



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL DIVISION**

Civil Cause Number 252 of 2019

BETWEEN:

LIANA SHARRA.....CLAIMANT

AND

ATTORNEY GENERAL

(MINISTRY OF HEALTH).....DEFENDANT

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	T Chihana:	Counsel for Claimant of Kita & Company
	Attorney General:	Unrepresented (Absent)
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

CM MANDALA, AR:

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Default Judgment entered on 19th May 2020. The Defendants are liable for: damages for pain and suffering for the loss of the Claimant's baby, damages for loss of expectation of life for the baby, medical expenses incurred before and after giving birth to the baby who eventually died, reimbursement of legal fees, and costs of the action. The hearing on Assessment of Damages was conducted on 7th April 2021.

This matter arose from events that occurred at Kamuzu Central Hospital (KCH) between 11th November 2018 and 21st November 2018. The Claimant was scheduled to deliver her baby at KCH on 11th November 2018. She delivered the baby on her own as no nurse would attend to her. The baby swallowed meconium but was discharged on 15th November 2018. Two days later, the baby developed a condition that led to the baby's demise on 21st November 2018. The doctors opined that the baby should have been administered antibiotics and kept under observation for not less than a week after swallowing the meconium.

EVIDENCE

The Claimant paraded three witnesses in support of their case. The evidence was unopposed as the Defendant did not appear at the hearing.

PWI – LIANNA SHARRA

The first witness was the Claimant who adopted their witness statement as their evidence in chief. It states:

1. *My name is Liana Sharra, the Claimant in the suit herein.*

2. *I work at Lilongwe City Council and my address is PO Box 30396, Lilongwe.*
3. *I am married to Leonard Sharra.*
4. *I am making this statement as the Claimant, a mother who lost her baby due to the medical negligence of the Defendant and the information herein is based on my personal knowledge*

FACTUAL BACKGROUND

5. *On the 13th of November 2018, I visited Kamuzu Central Hospital, which is a referral hospital under the control and supervision of the Defendant for delivery of my baby. I refer to a copy of her certificate of birth marked “LS 1.”*
6. *However, I delivered my baby on my own without the assistance of any medical personnel on duty despite calling for their assistance.*
7. *The baby died of respiratory problems on 21st of November 2018, Bwaila Hospital, in Lilongwe,. I refer to a copy of the baby’s health passport and death certificate marked “LS 2” and “LS 3” respectively.*

BASIS FOR THE DAMAGES CLAIMED

8. *The death of our baby caused our family so much grief.*
9. *I carried a baby for 9 months only to lose it after a week due to the negligence of the Defendant.*
10. *The negligence of the Defendant caused physical wounds on my body which could have been avoided had the delivery of the baby been properly administered. I sustained a large wound after giving birth on my own in the labour ward. This is due to the fact that my baby was born big, weighed 4 kgs and the pain from the wound was so unbearable.*
11. *The death of my baby has caused a lot more psychological trauma because it followed the loss of our other child in a tragic road accident.*
12. *The effect of now losing two children has increased my time to heal both psychologically and mentally. This has affected my productivity at home and work as I am still bereaved.*
13. *We incurred a number of expenses before and after the baby was born:*
 - a. *Taxi fares and other expenses incurred during antenatal visits to the Ethel Mutharika Maternity wing. I attach and exhibit a copy of the receipt of the hospital bill marked “LS 4.”*
 - b. *Costs of baby delivery. I attach and exhibit a copy of the hospital marked “LS5.”*
 - c. *Cost of hospital visits after the birth of the baby.*
 - d. *In preparation of having newborn, we incurred expenses on new clothing during advanced stages of my pregnancy.*
 - e. *Funeral expenses incurred as a result of the death of my baby.*
14. *By reason of the foregoing, I plead that the court do grant damages reflective of the loss that my family an di have suffered due to the death of our baby.*
15. *As per paragraph 11 of the statement of case, the reliefs claimed are particularized as follows:*
 - a. *Pain and suffering for the loss of my baby,*
 - b. *Loss of expectation of life of the baby,*
 - c. *Medical expenses incurred before and after giving birth to my baby; and*
 - d. *Physical wounds sustained as a result of not being administered the proper birth delivery process as per medical standards.*
16. *The damages pleaded are quantified as follows:*
 - a. *K5,000,000.00 for pain and suffering for the loss of our baby,*
 - b. *K2,500,000.00 for loss of expectation of life of the baby,*
 - c. *K2,500,000.00 for medical expenses incurred before and after giving birth to our baby;*
 - d. *K2,500,000.00 for physical wounds sustained as a result of delivering the baby on my own,*
 - e. *Costs of the action.*

