's monthly income whereas the multiplier is the approximated number of years the deceased might have lived if not for the wrongful death. To arrive at the level of loss of dependency, the multiplicand is multiplied by the multiplier. And the product thereof is multiplied by 12, representing the number of months in a year, and whatever the product is reduced by one third representing the income the deceased is presumed to spend on his or her purely personal needs.

This court notes that contrary to the formula propounded by counsel for the plaintiff designating a monthly income for the deceased the deceased was only earning an annual income after a particular tobacco growing season. And so the multiplicand herein shall have necessarily to be a figure representing the plaintiff's annual income. The pleadings show the plaintiff was earning an annual income of K75,000.00. The evidence suggests a different figure of K100,000.00. Since pleadings define the issues, the extent of the deceased's annual income herein shall be the K75,000.00 pleaded and proved. That sum excludes the deceased's operating expenses for farm inputs and other things.

With regard to the multiplier this court notes that the plaintiff died aged 23 years considering the average national life expectancy recently pegged around 50 years, this court adopts a multiplier of 19. This is so in view of the fact that the dependants of the deceased shall among other things benefit from a lump sum payment as opposed to instalments. This court also alluded to several cases on multipliers for guidance including that of **Makwerero v. Attorney General** Civil Cause Number 2314 of 1999 cited by Counsel.

The level of dependency herein therefore becomes K75,000 x 19 x $\frac{2}{3}$ which comes up to K950,000.00. The sum of K950,000.00 is therefore awarded to the plaintiff as damages for loss of dependency. The total award herein becomes K1,010,000.00.

This sum is apportioned amongst the dependants of the deceased as follows:

Name	Age (years)	Amount (Kwacha)
Masango Myaba	-	150,000.00
Phoebe Myaba	9	220,000.00
Tionge Myaba	6	280,000.00
Cecilia Myaba	1½	360,000.00

The sums awarded to Phoebe Myaba, Tionge Myaba and Cecilia Myaba shall be paid in court and be deposited in an interest earning account for the benefit of these young children.

Costs of this assessment are for the plaintiff.

Made in Chambers at Blantyre this June, 2004.

M A Tembo

ASSISTANT REGISTRAR

