



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI SITTING AT ZOMBA DISTRICT REGISTRY

CIVIL CASE NUMBER 132 OF 2012

BETWEEN

PATRICIA GOLIATI (Suing on her behalf and On behalf of the Estate of Joseph Goliati, (deceased)).....PLAINTIFF

AND

GENERAL ALLIANCE INSURANCE LIMITED.....1<sup>ST</sup> DEFENDANT

SAUTSO LINYAMA (MALE).....2<sup>ND</sup> DEFENDANT

Coram: H/H Jean Rosemary Kayira Assistant Registrar

Counsel Major A. Kamwendo of Counsel for the Plaintiff

Counsel M. Mizeka Chagoma of Counsel for the Defendant

Mr. Alexander Tepeka Court Clerk and Official Interpreter

RULING

INTRODUCTION

The parties in this matter entered a consent judgment on 22<sup>nd</sup> September 2015 against the Defendant. They later entered another consent judgment altering the level of liability of the Defendant. The said consent judgment excluded liability of the Defendant in relation to damages for loss of expectation of life. In other words the said claim was reserved for this Court to determine if it is payable to the Plaintiff or not. The present ruling therefore is in relation to that outstanding claim.

On 25<sup>th</sup> January 2016 the Plaintiff through Counsel Major Kamwendo applied for an order for damages on loss of expectation of life and determination of the quantum of the said damages. Counsel adopted his skeleton arguments in relation to the present application. Counsel submitted that the main issue is whether

or not the Plaintiff is entitled to damages for loss of expectation of life and dependency. Although the Plaintiff commenced this action before obtaining letters of administration as a beneficiary of the estate she is entitled to be awarded the said damages under Sections 7 and 9 of the Statute Law (Miscellaneous Provision) Act. Counsel finally submitted that the Court should award the Plaintiff damages for loss of expectation of life based on the circumstances in this matter and the settled legal principles. He then prayed for K1, 500, 000.00 being damages for loss of expectation of life.

In response Counsel Mizeka Chagoma adopted his skeleton arguments as filed on 19<sup>th</sup> October 2015. He confirmed that the issue for determination is whether or not the Plaintiff is entitled to damages for loss of expectation of life in the circumstances. His argument is that these damages accrue to the deceased's estate and can only be claimed by personal representatives of the deceased. He then referred to Section 10 (1) of the Statute Law (Miscellaneous Provision) Act and the case of *Mbaisa v Ishmael Brother and Beatrice Lamela*<sup>1</sup>. He stated that the Court should have recourse to the cited case which is being relied upon by both parties. He further referred this Court to the case of *Vanalio Vaslatos's*<sup>2</sup> where Kapindu J held that... According to Counsel Chagoma, when Kapindu J held like this he was well aware that the relevant provisions were those of Statute Law Miscellaneous Provision Act. This is why the *Mbaisa's* case is essential because it refers to the second Part of the Statute Law (Miscellaneous Provision) Act. Counsel then submitted that these two actions are quite distinct and separate. The action being brought on Part I is on behalf of the deceased's estate and that action can be brought by personal representatives only.

Counsel Mizeka Chagoma further submitted that the matter before this Court has not been disputed by both parties that there are no letters of administration. The question for consideration therefore is, is the Plaintiff in the circumstances entitled to being awarded damages for loss of expectation of life on the basis of the authorities cited? In his view Counsel Chagoma submitted that the Plaintiff is not at all entitled to being awarded damages for loss of expectation of life. As such the Court should have regard to paragraphs 3.2 of his skeleton arguments.

Counsel Major Kamwendo disagreed with what defence Counsel because the Plaintiff obtained letters of administration and the same were on Court file. The issue is whether or not the letters of administration which were obtained after the present matter was commenced could be used to award these damages. He urged the Court to decide that even though the letters of administration were obtained after the case commenced the Court can grant the damages. He submitted that the Plaintiff is a wife to the deceased person and any benefit to the Plaintiff are of benefit to her and the deceased's estate. Considering the case of decided by Kapindu J, she is entitled to these damages. He therefore prayed that the Plaintiff be awarded damages for loss of expectation of life and costs of the action.