17. I believe that the facts stated in this witness statement are true.

PW2 – LEONARD SHARRA

The Claimant's second witness was their husband, Leonard Sharra. They adopted their witness statement as evidence in chief. It states:

1. *My name is Leonard Sharra, husband to the Claimant in the suit herein, and therefore duly authorised to swear this witness statement.*
2. *I am a journalist by profession currently freelancing as a media consultant.*
3. *I am making this statement as a husband and father who lost his baby due to the medical negligence of the Defendant and the information herein is based on my personal knowledge.*

FACTUAL BACKGROUND

4. *On the 13th of November 2018, my wife visited Kamuzu Central Hospital, which is a referral hospital under the control and supervision of the Defendant for delivery of my baby. I refer to a copy of her certificate of birth marked "LS 1."*
5. *Instead of being assisted by the medical personnel she was forced to deliver the baby on her own, despite calling for their assistance.*
6. *The baby died of respiratory problems on 21st of November 2018, Bwaila Hospital, in Lilongwe, I refer to a copy of the baby's health passport and death certificate marked "LS 2" and "LS 3" respectively.*
7. *The death of the baby has caused extreme pain as she was the second child we lost following the death of our four year old girl child, Tadala who died in a tragic road accident in 2013. We had considered Tadala as our last born a child and after losing her, we saw the birth of Chikumbutso as a compensation from God but we lost her too.*
8. *The death of our baby highly affected my studies at Chancellor College. As the baby was born when I was studying at Zomba and I had to come to Lilongwe during her birth and death. I had to write a supplementary for an exam I wrote after the funeral. Due to the distractions and the travelling to and from the funeral I was not able to prepare well for the first sitting. This set me back. I attach and exhibit a copy of my transcript marked "LS 4."*
9. *The negligence on the part of Defendant that caused the death of our baby resulted in us incurring expenses and experiencing loss, particularized below:*

PARTICULARS OF LOSS

- a. *Taxi fares and other expenses incurred during antenatal visits to the Ethel Mutharika Maternity wing. I attach and exhibit a copy of the receipt of the hospital bill and taxi receipt marked "LS 5."*
- b. *Guardian's transport costs to and from Dowa, using public transport pegged at K5,000.00.*
- c. *Guardians upkeep for assisting with the baby, pegged at K40,000.00 and a phone which costs K9,000.00 for ease of communication.*
- d. *Costs of baby delivery. I attach and exhibit a copy of the receipt of the hospital bill marked "LS 6."*
- e. *Taxi fare when collecting the Claimant and the baby. I attach and exhibit a copy of a receipt marked "LS 7."*
- f. *Taxi fare costs of hospital visits after the birth of the baby, pegged at K25,000.00 per day and we took 3 trips.*
- g. *In preparation of having a newborn we incurred expenses approximately K100,000.00 on new clothing during advanced stages of my wife's pregnancy.*

- h. All funeral expenses at roughly K300,000.00 ie fuel, hiring of a bus to and from Dowa; and food;
 - i. The death of our baby caused loss of productivity especially during the bereavement and mourning period.
 - j. Transport costs from Zomba to Lilongwe and back during childbirth. I attach and exhibit copies of some of the receipts “LS 8.”
 - k. Transport costs from Zomba to Lilongwe and back during the funeral. I attach and exhibit copies of some of the receipts “LS 9.”
 - l. Transport cost to and from Kamuzu Central Hospital for inquiry on the baby’s death.
10. As per paragraph 11 of the statement of case, the reliefs claimed are particularized as follows:
- a. Pain and suffering for the loss of my baby,
 - b. Loss of expectation of life of the baby,
 - c. Medical expenses incurred before and after giving birth to my baby; and
 - d. Physical wounds sustained as a result of not being administered the proper birth delivery process as per medical standards.
11. The damages pleaded are quantified as follows:
- a. K5,000,000.00 for pain and suffering for the loss of our baby,
 - b. K2,500,000.00 for loss of expectation of life of the baby,
 - c. K2,500,000.00 for medical expenses incurred before and after giving birth to our baby;
 - d. K2,500,000.00 for physical wounds sustained as a result of delivering the baby on my own,
 - e. Costs of the action.
12. I believe that the facts stated in this witness statement are true.

