



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NUMBER 278 OF 2021  
(Before Honourable Justice M. Mambulasa)**

**BETWEEN**

**RHODA CHIGARU.....CLAIMANT**

**-AND-**

**DR. SAMUEL MEJA .....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL**

**(MINISTRY OF HEALTH / QUEEN ELIZABETH CENTRAL**

**HOSPITAL).....2<sup>ND</sup> DEFENDANT**

**CORAM: HH ELIJAH BLACKBOARD DAZILIKWIZA PACHALO DANIELS**

Mr. P. Mzembe of Counsel for the claimant,

Mr. D. Zikagwa of Counsel for the defendant (Not Present),

Mr. F. Mathanda, Clerk/Official Interpreter.

**JUDGEMENT ON DAMAGES**

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**DAZILIKWIZA**

1. Her vagina was mutilated when she was just graduating from her 30s to welcome her early 40s in and or about 2017 through 2020. Do they not say that—life begins at 40? Of course, that is

what they say. Whatever that means—we have never been 40—perhaps we may hardly understand the extent of her excruciating pain. Clearly, the claimant's painful lamentations at paragraph C(i) of her witness statement says it all: 'I no longer have a vagina and can therefore never have or enjoy sexual intercourse **ever again**'. The emphasis is ours, but the substance of it explains her pain. Ever again, means ever again—the sadness of her predicament requires no explanation. It is sad and we do not pretend to fathom her pain—but we can only surmise that nothing we can do will enable her to once again thank the great unknown—we mean the one who created the ancient and bodily act of sex, whose pleasure refuses to be replaced by anything known to mortal beings—for the pleasures that sexual intercourse brings which from her submission, she can no longer enjoy but for the mutilation of her member are a cause for her trauma. Who would not understand her? We require no response.

2. What we are narrating is not our own submission nor is it our own creation of the facts. As the record reflects—ours is a consideration of relevant facts as will later be married to the applicable prescriptions of law. That her vagina was mutilated and that she can no longer have sexual intercourse nor can she conceive in the traditional way—remains a relevant fact. Her pain is clear, for in her witness statement, she admits—that the entire ordeal tested even her faith in God asking; why did this happen to me. To that, clearly—she cannot find an answer nor do we have one.
3. The above notwithstanding, the difficult question that we should try to answer is this: can money as we know it, take-away the absence of sexual pleasure and or inability to conceive children? Or do we assume that given a chance between money and sexual pleasure all would choose money? We do not have an answer. Satisfaction, we know it right is never quenched by any region of money nor can we quantify the damage caused to her mutilated member in monetary terms. The consequence of her members' mutilation cannot be valued with any figure of money. But still, the principle of law is that—as far as money can do it, we understand—the claimant must be brought back to the position she was but for the negligent medical handling of her sickness. We are in awe—does that principle even make sense in our case? We do not think it does.

4. Can money as we know it, bring her back what she has dearly lost? Perhaps not. The limitations of the human mind are thus manifest in the Latin phrase: '*de minimis non curat lex*'—talking of the seemingly little things that the law knows no cure. Clearly, this is a case where the law knows not a cure. To those who think that the law is the answer of all questions of men, our question is simple: is there a tool in law that can bring her member back to the position it was but for her injury? We do not think so. To think that we can compensate the claimant with mathematical precision in law—is to overly think about the law's ability. But, equity as we understand it suffers not a wrong without a remedy—that should be understood as the basis of the principle—that all the court should do like in this case—is to remedy a wrong. We will not wait for the principle to make sense because we as earlier revealed money cannot bring her vagina back to the position it was, but for the wounds and scars inflicted by her unfortunate ordeal. We will simply compensate as a way of remedying the wrong. That is what we—as a legal society have simply agreed to be the solution imperfect as it is, but it will at least calm the emotionally unhappy claimant—for she is traumatized indeed.
  
