

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1680 OF 1993

BETWEEN:

AGNESS LENADI FRANK PLAINTIFF

and

STAGECOACH (Mw) LIMITED DEFENDANT

CORAM: D F MWAUNGULU, REGISTRAR
Chisanga, Counsel for the Applicant
Respondent unrepresented

ORDER

This is the defendant's application for minor settlement under Order 80, rule 11 of the Rules of the Supreme Court. A compromise has been reached with the widow of the deceased, Agness Lenadi Frank. The deceased, however, is survived by three minor children, Henderson, Esther and Evans. Order 80, rule 10 of the Rules of the Supreme Court provides:

"Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the court."

The defendant, appearing by legal practitioner, the widow is not represented, has taken out the summons under Order 80, rule 11.

The requirement for the court's approval is germane. The requirement protects the payer and above all the minors. The defendant obtains a discharge from a minor's or patient's claim. At common law a contract of compromise for the benefit of a person under disability does not bind the person under disability unless it is shown that it benefits the person under disability. A discharge by the court absolves the defendant. The rule protects the interests of persons under

disability. Legal practitioners with wanting skills can compromise anything. Approval ensures that the patients or minor's case is handled with skill. Black V Yates [1991]4 All E R 722. Further a legal practitioner could compromise a lesser sum at the temptation of higher costs to himself. The procedure also enables the funds to be under the control of the courts. There is so much good for persons under disability in the rule.

When approving a settlement, the court wants to ensure that the compromise is to the benefit of the person under disability. It, therefore, looks at all the facts and circumstances of the case. It also, however, has to consider that the parties are seeking a compromise to save costs and time. It is pointless to send litigants at such cost in money and time to a full trial for just a marginal difference.

In this case the legal practitioner has actually compromised at the optimum. The deceased was not employed. He has based, as I have done before, the calculations on the minimum wage in the area where the deceased lived. With considerable difficulty of proving the deceased's age, he compromised at the age of 31, after consultation with the deceased immediate relation. The legal practitioner has compromised at a multiplier of 15. The compromise cannot be faulted. I approve it. The defendant will pay K7,200.

There is no evidence of the ages of the minors. The legal practitioner had extreme difficulty to establish the ages of the minor. He decided to bring them to court. All of them are under the apparent age of below 14. There is no evidence on which to assess the remarriage prospects of the widow. The money should be distributed as follows: the deceased's mother K850.00; the widow K1,250 and each of the children K1,700.

Made in chambers this 29th day of December, 1993.



D F Mwaungulu
REGISTRAR OF THE HIGH COURT