



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI SITTING AT BLANTYRE
PRINCIPAL REGISTRY
CIVIL DIVISION
PERSONAL INJURY CASE NUMBER 1066 OF 2021
BETWEEN

(Before Hon. Justice Tembo)

ERIC KOPOLANDE (Suing on behalf of the beneficiaries of the estate of MILLIAM KOPOLANDE) -----1st CLAIMANT

FERISTA KOPOLANDE (Suing through her litigation guardian being MR. ERIC KOPOLANDE) -----2nd CLAIMANT

AND

MR. AUSTINE NANDOLO-----1st DEFENDANT

GOZANGA MPONDA -----2nd DEFENDANT

PRIME INSURANCE COMPANY LIMITED -----3rd DEFENDANT

CORAM: His Honour, Elijah Blackboard Dazilikwiza Pachalo Daniels, AR.

Mr. Kajawo, Counsel for the Claimants,

Mr. Ndhlovu, Counsel for the defendants,

Mrs. D Mtegha, Clerk/Official Interpreter,

JUDGMENT ON DAMAGES

1. She breathed her last on the 6th August, 2021 the day you took her away from her loved ones. I mean she was with her sister on the fateful day, innocent as they were hoping to get themselves to school for like many a few, they refused to perish through ignorance. Sadly, she ended up perishing by the uninvited mystery of death. I mean, she was only

in standard 1, and painfully having visited the earth only for 8 years at the time you caused her to unwillingly answer the call of the great unknown. Yes, calling her to the place easily imagined by many and yet only known for its eternal silence and darkness. Death, not only did you take her dear life from her loved ones, but you took from the society a hope for the future. I mean, you thwarted the hope of the society, for we say that you educate a girl, you educate the nation. I understand you care for nothing oh! Death, if only we could unbind ourselves from your grip, we would do so without delay. Sadly, you know we cannot, that is why we call you cruel. In essence, on this day, if they so wished to side with the ravages of ignorance by not going to school, perhaps we would have the beautiful young soul alive and her surviving sister would not have endured chest and facial injuries and or the trauma you caused her to see as against the person of her mightly resting sister.

But if the pursuit of knowledge causes death as an unexpected reality, then perhaps those who profess to have life but are afraid of pursuing knowledge, should indeed reconsider their cowardice and follow the bravely of our fallen angel. That I say, with greatest respect. Her life was claimed by a road accident involving a Motor Vehicle Registration No. MH 8157, being a 15 tonner Scania driven by the 1st defendant, and owned by the 2nd defendant. The left rear tyres detached themselves as the motor vehicle was in motion and ended up hitting the innocent girls who were going to school and walking on the side of the road. This, is how you killed one in the process at Chisugulu Community Day Secondary School.

Death, you have enlightened the eyes of my understanding, in that now, I know that you only and I mean you alone, are so cruel. That said, if it is a natural consequence that the thirst for knowledge can cost the life of the young lady, then knowledge, you must owe mankind an explanation of your treasure. As it were, knowledge, if you! I mean only you, have a cost, then the young lady paid it all with her dear life. There is no way she could have suspected that as she pursued you in one of her innocent endeavours, you would allow her to pass to the places not known to the living. They could not have known the cruelty of life and indeed the beaconing of death. It was only a normal day. Oh! Death.

2. Sad that when you without shame took her life, you did that in the presence of her elder sister whom you narrowly wanted to get to yourself. Whether you missed or not is perhaps the solace we have that fate spared her dear life from your unquenchable grip. Death, you traumatized the 2nd claimant, as she in pain, painfully witnessed what caused the death of her dear little sister. Painful as I write, but I reckon that you could not get it all, because the estate of the deceased, survives her beyond her resting place. Indeed, she lives beyond her grave, and the law is no alien to come to her aid even as she eternally takes her sleep. We cannot pretend to bring her back by the aid of the law, even though we would want that with all our might. I mean with all their strength, the bereaved family would have loved to protect the fallen queen, but I know no bond that is strong as their love although you pretend to be stronger oh! Death.