5. What we have is a sad situation which started when the claimant got so sick from early 2017 to 2020. Throughout this period—the claimant had had multiple surgeries at Queen Elizabeth Hospital. She was referred to the hospital named after the Queen, after Chikwawa District Hospital had referred her there. Like in many cases, patients would be fortunate and the general hospital would indeed be a cure for many a sick patient. The claimant through the negligence of the 1<sup>st</sup> defendant was simply unfortunate—that is the premise of our discourse, we do not undermine the work the 2<sup>nd</sup> defendant does to many a citizen. This is a peculiar case, one that demands maturity in the handling of the balancing of the interests and the implications that our order may have on medical personnel. We must not send a wrong message and unintentionally put medical personnel in fear in the conduct of their work. Fear is not what we will instill. But like a few of the cases—this case was as a result of improper handling of treatment on the claimant.
  
6. Thus, the record has it that, the claimant went through an excruciating biopsies, painful chemotherapy, multiple and invasive and painful procedures, tests and surgeries. In March 2020, the claimant had had a failed operation which caused a lot of excruciating pain on her at

the hand of the 1<sup>st</sup> defendant. As a result of the said painful and failed operation, the claimant suffered serious multiple wounds and infections on the operated parts of her body, she was fitted with a colostomy bag. As a result of the failed surgeries and operations, the claimant has a mutilated vagina and with permanent scars thereof. The diagnosis is that she can never have a child and or have sexual intercourse. We understand her worry. Her depression as submitted is equally warranted.

7. Unfortunately, there is not a thing we can do to bring her back to the position she would have been, but as far as money can do it—ours is simply to compensate her although not with any claim of mathematical precision as earlier stated. The discretion remains ours to decide. Permanent deformation of the only her member she worries will never bring her any sexual pleasure and or indeed conceive any children is established. Her trauma and the emotional torment is all we say: excruciating. Shock, stress, multiple body injuries and all are synonymous to the songs of pain she sings. Because of the colostomy bag which remained in her system, she submits that—she feels embarrassed and stigmatized. Who wouldn't? She survives on medications—so she submits. That aside, the invitation we have today is to consider her prayer that we award general damages for pain and suffering and the usual neighbours of damages including special damages and exemplary damages.
8. The calling we have answered above is premised on the authority we have received from the Honourable Judge seized of this matter under Order 25 Rule 1 of the Courts (High Court) (Civil Procedure) Rules. Our duty is to assess the quantum of damages within the bounds of reason and proportionality (see Order 25 Rule 1(n) of the Courts (High Court)(Civil Procedure) Rules). As seen above, the claimant suffered serious injuries following a surgical operation that she underwent at Queen Elizabeth Central Hospital (QECH). By an order dated 13<sup>th</sup> May, 2024 the Court struck out defense and entered judgment against the defendants. Judgement for damages and costs was accordingly entered for the claimant.
9. To arrive at a reasonable award, the court will have aid from similar past cases to determine the quantum of damages—thereby helping to maintain consistency and uniformity in similar cases (*Kwalenga v Chirambo and Another*, Personal Injury Case No. 432 of 2018 (Unreported)).

Therefore, this Court has referred to similar cases in determining the appropriate quantum of damages for the claimant.

10. Thus, in the case of Joyce Gama v The Attorney General Civil Cause Number 230 of 2017 (Unreported) this Court awarded a sum of K10,000,000.00 to the claimant in 2024 when she endured pain and suffering as well as disfigurement, following an erroneous retention of a gauze in her uterus.

Looking at the seriousness of the loss in this case we are convinced that **K20,000,000.00** should suffice for pain and suffering, loss of amenities, and disfigurement. As for trauma and psychological distress, regrettably we could not find any Malawian authority that awarded and quantified the same. We speak but for ourselves on what we were unable to find. We noted that similar lamentations were made 2018 by the honourable Assistant Registrar Anneline Kanthambi, (as she was then, now Judge of the High Court of Malawi), in Msakambewa v Kayira & 2 Others Personal Injury Cause Number 889 of 2014. But unlike in that case, we think we have the authority to create the precedent ourselves. We accordingly award **K5,000,000.00** as a reasonable sum for all the psychological distress and trauma she suffered.

