

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL CAUSE NO. 1004 OF 2003**

**BETWEEN:**

**AMOS NYELIWA ON BEHALF OF**

**CLEMENT NYELIWA (DECEASED )**

**& OTHER DEPENDANTS.....**  
**.....PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL .....DEFENDANT**

**CORAM : TEMBO, ASSISTANT REGISTRAR**

Movette, Counsel for the Plaintiff

**ORDER ON ASSESSMENT OF DAMAGES**

This is this court's order on the assessment of damages herein. The assessment is done pursuant to a default judgment entered in favour of the plaintiff herein for damages for loss of expectation of life of the deceased and for loss of dependency on the deceased.

The notice of hearing of assessment of damages was duly served on the defendant who did not appear on the hearing. That left the plaintiff's evidence totally unchallenged.

The deceased herein Clement Nyeliwa was the plaintiff's son. The deceased died after being hit by a Malawi Police Service vehicle on 4<sup>th</sup> February, 2002 as he was walking along the Blantyre-Lilongwe road.

The deceased died aged 31 years. The deceased is survived by his father, the plaintiff, and his mother aged 74 years and 62 years respectively. The deceased is also survived by two children Albert and John aged 1 year and 4 years respectively. The deceased is further survived by his wife whose age and name are not in evidence.

This court notes that the law is settled that an action can be maintained on behalf of the estate of the deceased for damages for loss of expectation of life. See **Rose –v- Ford** 1937 A.C. 826. The award of damages to be made in such actions is arrived at using the same principles used in arriving at awards of damages for personal injuries. See **Cain – v- Wilcock** [1968] ALLER 817. The figure awarded is conventional and the court seeks guidance on the level of an award from decided cases of comparable nature.

This court had occasion to consider decided cases of comparable nature to the instant one. One such case being that of **Nasisiyaya –v- Mazinga** Civil cause Number 2484 of 2002 in which K48,000.00 was awarded as damages for loss of expectation of life by a plaintiff who died aged 21 years. The award was made on 2<sup>nd</sup> January, 2003. This court also considered the case cited by counsel in her submissions of **Chimbula –v- Yona t/a Chokotho** Civil Cause Number 301 of 2001. Considering that the kwacha has lost some value since those awards and that the deceased died aged more than in the **Nasiyaya** and **Chimbula cases** and that the life expectancy of Malawi's was recently pagged in the range of 40 and 50 years this court awards the plaintiff K80,000.00 damages for loss of expectation of life. This court shall now deal with the issue of loss of dependency.

As rightly submitted by counsel for the plaintiff, the approach the courts have adopted in arriving at damages recoverable in suits for loss of dependency is that of using what is known as the multiplicand and multiplier formula. See **Mallet –v- McMonagle** (1970) A.C. 166,175.

The multiplicand is the deceased's monthly income whilst the multiplier is the approximated number of years the deceased would have lived if not for the wrongful death. To arrive at the level of loss of dependency, the multiplicand is multiplied by the multiplier and then the figure of 12 representing the number of months in a year, then there's a reduction of one third on the product, representing the portion the deceased would have presumably spent on purely personal ends.

The starting point in determining the multiplier is the average life expectancy of Malawians that was recently pegged in the range of 40 - 50 years. The estate of the deceased will get a lump sum payment as opposed to installments. The plaintiff might also have had his life expectancy affected by other even tualities of life. So, bearing in mind all the above factors this court adopts a multiplier of 15 as the plaintiff was aged 31 years. On the multiplicand the deceased is said to have been earning about K4000.00 every week. That appears not to be far fetched. The deceased was engaged in a produce business. Thus per month the deceased would make about K16,000.00 selling the cabbages and seedlings. The deceased would give K2,000.00 or K3,000.00 per month to the plaintiff who appeared credible. This court notes that there must have definitely been operating expenses in the deceased's produce business. These are not in evidence. This court finds it difficult to determine the deceased's monthly income in these circumstances. And so to be fair to both sides this court adopts the minimum wage of a domestic worker as provided under the Employment Act viz K1,500.00 as the multiplicand. That sum is adjusted upwards to K2,000.00 as this is the actual minimum sum the deceased would give to the plaintiff. There is a lot to be said as to why the deceased's wife was not called to testify. Nobody knows. But if she did this court is confident she would most probably have shed some light on the deceased's earnings. So much about that.

In the circumstances this court shall not make any one third deduction in calculating the level of loss of dependency since K2,000.00 was the actual monthly sum given to the plaintiff by the deceased.

The level of dependency using the formula outlined above therefore is:

$K2,000 \times 12 \times 15$  which comes up to K360,000.00.

And so the sum of K360,000.00 is awarded as damages for loss of dependency. The Total award herein is K440,000.00. That sum is apportioned amongst the deceased's dependants as follows:-

NAME	RELATIONSHIP	AGE (YEARS)	AMOUNT
Mrs Nyeliwa	Wife	-	75,000.00
Amos Nyeliwa	Father	74	45,000.00
Veronica Nyeliwa	Mother	62	40,000.00
Albert Nyeliwa	Son	1	165,000.00
John Nyeliwa	Son	3	115,000.00

The sums apportioned to Albert and John Nyeliwa shall be paid in court, as the two are minors, and shall be deposited in an interest earning account for their benefit. Costs of

this action are for the plaintiff who have wholly succeeded herein.

**Made in Chambers** at Blantyre this .....April, 2004.

M. A. Tembo

**ASSISTANT REGISTRAR OF HIGH COURT**