Certainly, you took her away from them, but not their love for her. This, as I have always argued, only speaks to those little things that the law sadly knows no cure, but we understand that for a fact, the bereaved lost some expectation of her beautiful life that indeed she would have had. There is nothing before me to suggest that such a life would not have been a healthier one. Death, you caused pain to the family. We might have a few words to say, but we have hope in hope that we the living and mortal, have the keys to understand the pain you cause. Remember, we like many a believing people have our hope even in the Host of above and yet others have their peace in philosophical engagements. All this, is to say that you took away the precious soul from them. But their life will remain in hope, I mean in whatever brings them such. As it were, so far money would do it, today, the law will come near to providing them comfort.

3. Nonetheless, we point our finger at no one but with the sanction of the law, we have developed to ourselves the little things that compensate us from the loss of our dear loved ones. It is not enough I understand, but at least if we had power over you oh! Death, we would have conquered you with everything we have. Sadly, there is not a reason we see in fighting you, the ancient mystery. We expected her to live her colourful life, but you took her without second guessing, you meant it when you took her young and unsuspecting soul to yourself. How selfish oh! Death. I can fathom the pain you caused to the bereaved. Perhaps, when we sit, we must always warn ourselves that to some, these cases remain a statistic, but to us, we understand that life is precious, and when it is taken at the time we least expect it, hearts are wounded in the process. That, I may not pretend not to see in the garment of my judicial gown. But I warn my emotions to be far from influencing my faculties. That said, oh! Death, I understand that, once you claim a life to yourself, all we do is express our pain, but our pain is never attributed to anyone other than yourself. I mean, even the law is hopeless to face your wrath, but at least the law has made it clear that when you claim a life from mankind, we must compensate for that loss through the tool of the loss of expectation of life we had in the deceased. She was a beauty of her family and a flower whose withering period was far from coming. For that, I have no better words to describe your cruelty and selfishness.

4. Be that as it is, I have gone through the law in search of some medicament to the bereaved claimant who claims on behalf of his sleeping queen and her living estate. Like earlier enunciated, I understand that we only have solace in some human solutions limited as they are, but we cannot pretend to be immortal for we are but mortal and hence we have those solutions that only exemplify our mortality. But still, we get some solace in our manly wisdom entrenched in the spirit and or the soul of the law. Death, I understand that even in the case of Elida Joseph (suing for herself and on behalf of other beneficiaries of the estate of Henry Piyo) v United General Insurance Company Limited Personal Injury Cause No. 461 of 2018 (Unreported) you also claimed a life before time. The Honourable Masoamphambe, expressing his lamentations as a Deputy Registrar (Just as he was that time) awarded a sum of K1,500, 000.00 to compensate

the bereaved of your cruelty because they, in that case also lost the expectation of life in the deceased. I hope this, you remember.

I mean, there is no mathematics which I would use other than to reckon that you came to take away their joy and peace, oh! Death, how cruel you are remains a notorious fact. Nonetheless, today we forget the pain you caused for a while and comparatively wipe the tears of the bereaved estate with money because that is how humans have resolved and correctly so in my view, to compensate the pain you cause through loss of expectation of life that they had in her before you called her earlier than was necessary.

On this, I notice that, the benevolence of the Honourable Deputy Registrar in the reference above, was exercised on 4th day of December, 2018. It has been a while and the value of the medium of exchange has sadly dwindled, and also regard being had to the fact that in that case, the deceased was 42-years-old at the time he joined his ancestors, but at least he lived, for even then, they said that life begun at 40. Certainly, he was rather older at the time of his demise than was the fallen young lady in the instant case, whose soul, I know without doubt, continues to rest in eternal peace.

With that in mind, my view is that a sum of K2,000,000.00 (Two Million Kwacha Only), (K1,000,000.00 (One Million Kwacha Only) shy of what the deservedly grieving claimant submitted through the learned advocate), is reasonable in the circumstances. This I hold so, because I understand that the temptation that death brings us, is to forget that some things are beyond the control of humans and that if wished, perhaps the defendant would not have wanted to be the medium through which a life would be claimed by the ruthless spirit of death. We however impose the liability on them because humans have resolved that, there are expected human standards of reasonable behaviour that if not properly followed and an injury ensues from such, then we conclude that, as far as reason has it, the person who falls short of the proper standards must accept the costs of pain caused. The reason is not to punish as death would want to confuse us. The reason is so far as money can do it, to quench the pain caused as it were. That remains the settled law, which in my view holds sound and reasonable.