PW3 – VERSON LWANJA

The Claimant’s final witness was an expert witness, Verson Lwanja. The witness adopted their witness statement as their evidence. The court will reproduce the relevant parts:

- 1. My full names are Verson Lwanja, an expert witness in the suit herein and therefore duly authorized to produce and swear this statement.
- 2. I reside in Lilongwe and my address is C/O African Bible College, PO Box 161, Lilongwe.
- 3. The statements made herein are based on the information furnished by the Claimant, by way of instruction. I verily believe that the information is true and accurate to the best of my knowledge.

MY EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

- 4. I am a Medical Practitioner fully qualified and registered with the Medical Council of Malawi to practice as a Clinical Officer.
- 5. I have a Diploma in Clinical Medicine conferred on me by the Malawi College of Health Sciences. My Medical Training commenced in October of 1995 and ended in December of 1999.
- 6. My practical exposure began during internship at Kamuzu Central Hospital from the year 1999. After the internship program, I elected to join the Department of Obstetrics and Gynecology on a permanent basis where I served up to September of 2007.
- 7. I left the civil service in September 2007 to join CHAM and my first station was Mtengowanthena where my primary task was to establish theatre. They acknowledge we did a good job and that we laid a firm foundation for maternity at Mtengowanthena.
- 8. From Mtengowanthena I joined the African Bible College Clinic in 2011. Here too I actively participated in the establishment of Maternity at the clinic. The whole 20 years of medical practice I have served in Maternity.

9. *My testimony will be expert knowledge on the psychological and physical damage that the Claimant went through as a result of losing her baby at Ethel Mutharika maternity wing.*
10. *I will endeavour to give evidence that is within my expertise on the matter herein, to assist the Court to determine the extent of damage and harm experienced by the Claimant.*

...

PSYCHOLOGICAL AN PHYSICAL DAMAGE THAT MRS LIANNA SHARRA WENT THROUGH AS A RESULT OF LOSING HER BABY AT THE ETHEL MUTHARIKA MATERNITY WING

20. *The baby's death was a culmination of events that occurred before, during and after the actual delivery of the baby. The Claimant narrated how she delivered the baby alone without the help of the attending nurse and doctor which led to the baby aspirating meconium and later suffering infection which led to the death of the baby.*
21. *Right from the moment when she felt like pushing/delivering the baby in the labor ward and shouted for help twice not once, she felt let down by the system she trusted evidenced in her choice to deliver in a government owned Ethel Mutharika Maternity wing as opposed to the now proliferating private maternity clinics within Lilongwe. The Claimant is still in disbelief and cannot come to terms with what exactly happened.*
22. *The Claimant became very sad, worried, scared, tired, and anorexic following the loss. She also could not sleep because of nightmares in the entire period of bereavement. She became solitary and lost weight. The only supports were relations who came from their two parent families to be with them during their loss.*
23. *The Claimant, psychologically, felt personally guilty and responsible for the predicament and doubted herself in the eyes of her husband and the public at large.*
24. *After the relations left, and she was left on her own, the family's situation worsened. She could hardly manage to do her chores in the home. The Claimant had not adequately recovered from the physical aftermath of a difficult delivery and the psychological torment of the resulting loss of the baby.*
25. *During this period, and because of the avoidable loss of their baby, both the Claimant and her husband could not engage in gainful work. This means they both suffered loss of income and endured uncalled for stagnation.*
26. *If the Claimant's baby delivery was handled professionally and ensured the survival of the baby, she would be entitled to three months of maternity leave from work but in this situation, she would have to return to work sooner because her privilege of maternity leave was lost in the process. When she returned to work, her productivity also suffered which would directly impact on the contribution she is expected to make to the progress of her organization.*
27. *Negligence which resulted into the loss of this baby abruptly ended the hope of an entire life of a baby – who knows what the baby would have become.*
28. *The Claimant and her family in general have suffered immeasurable damage due to negligence of duty by the hospital staff at Ethel Mutharika Maternity Wing on the night of the 13th of November, 2018.*

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The

principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: “*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: “*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e., cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*’

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s loss and the devaluation of the Kwacha would attract awards totalling K12,500,000.00 as damages. Counsel cited the following comparable awards to support their argument:

- *Hannah Master (suing as representative of the Estate of Master Henry, deceased, and on behalf of the dependants) v Medson Kabingu & Prime Insurance Co Ltd* where the Claimant was awarded K2,000,000.00 as damages for loss of expectation of life.
- *Kachisi and another v United General Insurance Company limited* Personal Injury Cause Number 87 of 2017 where the Claimant was awarded K1,500,000.00 as damages for wounds and multiple bruises sustained in an accident.

