



The Judiciary

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 947 OF 2015**

**BETWEEN**

**LASTONE CHIDULE.....CLAIMANT**

**AND**

**ESCOM LIMITED.....DEFENDANT**

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**CORAM: A.J. BANDA, ASSISTANT REGISTRAR**

For the Claimant, Mr. Gulumba, of counsel,

For the Defendant MTM Law Chambers, no counsel present

Ms. M. Galafa, Clerk/ Official Interpreter

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**BANDA, AR:**

**ASSESSMENT ORDER**

**1. Background**

This is an assessment of damages order pursuant to a default judgement that the claimant obtained, that was endorsed by the court on 4<sup>th</sup> February, 2016, in lieu of a defence from the defendant within the prescribed time. The claimant got judgment to be paid damages for loss of expectation of life, damages for loss of dependency and costs of the action. The claimant sued following the death of Mphatso Chidule who died from electrocution that was caused by the defendant's agents or servants in the course of felling down trees which had grown close to power lines. At the time of his death, Mphatso Chidule was 12 years old and attending school. The plaintiff suing under the Statute Law (Miscellaneous Provisions) Act, is a maternal

uncle of the deceased, and sued on his own behalf and on behalf of three siblings of the deceased. The deceased Mphatso Chidule was under the guardianship of the claimant following the death of his mother and abandonment by his father.

## **2. Issue**

The only issue at this stage of proceedings is the applicable quantum of damages for loss of expectation of life and loss of dependency, given the facts in this case.

## **3. Analysis and Determination**

Damages are paid as a matter of compensation in torts, for a wrong done to the receiving party, by the party that is responsible for the wrong. The principle is that as far as money can do, the claimant should be put in the same position as he could have been if the wrong was not done, for which he is receiving compensation. It is acknowledged that loss that is not in monetary terms cannot perfectly be ascertained with mathematical precision, as such the damages to be paid in monetary terms must be reasonable compensation. To achieve a reasonable degree of certainty, courts have recourse to decided cases for guidance.

### **3.1. Loss of Expectation of Life**

Awards for claims of loss of expectation of life takes into account the number of years a deceased person was expected to live without necessarily attaching value to the years. A court considers the country's life expectancy when making such an award- Samuel Chawanda v. Attorney General Civil Cause No. 3556 of 2002 High Court, Principal Registry (unreported). The court also factors life's ups and downs. It is a fact of life that misfortunes abound in the human realm that lessens a person's natural length of life- Aaron Amosi and Another v. Prime Insurance Company Limited, Personal Injury Cause no. 133 of 2013, High Court, Principal Registry.

When the deceased died in this case she was 12 years old as the death report will show. This was in the year 2015. The country's life expectancy then, according to the **United Nations Development Programme (UNDP) Annual Report, 2015** was 62 years.

The plaintiff cited several cases that the court should have considered for guidance. They are fairly old cases, the latest being an award made on 14<sup>th</sup> January, in the year 2013. The age of the deceased at the time of the wrongful death in those cited cases was 27 in one case and 39 in another. The ages are far advanced in the cited cases as compared to the case here-in. Nevertheless, the plaintiff submitted that K2, 000,000.00 would be the appropriate damages under this head. The defendant proposed a sum of K1, 200,000.00 as adequate

compensation for loss of expectation of life. The cases cited by the defendant were closer to this case in the age of the deceased, but also in time of making the award.

In Chitsilu Nkhoma v. Bridger Makina and Reunion Insurance Company Limited, PI Cause No. 538 of 2015, High Court Principal Registry (unreported), K1, 000,000.00 was awarded in May, 2017, for loss of expectation of life for a deceased person who died at the age of 14 years. In the case of Nelson Mika v. Prime Insurance Company Limited, PI Cause Number 473 of 2015, High Court, Principal Registry (unreported), the plaintiff was awarded K1, 500,000.00 for loss of expectation of life for a person who died at the age of 8. This award was made in July, 2017. In the Nelson Mika case the court considered a life expectancy of 52 years according to statistics of the country in the year 2011 as presented by the UNDP.

Considering the life expectancy at 62 years at the time of death of the deceased in this instant matter, as opposed to 52 in the Nelson Mika case, and also taking into account the difference in age of the deceased at the time of death in the two cases, and factoring in vicissitudes of life that would be in play, I find an award of **K1, 800,000.00** to be adequate compensation under this head.

### 3.2. Loss of Dependency

Courts use a multiplicand and multiplier formula to come up with an award for loss of dependency. The multiplicand is the figure representing the deceased's monthly earnings which is also multiplied by the figure 12, being the number of months in a year. The multiplier is an estimated number of years the deceased would have lived if it were not for a wrongful death- Samuel Chawanda v. Attorney General (supra). In the Chawanda case the court adopted, with authority of the case Libana v. Attorney General Civil Cause No. 296 of 1998, High Court, Principal Registry (unreported), a quarter of the domestic servant's minimum wage as the multiplicand for a deceased who died at the age of 12 who for the tender age could not be in employment at the time of the wrongful death. I will follow the precedent in this case.

The current minimum wage that took effect on 1<sup>st</sup> July, 2017, as revised by the Minister of Labour under section 54 of the Employment Act is K962.00 per day. Normally domestic workers work 6 days a week and there are four weeks a month. I will round off the minimum monthly wage at K25, 000.00. A quarter of that is K6, 250.00, and this is our multiplicand. Life expectancy at the time of the deceased death was 62. He died at the tender age of 12. He was expected to live for 50 more years. I will subtract 5 years to cater

for life's events, but also the fact the sum will be paid as a lump. The multiplier is therefore 45. As such the damages awardable for loss of dependency is **K3, 375,000.00**.

#### **4. Conclusion**

In conclusion, the claimant should recover a total sum of **K5, 175,000.00** as damages for loss of life expectancy (K1, 800,000.00) and damages for loss of dependency (K3, 375,000.00). The claimant should also recover costs of the assessment proceedings.

Made this 23rd day of May, 2018.



Austin Jesse Banda

**ASSISTANT REGISTRAR**