5. Moreover, we ordinarily would have had her life for 65 years from the date the earth was blessed with her first breath. There is nothing mysterious about my projection finding, because I deduced that from my interaction with the knowledge from United Nations projections that at the time of the demise of our dear young lady, that is on 6th August, 2021, life expectancy was projected at 64.74 years which to the nearest whole number, is 65 hereinafter referred. Oh! Death, that is indeed what you robbed from the bereaved, a precious life. We literally did not get much from her existence. We hoped she was just blossoming to give us all we needed from her which we cannot have now. Even though she had no dependents, her estate would have benefited from her existence.

We still hold that she had shown elements of wanting to deal with ignorance by going to school which in our African society, is the only way to deal with the ravages of poverty. We know, she was not working, just like it was revealed in cross examination by the learned advocate for the defendants, who I must say, besides being given 7 days after the 18th of July, 2022 to file his submissions for the aid of the Court, he is yet to file them. I could have benefited from his craft. Sadly, I did not. All in all, this is exactly why I know for a fact that the law would permit me to use the minimum wage as what ordinarily she would have been getting if she ever wanted to work upon attaining the majority age. I mean, it is even unfair for we might never know how much she could earn. But this is the only remedy mankind has compensated himself with. The methodology brings us a sufficient remedy even though it is starved of mathematical precision. I know that there would be moments in her life that she would have expended on herself and that $\frac{2}{3}$ of her expenses would be meant for herself. See death, this is what we have developed to ourselves but for the discomfort you cause.

I mean, the Court in Annie Cholinga v Duncan Nyalungwe, Civil Cause No. 659 of 2011 (Unreported) could not have put it any better. But still wounds are fresh in their hearts for the soul you claimed before time. Again, the law has set in itself a mechanism for us to claim the dividends of her estate's dependence. Thus, we multiply the minimum wage with 12 months, the wage she ordinarily would have been getting. I mean, other than other vicissitudes of life, we might have had her for the next 57 years contrary to the 59 years lamented by the learned advocate for the grieving father, the 1st claimant. However, life as we know it, has its own eventualities, and I think it would not be so odd for me to reason that she passed on as a minor, and that ordinarily she would qualify to formally work at 18 years old. Thus, I must take away 10 years from the 57 years and also take 2 years from it but for the other vicissitudes of life, meaning I will have 45 years, 5 years shy of what the learned advocate proposed.

As it were, this I hold because I understand that there is no medicine to eventualities of pain, and we only attribute fault so far as a negligent act is concerned. This is deliberately echoed again and again, so it is made clear indeed. Further, like earlier stipulated, it is never the intendment of the law to punish the living who through error in judgement and or a negligent act place themselves as a catalyst to the invitation of death as was in this case. For that, I maintain that the method used may have its imperfections, but that is how far the mind can go to remedy the pain that death caused through the defendant's omissions and or actions.

Coming to the exact award I must impose on loss of dependency, I have to borrow a leaf from the reasoning of the Honourable Deputy Registrar (As he was then) in Elida Joseph (suing for herself and on behalf of other beneficiaries of the estate of Henry Piyo) v United General Insurance Company Limited (Supra) who used the method of multiplying the earnings of the deceased which were known by 12 months to find what he would earn per year, then the sum was further multiplied by the number of years that the Court held were remaining for the deceased to live, calculating that from the life

expectancy applicable then. I gladly hold that, this remains the only solace I have to remedy the predicament now before me. Thus, the award over loss of dependency shall be: $((K50,000.00 * 12 * 45) * \frac{2}{3}) = K18,000,000.00$ (Eighteen Million Kwacha Only). I accordingly award it.

But even then, I understand that, that amount would barely heal the wounds death has caused on the bereaved family. But at least the estate would have something to compensate its grieving spirit for the loss of dependency that death invited them to. All in all, the estate will have K20,000,000.00 (Twenty Million Kwacha) in compensation. Let me mention here oh! Your death, that this award must not be thought of as skyrocketing and or unreasonable for it is in the same neighbourhood as that which was awarded in the case of Davie Maston Fransiku (Suing on his own behalf as a father of the deceased and on behalf of other dependents of Ruth Maston (Deceased) v Edward Banda & Prime Insurance Limited Personal Injury Cause No. 29 of 2017 (Unreported) where on 22nd December, 2018, that is four years ago, the learned Registrar, awarded a sum of K18,944, 400.00 (Eighteen Million Nine Hundred Forty Four Thousand Four Hundred Kwacha Only) as damages for loss of expectation of life and loss of dependency. The methodology used therein is no different from that adopted by this Court aside of the obvious difference in the parameters inserted in the equation in this case. Suffice to note however, that in that case, the deceased died when she was only 25 years old. But oh! Death, if at all you remember, you took her when she was only 8 years old in the present case. Well, you remain a mystery but at least we have hope that we will circumvent your grip when that day comes. Respectfully, be advised that, that day is fast coming than you know it. Assuredly, I say, you will be conquered, and when at it, we too will show no mercy, just like you have done.