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

COMPENSATION

Pain and Suffering

The word ‘pain’ connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident while ‘suffering’ includes fright, fear of future disability, humiliation, embarrassment, and sickness. See: *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

The Claimant herein sustained both physical and mental pain and suffering. The physical pain was felt when she had to deliver her baby on her own, sustained injuries during that delivery, and not being sedated/ helped during that delivery to calm the pain. Whilst the Claimant sustained physical trauma, the psychological trauma was just as painful and is lingering, the psychological trauma is current. The third witness, Verson Lwanja, described the effect that the incident had on the Claimant, citing extreme grief over the loss of her second child, disappointment with the public health system, and attendant mental anguish that manifested as anorexia, weight loss, lack of concentration, extreme sadness.

The pain and suffering experienced by the Claimant were felt by her husband too. The second witness was the Claimant’s husband who told the court that he had to retake an exam due to failure to concentrate. The baby’s demise occurred whilst the second witness was writing his exams. In addition to travelling between Zomba and Lilongwe, he also couldn’t concentrate on his studies due to the grief he felt.

For both witnesses, they had to be strong and support each other while both were suffering from extreme mental anguish. For the Claimant, she bore the additional burden of being the homemaker and main caregiver, in that state it was very difficult for her to fulfill these duties.

Based on this discussion, this court awards the sum of **K5,000,000.00 as damages for pain and suffering.**

Loss of Expectation of Life

Damages under this head are claimable by a Claimant where injuries suffered by him have reduced his expectation of life - *Flint v Lovell* [1935] 1 KB 354. The claim for damages under this head also survives the demise of the injured plaintiff and is thus available to the personal representative of his estate – *Nyirongo v United Transport (Mal) Ltd* [1990] 13 MLR 344. In assessing damages under this head, the thing to be valued is not the prospect of length of days but of a predominantly happy life – *Bentham v Gambling* [1941] AC 157. No regard must be had to the financial losses or gains during the period of which the victim has been deprived, as these damages are in respect of loss of life, and not of future pecuniary loss - *Bentham v Gambling* [1941] AC 157.

In determining what damages to award the Claimant for loss of expectation of life, current awards are considered to determine an appropriate amount of compensation. The Court had recourse to comparable awards where various courts awarded the sum of K2,000,000.00 as damages for loss of expectation of life. The awards were made in 2018, 2019, and 2020. See; *Lestas Phiri v Moses Owen Mphepo & Britam Insurance Company Limited* Civil Cause Number 33 of 2018; *Tamara Sibale (suing on her own behalf and on behalf of the dependants of Patrick Sibale, deceased) and Bongani Sibale v John Lameck and others* Personal Injury Cause Number 611 of 2017, *Mary Kalupsya (suing on her own behalf and on behalf of the dependants of the estate of Annie Kalupsya, deceased) v Gerald Malikebu and another*

[2019] MWHC 126, and *Aubrey Gama v Daniel Banda, Mchinji District Assembly and Prime Insurance Company Limited* Civil Cause Number 448 of 2019.

Considering recent awards made under this head, this court believes an adequate award for the Claimant would be **K2,000,000.00 as damages for loss of expectation of life.**

Reimbursement of Medical and Other Expenses

The Claimant and her husband submitted the following receipts to prove the expenses they incurred:

Malawi Government General Receipt dated 13/9/2017 -	K8,540.00
Malawi Government General Receipt dated 15/11/18 -	K32,850.00
Angoni Taxi Services dated 13/11/18 -	K3,500.00
Angoni Taxi Services dated 15/11/18 -	K5,500.00
N Daiton Tours dated 16/11/2018 -	K7,000.00
Which is Which Tours dated 21/11/2018 -	K7,000.00
Halfway Bus Service dated 27/11/2018 -	K7,000.00
<u>Total</u>	<u>K71,390.00</u>

The Claimant is therefore **awarded the sum of K71,390.00 as reimbursement of the medical and other expenses incurred** during the ordeal.

DISPOSAL

The Claimant is therefore awarded K5,000,000.00 for pain and suffering; K2,000,000.00 for loss of expectation of life, K71,390.00 as reimbursement of expenses incurred, and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K7,071,390.00 (seven million seventy thousand three hundred and ninety kwacha).**

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames. Leave to appeal is hereby granted.

Ordered in Chambers on the 7th day of May 2021 at the High Court, Civil Division, Lilongwe.



C Mandala

ASSISTANT REGISTRAR