

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1713 OF 1995

BETWEEN:

KENNEDY CHIMPANZI.....PLAINTIFF

AND

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Jumbe, Counsel for the Plaintiff.

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages herein pursuant to a default judgment entered in favour of the plaintiff herein for damages for loss of expectation of life, loss of dependency and funeral expenses.

The notice of hearing of the assessment of damages was duly served on the defendant's Chambers who made no appearance at the hearing. The plaintiff's evidence is therefore uncontroverted. The evidence herein was taken before the late Mr Sidira then Deputy Registrar of the High Court.

The plaintiff's daughter, Rachel Chimpanzi, aged 20 years at the time of her death died whilst in the custody and care of Zomba Mental Hospital. She was a form 4 student at Stella Marris Secondary School. She was a hard working student with good prospects of securing a job after completion of her studies. She was also very helpful at home in that she used to do a lot of household chores helping her dependants, the plaintiffs herein.

The plaintiff now sues on his own behalf and on behalf of the deceased's dependants for damages for loss of dependency and for loss of expectation of life on behalf of the estate of the deceased as well as for funeral expenses incurred.

The issue of the defendant's liability was settled by the default judgment. The only issue is how much in compensatory damages is due to the plaintiffs and the deceased's estate.

This court notes that the law was settled in the case of **Rose v Ford** [1937] AC 826 that a claim for loss of expectation of life is maintainable on behalf of the estate of the deceased. And with regard to awards for such loss, they were described as basically conventional. See **Cain v. Wilcock**[1968] ALLER 817. This is so because loss of expectation of life is an aspect that can not be quantified in monetary terms with any known mathematical formula. Courts, therefore, use the same approach employed in arriving at damages in personal injuries cases.

This court had opportunity to look at the case of **Chimbula v. Yona t/a Chokotho** Civil cause No. 301 of 2001 in which this court awarded K60,000.00 of damages for loss of expectation of life by a person who died aged 21 years.

The relevant factor is that the deceased herein died aged 20 years. The life expectancy in this country was pegged at around 55 years by the National Statistical office but has since been revised downwards with the advent of the many health risks including HIV/Aids. The deceased herein might possibly have reached her 50's had it not been for her death herein. She possibly had about 30 years to live. This court therefore awards the sum of K100,000.00 as damages for loss of expectation of life in the circumstances of the instant case.

On the aspect of loss of dependency on the deceased by the plaintiff the law is that in arriving at damages recoverable the courts use what can be termed as the multiplicand and multiplier formula. See **Market v. Mc Monagle** (1970) A.C. 166, 175. The multiplicand is the deceased's monthly income whilst the multiplier is the approximated number of years the deceased would have lived if not for the wrongful death.

To arrive at the level of dependency, the multiplicand is multiplied by the multiplier and then the figure of 12 representing the number of months in a year. Whatever the product, there is a reduction of one third, representing the portion the deceased would have presumably expended on purely personal needs.

In the instant case the deceased was not employed. But that fact shall not deter this court

from working out an award for loss of dependency. The fact remains that at the age of 20 years the deceased was employable under the laws of this country as she was an adult. At the least she would have, upon getting employment, been earning the minimum wage for domestic workers as stipulated under the Employment Act namely K2,000.00 per month. For the foregoing reasons this court adopts the sum of K2000.00 as the multiplicand herein. With regard to the multiplier this court has already noted that the deceased was aged 20 years at the time of her death. Had it not been for her death she most probably would have lived into her 50's. This regard having been had to the statistics on life expectancy in Malawi that pegs it to around the range of 50 years. The deceased therefore possibly had around 30 more years to live had it not been for her death. That figure of 30 years shall be reduced to cater for eventualities of life that may have reduced her life expectancy in any event. This court makes a reduction of 10 years and so adopts the multiplier of 20. So taking the figure of K2000.00 as the multiplicand and that of 20 as the multiplier the level of dependency works out as follows; when the formulae laid out above is used, $K2,000 \times 12 \times 20 \times \frac{2}{3}$ which becomes K320,000.00.

The sum of K320,000.00 is therefore awarded to the plaintiff as damages for loss of dependency. With regard to the special damages for funeral expenses, the same have been proved to be K1,750.00 as claimed. And so K1,750.00 special damages are awarded to the plaintiff herein.

The total sum awarded for loss of expectation of life and loss of dependency shall be equally divided between the plaintiff and the mother of the deceased Mrs Chimpanzi.

Costs of this action are for the plaintiff who is the successful litigant herein.

Made in **CHAMBERS** at **Blantyre** this February, 2004.

M A Tembo

ASSISTANT REGISTRAR