6. Now, I must allow the spirit of the young queen to peacefully rest without any disturbance from my disposition, as I answer the needs of the 2nd claimant who was gracefully spared from death. As it were, this claimant, suffered as a result of the accident chest pains, facial injuries and general body pains. The witness statement adopted in Court, holds clear and free from any ambiguity. Disagreeably, however, the learned advocate through comparable decisions of the Court submitted that a global sum of K4,500,000.00 (Four Million Five Hundred Thousand Kwacha Only) would suffice for pain and suffering, loss of amenities of life and damages for disfigurement. Respectfully, the proposal is on the higher side compared to the proved injuries from evidence viva voce and the adopted witness statement.
7. Again, there is no material before me to show that 2nd claimant endured some form of disfigurement. Either way, having read the decisions of Stanley Mpakati & Lunde Saizi v Rashid Jonas & Prime Insurance Company Limited Personal Injury Cause No. 279 of 2015 (Unreported) and Rhoda Samson (minor, suing through Samson Ramsi next of friend) v Besten D Thomson & General Alliance Company Limited, Personal Injury Cause No. 1158 of 2013 (Unreported), I notice that the court awarded a common sum of K2,400,000.00 (Two Million Four Hundred Thousand Kwacha Only) for chest pains

and facial bruises and of course among other injuries not suffered by the 2nd claimant in the instant case. These awards were made on 19th June and 28th April 2015 respectively. Thus, knowing that the principle of law is to bring her to the position she would have been but for the accident so far as money can do it, I proceed to award a sum of K2,000,000.00 as compensation for pain and suffering and indeed loss of amenities of life. I decline to make any order on anything called disfigurement. Ordinarily, I would have awarded less, but regard must be had to the elapse of time and the devaluation of our medium of exchange.

8. In addition, I see also no reason why I should award damages that must be specifically proved and pleaded. Thus, the leaned advocate failed to convince my lamenting soul on the special damages incurred. Therefore, I must on this, not awaken my spirit of benevolence to award anything on this invitation. Consequently, on this head, I decline to make any award with the reasons as stipulated.
9. It is from the foregoing that I hold that a sum of K22,000,000.00 (Twenty-Two Million Kwacha Only) is reasonable compensation in the circumstances. Sad, that this would not bring the beautiful flower back, neither will it erase the memories of pain for the survivor claimant. But death, if I was to talk to you, I would simply tell you that the lovely memories of deceased will remain with those that dearly loved the blossoming beauty. That, you should know, you miserably failed to take away from them. You remain defeated and hopelessly so in my view even though you conquer us all and spare no one.
10. But, before I rest my troubled soul but for the facts of this case, this Court understands that when the deservedly mourning father came to the aid of this Court, he incurred costs in the process. As it were, they were correct when they said that the fountains of justice are never cheap to drink from, and they were on point, when they employed my mind on Order 31 Rule 3 (1)(a) of the Courts (High Court) (Civil Procedure) Rules 2017 and gave me the tools of my craft, which is the discretion I have over the issues of costs expended in the pursuit of justice which this Court desires to be a fountain of. Hence, I accordingly order costs in favour of the bereaved claimants. I would strongly encourage that to be agreed upon by the parties, if not, I will receive the invitation to assess the costs as it were.
11. It is so pronounced, just like it is herein ordered.

Any party to these proceedings is at liberty to be aggrieved by this decision, and when that happens, the party aggrieved will as a matter of right appeal against this decision. However, that freedom must be exercised within 21 days from the date of this order.

PRONOUNCED in Chambers this the 5th Day of January, 2023 at the High Court of Malawi,
Civil Division, Principal Registry, Blantyre.

Elijah Blackboard Dazilikwiza Pachalo Daniels
ASSISTANT REGISTRAR