



IN THE HIGH COURT OF MALAWI  
CIVIL DIVISION  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 894 OF 2020  
(Before Justice Rachel Sophie Sikwese)

BETWEEN:

CHIMANGE

(Suing on his own behalf and on behalf of the dependants of LAZARUS CHIMANGE  
(deceased)).....CLAIMANT

AND

RAIPLY MALAWI LIMITED.....1<sup>ST</sup> DEFENDANT  
GENERAL ALLIANCE INSURANCE COMPANY LTD.....2<sup>ND</sup> DEFENDANT

CORAM

HON. JUSTICE RACHEL SOPHIE SIKWESE

Dzikawanda; Counsel for the Claimant  
Dzimphonje; Counsel for the Defendants  
Chilimampunga; Official interpreter

RULING

ON PROCEDURE TO COMMENCE ACTION AS AN ADMINISTRATOR OF A DECEASED  
ESTATE  
AND  
ORDER SETTING ASIDE PROCEEDINGS

SIKWESE J

## **Procedural Background**

1. On 5 November 2020, the Claimant filed a specially endorsed summons claiming damages for loss of dependency and expectation of life arising from the death of one Lazarus Chimange on 29 June 2019, at Dedza District Hospital after sustaining severe head injuries in a road accident and costs of the action.
2. On 15 November 2021, the matter was scheduled for mediation. The Claimant's and Defendants' statements of issues raised a number of both factual and legal issues for discussion at the mediation.
3. One of the issues raised for consideration by the Claimant in paragraph 1.1 was, "whether the Claimant is the administrator of the estate of Razarus Chimange, deceased?"
4. A similar issue was raised in the Defendants' statement of issues but presented differently asking in paragraph (d), "whether without letters of administration, the Claimant is entitled to the damages claim [and] quantified and costs of this action?"
5. The Court invited both Counsel to address it on this point of law as it related to *locus standi* being a preliminary matter before proceeding to mediation as scheduled.
6. Counsel for the Claimant argued that the Claimant was not required to obtain and file letters of administration because he was exempted under section 7 of Statute Law (Miscellaneous Provisions) Act.
7. Counsel for the Defendants basing on the same provision, section 7, of Statute Law (Miscellaneous Provisions) Act, argued to the contrary. He averred that there is no such exemption and that in paragraph 1 of their defence, they have stated that, "at trial [they] will require the Claimant to produce letters of administration obtained before commencing the present action".

## **Considerations**

8. Section 7 of the Statute Law (Miscellaneous Provisions) Act, provides that:

Where, in any case intended and provided for by this Part, there shall be no executor or administrator of the person deceased, or if no action is brought by such executor or administrator within six months after the death of such deceased person, an action may be brought by and in the name or names of all or any of the persons for whose benefit such action would have been brought, if it had been brought by and in the name of such executor or

administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator.

9. The provision allows a claimant to bring an action, in his name or names of all or any of the persons for whose benefit such action would have been brought. This entails that the action shall be brought in the name of a claimant or names of the beneficiaries as if it had been brought in the name of executor or administrator of the deceased estate.
10. The statement of the case however states that, “ the Claimant brings this action as administratrix of the estate of late Lazarus Chimange”.
11. There is an assumption in the statement of the case that the Claimant as an administrator is a holder of letters of administration as provided under section 43 of the Deceased Estates (Wills, Inheritance and Protection) Act, which states that;

Where the deceased has died intestate, letters of administration of his or her estate may be granted to any person who, under section 17 or 18, would be entitled to the whole or any party of such deceased’s estate.
12. The purpose of letters of administration shall be to, “entitle the administrator to all rights belonging to the deceased...” (section 50(1) Deceased Estates (Wills, Inheritance and Protection) Act). One such right is the right to bring action in a court of law against all debtors of the deceased or persons holding inheritable property of the deceased.
13. The letters of administration shall be conclusive against all debtors of the deceased and all persons holding inheritable property of the deceased, (section 50(2) of the Deceased Estates (Wills, Inheritance and Protection) Act).
14. In *Adam (Suing as Administrator of Estate of Bonzo Adam (deceased) v Stanbic Bank Limited*<sup>1</sup>, the Supreme Court of Appeal (SCA) made the following observations on the issue of *locus standi* under substantially similar circumstances;

In considering and determining whether the appellant has *locus standi* to institute these proceedings, it is expedient that we are guided by relevant pleadings on the matter. A glance at the appellant’s writ and statement of claim...clearly shows the status and capacity in which the appellant commenced these proceedings. He commenced these proceedings as an administrator of the estate of Bonzo Adam (deceased). On the other hand, in its re-amended defence, the respondent denied that the appellant was a co-administrator of the estate of Bonzo Adam

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<sup>1</sup> [MSCA Civil Appeal No. 3 of 2009, judgment delivered 7 May 2009 (unreported)]SCA

(deceased) and therefore demanded strict proof thereof by the appellant... Notice was given to the appellant that the respondent would at trial require the appellant to produce for the respondent's inspection originals of certified copies of the letters of administration duly issued by the High Court authorising the appellant to administer the estate of Adam Bonzo (deceased)...No letters of administration were at all produced by the appellant before or during and after the trial of the instant case.

15. After making the above observations the SCA held that;

The appellant had failed to prove before the lower court that he had *locus standi* in the instant case. Such having been the position, and due regard being had to the relevant legislative and case law...on the point, the judge ought to have dismissed the case of the appellant in its entirety on that basis alone.

16. Such is the position of the law, that the case ought to be dismissed, in cases where a claimant pleads to be "an administrator" of a deceased estate. He must produce at commencement of the action, letters of administration as proof of his authority to assume the rights of the deceased in a court of law.

17. The Claimant in this action pleaded to be an administrator without complying with this process. He relied on a legislative provision which does not apply in the instant case in as far as the Claimant describes himself as an administrator.

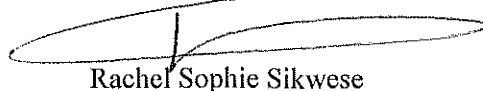
## **RULING**

18. **IT IS THE COURT'S RULING THAT** this case is distinguishable from *Adam* above, in that the irregularity in the case at bar was caught at a preliminary stage of the proceedings, (at mediation stage) and that the Rules of procedure may be utilised to cure the defect.

## **ORDER**

19. **IT IS ORDERED THAT** failure to comply with the procedure for pleading as an administrator is an irregularity; a just, fair and expeditious manner of dealing with the irregularity is to SET ASIDE mediation proceedings to allow the Claimant to comply with procedure. The Claimant shall file processes to cure the irregularity within fourteen days of this order.

Made this 15<sup>th</sup> day of November 2021, at **High Court (Civil Division) Blantyre.**



Rachel Sophie Sikwese

**JUDGE**