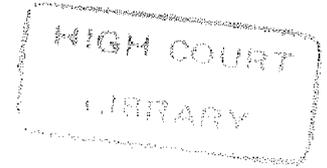




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**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 86 OF 2013**

**BETWEEN**

**T.C. MHANGO** (On behalf of Dependents of

**TIWONGE MHANGO, Deceased)** ..... **CLAIMANT**

**AND**

**REHANA GIGA** ..... **1<sup>ST</sup> DEFENDANT**

**SYED ASIF ALI GILLANI** ..... **2<sup>ND</sup> DEFENDANT**

**CORAM : HER HONOUR MRS. E. BODOLE, ASSISTANT REGISTRAR**

Mzembe, of Counsel for the Claimant

Mapemba, of Counsel for the Defendants

Mrs. Chilemba, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The Claimant brought proceedings against the Defendants claiming damages for loss of dependency, loss of companionship, loss of expectation of life, special damages and costs of the action. Judgment on liability was entered for the Claimant on 11<sup>th</sup> February, 2020. The matter has now come for assessment of damages.

## The Evidence

The Claimant brought this action on 13<sup>th</sup> January, 2013 on behalf of the dependents of Tiwonge Mhango, deceased. The Claimant is the father of the Deceased. The Deceased was born in March, 1992. He was employed by the Defendants on 6<sup>th</sup> May, 2011. His salary was the minimum wage of K6,000.00 per month. He died on 17<sup>th</sup> May, 2011 after the Defendants (KIPS) building collapsed and fell on him. The Defendants assisted the Claimant by buying a coffin and giving him a sum of K13,000.00 towards funeral expenses. The Claimant used a sum of K100,000.00 towards other funeral expenses such as food, clothing for the Deceased, transportation and other incidentals. He did not have receipts for the said amounts spent as receipts are not and were not issued and he was not in the mind frame to ask for the same.

The funeral was attended by many people because of the Deceased's jovial nature, his family long stay in Chilomoni, and because the KIPS' building incident was nationally publicized and aroused a lot of public sympathy. This increased the Claimant's out of pocket costs. The Deceased was laid to rest on 18<sup>th</sup> May, 2011.

The Claimant is claiming a sum of K5,000.00 which he used to travel to and procure the Death Report. Again, he did not obtain any receipt for the same.

The Deceased was the Claimant's only son and last born of his six children. He was the only child living with the Claimant and his wife at home in Chilomoni. He was a holder of Malawi Junior Certificate of Education. He was in the prime of his life, was a happy young man, full of life. He was ambitious and intended to continue with his education. He was assisting with chores at home and small business ventures. He intended to assist the family with his wages

As a result of his death, his family has lost and still miss his company, his jovial nature, and financial assistance. This has resulted in his parents getting depressed as he was the only one of his children left at home and spent a lot of time with them. The Deceased is survived by his parents and 5 sisters.

During the hearing of the matter, Counsel for the Defendants cross-examined the Claimant on whether or not he obtained Letters of Administration to administer the Estate of the Deceased. The Claimant answered that he did not.

## **Issues for Determination**

The issues for determination are:

1. Whether the Claimant can be awarded damages having not obtained Letters of Administration to administer the Deceased's estate; and
2. The appropriate measure of the quantum of damages that the Claimant ought to be awarded in the circumstances.

## **Applicable Law and Analysis**

The Claimant did not obtain Letters of Administration to administer the Deceased's estate. Section 7 of Statute Law (Miscellaneous Provisions) Act states 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 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, as 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."*

In *N'gambi v General Alliance Insurance Company Limited* [2020] MWHC 109 the Claimant was not administratrix of the estate of the Deceased and Counsel for the Defendant submitted that she was not entitled to damages. The Court held that:

*"A reading of Section 7 suggests that the law intended that wrongful death suits should benefit the deceased person's beneficiaries, whether it's through or by the administratrix/executors. The provisions suggest that the law's aim was to ensure that the bereaved family is compensated, and this ought not be impinged by an administratrix/executor who might delay commencement of the suit. It is unlikely that the goal was to completely prevent compensation for bereaved families whose loss was occasioned by identifiable person."*

It is clear that the goal of Section 7 of Statute Law (Miscellaneous Provisions) Act is to ensure that the beneficiaries to the deceased estate are compensated. The Deceased died on 17<sup>th</sup> May, 2011 and the proceedings were commenced on 13<sup>th</sup> January, 2013 which was over one and half years after the Deceased's death. The

Claimant's claim in the present case, therefore, cannot be thwarted by him not obtaining Letters of Administration.

In assessing damages for personal injuries, the intention of the Court is to compensate the injured party as nearly as possible as money can do. The principle is to put the Claimant in the position he would have been if he did not suffer the injuries he is claiming damages for - *Halsbury's Laws of England* 3<sup>rd</sup> Ed. Vol. II p.233 para 400. This principle was further enunciated in *Livingstone v Raywards Coal* [1880] AC 25 at 39 where Lord Blackburn said:

*'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'*

Such damages are recoverable for both pecuniary and non-pecuniary losses. Pecuniary losses must be specially pleaded and proved while non pecuniary losses are assessed by the Court - *Mary Ntulungwa & 9 Others v Makandi Tea Estate* Personal Injury Cause No 844 of 2012.

