



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NUMBER 155 OF 2020**

BETWEEN:

**ROBEN KAMPENI (Suing as a representative of the Estate  
of MOFOLO MBUWA, Deceased, and on Behalf of the  
Dependents of the Deceased) ----- CLAIMANT**

AND

**ERNEST MAZANJO ----- 1<sup>ST</sup> DEFENDANT**

AND

**PRIME INSURANCE COMPANY LIMITED ----- 2<sup>ND</sup> DEFENDANT**

CORAM: **C. H. Msokera, Assistant Registrar**

Kadyampakeni, of Counsel for the Claimant

Defendants absent

Chitsulo, Official Court Interpreter

**REFERRAL TO JUDGE IN CHAMBERS**

**(Order 25, Rule 2 Courts (High Court) (Civil Procedure) Rules, 2017)**

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1. The action herein was brought by the claimant, Roben Kampeni, as a representative of the Estate of Mofolo Mbuwa (deceased) and on behalf of the dependents of the deceased under Sections 7 and 4 of the Statute Law (Miscellaneous Provisions) Act.
  2. Through a default judgement dated 27<sup>th</sup> July 2020, the 2<sup>nd</sup> defendant was ordered, to pay the claimant:
    - 2.1 Damages for loss of expectation of life;

- 2.2 Damages for loss of dependency;
  - 2.3 Damages for funeral expenses;
  - 2.4 Special damages;
  - 2.5 Party and party costs.
3. My role in this proceeding is to assess the quantum of damages payable. However, going through the record, I have noted the following anomalies:
- 3.1 The claimant could not bring an action as a representative of an estate under Section 7. He was supposed to bring that action under Part II of the Act - *Mbisa v Ibrahim Ismail Brothers* (1971–72) ALR Mal. 321;
  - 3.2 There is no proof that that the claimant is an administrator of the estate of the said Mofolo Mbuwa;
  - 3.3 The claimant did not comply with Section 8 of the Statute Law (Miscellaneous Provisions) Act which required him, on record, together with the statement to deliver to the defendant, or his legal representative, full particulars of the person or persons for whom, and on whose behalf such action is brought.
  - 3.4 The claimant who is a cousin to the deceased is not covered under Section 4 of the Act and cannot possibly bring a claim under Section 7. A similar conclusion was reached in *Ingolosi v Mahomed and Nyazaude* (1971–72) ALR (M) 335 where the court held that under Section 7 of the Act, 'an action cannot be maintained by an uncle and that an action could not be brought by the plaintiff.'
4. I have also taken note what was said in the case of *The Administrator of the Estate of Edith Nkumba v Adventure Tours and Safaris and another* [1998] MLR 400 as follows:
- 'It is vital that the administrator should provide proof of him having letters of administration. Although there is default judgment in this case, the plaintiff

must have shown the court that indeed he is the administrator. This is so because the capacity of who can bring such action is limited: see *Mbisa v Ibrahim Ismail Brothers* (1971–72) ALR (M) 321.'

5. Further, the same court observed that the plaintiff in that matter had not complied with Section 8 of the Statute Law (Miscellaneous Provisions) Act. It said:

'I note that the plaintiff did not comply with section 8 of the Act, which reads: "In every action brought by virtue of this part, the plaintiff on the record shall be required, together with the statement of claim to deliver to the defendant, or his legal representative, full particulars of the person or persons for whom, and on whose behalf such action is brought, and the nature of the claim in respect of which damages are sought to be recovered."

'This section is constantly being overlooked in actions of this nature before this Court. It is merely due to careless default of procedure and drafting by Counsel, and this has been tacitly condoned by the court... By not giving the full particulars of the others, there is the danger of some dependants being left out of their entitlement or multi-actions being brought against the defendant.'

6. It is worth noting that in the *Nkumba* case, the court proceeded to forego the unavailability of proof of letters of administration because the plaintiff was a child of the deceased and therefore could claim under Section 7 of the Act. This is the case because Section 4 lists, 'the wife, husband, parent and child,' as the beneficiaries of claim under Part I of the Act. But as I have already pointed out, in the present proceedings, the claimant who is a cousin to the deceased is not covered under Section 4 of the Act and cannot possibly bring a claim under Section 7.
7. I am of the view that if I proceed to determine the quantum of damages without these anomalies being addressed, the process may potentially lead to injustice especially taking into account the minority interests herein. It is on this basis, that I have decided to invoke Order 25, Rule 2 of the Courts

(High Court) (Civil Procedure) Rules, 2017 to have this proceeding referred to a Judge in chambers for directions.

**Made** this 4<sup>th</sup> day of December 2020 at Blantyre.

A handwritten signature in black ink, appearing to read 'C.H. Msokera', written in a cursive style.

C.H. Msokera

**Assistant Registrar**

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