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*REASONED ANALYSIS OF THE COURT*

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It is on record that the Plaintiff commenced the present matter on 12<sup>th</sup> May 2012. They obtained letters of administration on 25<sup>th</sup> May 2015. It remains therefore undisputed that the Plaintiff obtained letters of

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<sup>1</sup>(1971-72) ALR Mal. 321@322

<sup>2</sup>Probate Case Number 51 of 2014

administration after the present cation had already been commenced against the Defendants. The Plaintiff claim damages for loss of expectation of life and loss of dependency. Bearing this in mind, the crucial point worth determining is whether the Plaintiff is entitled to be awarded damages for loss of expectation of life.

In the present matter the crucial provisions worth reproducing are Sections 7 and 9 of the Statute Law (Miscellaneous Provision) Act. I have therefore reproduced them as follows:

Section 7:

"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 deceased 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, 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.

Section 9:

"In the event of death, action maintainable against estate (1) upon the death of any person against whom, were it not for his death, an action would be maintainable by virtue of this Part, such action shall be maintainable against his estate. (2) No proceedings shall be maintainable in respect of a cause of action which by virtue of this section has survived against the estate of a deceased person, unless either—(a) proceedings against him in respect of that cause of action were pending at the date of his death; or (b) proceedings are taken in respect thereof not later than six months after his personal representative took out representation. (3) Where, by virtue of this Act, a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action as would have subsisted if he had died after the damage was suffered. (4) Notwithstanding any other written law, in the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action by reason of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate."

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Section 10 (1)

"Subject to this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate: Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery".

I have gone through the Judgment of Justice Kapindu in *Vanalio Vaslatos's*<sup>3</sup> case which was an application for limited grant of letters of administration under Section 43 of the Deceased Estate Wills and Inheritance and Protection Act of 2011. In that particular case the relevant part is under paragraph 1.17 as follows:

"So clearly, it is not necessary that a limited grant for letters of administration be made in the present proceedings simply for purposes of the 1<sup>st</sup> Applicant proceeding with the action for personal injuries against the driver and the insurance company in Personal Injury Cause Number 237 of 2014 at this Registry. That action can competently proceed as long as it was made on the basis of relevant provisions under the Statute Law (Miscellaneous Provisions) Act..."

In *Mbaisa v Ibrahim Ismail Brothers*<sup>4</sup> Skinner CJ held as follows:

"It is necessary at this stage to refer to the cause of action provided for in the statute law (Miscellaneous Provisions) Act which I will hereinafter refer to as "the act." Where the death of a person has been caused by another's wrongful act Part I of the Act provides that an action may be maintained by or on behalf of the dependants of the deceased person. Part II of the Act provides that a cause of action survives for the benefit of the deceased person's estate. These two actions are quite distinct and separate. The former is on behalf of the dependants... the latter action is on behalf of the deceased's estate.....an action for the benefit of the estate can be brought by the personal representatives only."

Having gone through these authorities, the question is, in what capacity is the Plaintiff suing? The statement of claim clearly states that the Plaintiff is suing on her own behalf and on behalf of other beneficiaries of the estate of Joseph Goliati (Deceased). In short, much as the Plaintiff is a beneficiary under Section 17 of the Deceased Estate (Wills, Inheritance and Protection) Act, the present action was commenced for the benefit of the deceased's estate. Since she was not an executor at the time she commenced the present matter, I hereby hold that she is not entitled to damages for loss of expectation of life.

## CONCLUSION

I therefore find in favour of the Defendants and costs are for them as well.

PRONOUNCED IN CHAMBERS ON 19<sup>TH</sup> FEBRUARY 2016@ 4:30PM

  
H/H J.R. KAYIRA

ASSISTANT REGISTRAR

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<sup>3</sup>Probate Case Number 51 of 2014  
<sup>4</sup>(1971-72) ALR Mal. 230