Damages cannot be quantified in monetary terms by use of mathematical formula but use of experience and looking at awards made in decided cases of similar nature - *Wright v British Railway Board* [1983]2 AC 773. In reaching the final award for damages through looking at similar awards made, the Court considers the time the awards were made and currency devaluation - *Kuntenga and another v Attorney General* Civil Cause No 202 of 2002.

The non-pecuniary head of damages include loss of expectation of life and loss of dependency. These are assessed by the Court. Pecuniary loss is also called special damages and must be pleaded and proved. - *Renzo Benetollo v Attorney General and National Insurance Co. Ltd* Civil Cause No. 279 of 1993.

### **Damages for Loss of Expectation of Life**

Damages for loss of expectation of life are claimable by a Claimant where his injuries have reduced his expectation of life - *Flint v Lovell* (1935) 1 KB 354. They are extended to actions which have survived for the benefit of the Deceased's estate and is thus available to the personal representatives of his estate.

In assessing the damages, the thing to be valued is not the prospect of length of days but of a predominantly happy life- *Venham v Gambling* [1919] AC 157. The damages are supposed to be modest and the sum is supposed to be conventional one - *Chikoti v Attorney General* [2006] MWHC 28. In *Fayiness Nyalugwe (on her own behalf and on behalf of the beneficiaries of the Estate of Macdonald Nyalugwe v Prime Insurance Company Limited* Personal Injury Cause No. 416 of 2013 the Court on 26<sup>th</sup> June, 2017 awarded the Claimant a sum of K1,500,000.00 as damages for loss of expectation of life. In *Louis Kwalinga (Suing on his own behalf and as Administrator of the Estate of Solomon Kwalinga – Deceased)* Personal Injury Cause No. 210 of 2020 the Court on 5<sup>th</sup> March, 2021 awarded the Claimant a sum of K2,500,000.00 as damages for loss of expectation of life. In the present case, the Claimant and the Deceased's beneficiaries have been deprived the enjoyment of life with the Deceased. This Court awards the Claimant a sum of K2,500,000.00 as damages for loss of expectation of life.

### **Damages for Loss of Dependency**

The foremost thing in this head is the amount of dependency. That is ascertained by deducting from the wages earned by the Deceased the estimated amount of his own personal and living expenses. In Malawi this is estimated at a third of the deceased's income - *Chikoti v Attorney General* (supra). Where the Deceased's monthly income is unascertained, the Court awards a sum equivalent to what a domestic worker earns – *Kenson Shapu v NICO General Insurance Company Limited* Civil Cause Number 222 of 2007 (unreported). In calculating the damages, courts use the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings while the multiplier is the figure representing the estimated number of years the deceased would have lived if not for the wrongful death. The product of the multiplicand and the multiplier is multiplied by 12 representing the number of months in a year.

The Deceased died aged 19 years. The World Health Organization puts the life expectancy for males in Malawi at 56.7 years - [www.worldlifeexpectancy.com/malawi-life-expenctancy](http://www.worldlifeexpectancy.com/malawi-life-expenctancy). The Court takes into account the fact that there would have been other factors that would have shortened the Deceased's life. This Court adopts a multiplier of 30. The Deceased was earning a salary of K6,000.00 per month which was the minimum wage then. There have

been several revisions of the minimum wage since 2013 and using them would be cumbersome. So, this Court will use the current minimum wage or domestic worker's earnings which is K50,000.00 as a multiplicand. Loss of dependency would thus be calculated as follows:  $K50,000.00 \times 30 \times 12 \times 2/3$ . The award under this head would, therefore, be K12,000,000.00.

### **Special Damages**

Special damages are supposed to be pleaded and proved. The Claimant claimed that he used a sum of K100,000.00 towards other funeral expenses such as food, clothing for the Deceased, transportation and other incidentals. He did not have receipts for the said amounts spent as receipts are not and were not issued and he was not in the mind frame to ask for the same. The funeral was attended by many people because of the Deceased's jovial nature, his family long stay in Chilomoni, and because the KIPS' building incident was nationally publicized and aroused a lot of public sympathy. This increased the Claimant's out of pocket costs. In *Magaleta v Ngondo and Another* [2019] MWHC 127, the Court stated that:

*"The Claimant prayed that the funeral expenses incurred by the family be reimbursed. It was her claim that the amount they spent on the funeral was K500,000.00. The sole witness barely gave evidence of this expense in both her written and oral testimony in court. Is that fatal to the claim? In my view, it is not. It is not at all times when receipts are given for purchases. In fact, most local vendors rarely give receipts...Otherwise it follows that when the deceased died the family had to incur costs of the funeral. For that reason, I will treat the damage as a natural consequence of the wrong by the defendants, and award general damages – **Stros bucks Aktie Bolag v Hutchinson (1905) AC 515**. If the court finds the evidence of expenses having been incurred to be believable on the balance of probabilities, then the expenses are proved – see the case of **Renzo Benetollo v Attorney General and National Insurance Company Limited Civil Cause No. 279 of 1993, High Court, Principal Registry (Unreported)**."*

This Court believes the Claimant, on a balance of probabilities that he indeed used the amount he is claiming for the funeral and the reasons he has given for the same. This Court awards him the sum of K100,000.00 as claimed.

The Claimant also awarded a sum of K5,000.00 which he used to travel to and procure the Death Report.

**Conclusion**

The Claimant is awarded a total sum K14,605,000.00 as damages. He is further awarded costs of the proceedings to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 26<sup>th</sup> day of July, 2021 at Blantyre.



**EDNA BODOLE (MRS.)**

**ASSISTANT REGISTRAR**