On this we must add, that we would have awarded more if the age range of the claimant was between 25—40, because we also have it in mind that the claimant is 50 years old, and this ordeal started when she was in her 40s, she was not far from her menopause cycle. If she was a bit younger at the time of the injury we would have awarded more.

11. However, as regards exemplary damages, it should be pointed out that, they are punitive in nature since their purpose is to punish the defendant for outrageous conduct and to deter the defendant and others from engaging in the conduct like that which formed the basis of this lawsuit (see Magombo v The Attorney General (Malawi Police Service) (2021) MWHC 51). Thus, exemplary damages are not necessarily compensation to the claimant for the damage she suffered; they are more like a punishment on the defendant for waywardness (see Kapichila & 13 Others v Chiumia & Attorney General (Ministry of Home Affairs and Internal Security) (2021)MWHC).

The conduct of the 1<sup>st</sup> defendant herein was a serious breach of a fiduciary duty as he had been negligent in handling the situation of the claimant through conducting erroneous tests,

misdiagnosis and uninformed surgery that left the patient—seriously deformed, in trauma as well as completely depriving her from the enjoyment of a colourful sexual life and parenthood. Consequently, we find this case to be appropriate for awarding exemplary damages so as to deter the defendants and others from repeating or doing the same.

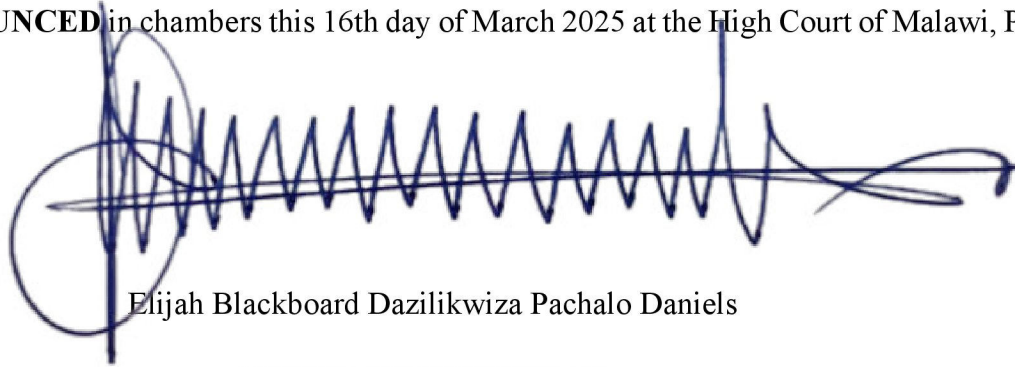
12. Accordingly, in the case of Magombo v Attorney General (Malawi Police Service) Personal Injury Cause No. 282 of 2018 (Unreported), the Court awarded K30,000,000.00 as exemplary damages where the claimant was tortured and humiliated in police custody for one day, sustaining injuries therefrom. However, considering the gravity of the damage to the claimant in this case and the passage of time, we award **K40,000,000.00** as exemplary damages befitting this case.
13. Again, the claimant also claimed damages for the loss of expectation of life and companionship following the irreversible damage made to her private parts. In Ketrina Chizonda (mother suing on her own behalf And on behalf of the beneficiaries and dependents of the estate of MANUEL SIKALIOTI and PEMPHERO SIKALIOTI (deceased)) and Another v Precious Kambani and Another Personal Injury Cause No. 838 of 2020, Assistant Registrar C.M. Mandala awarded K2,000,000.00 for loss of expectation of life and another K2,000,000.00 for companionship. Looking at the loss that is attributed to the claimant in this case, we award a sum of **K2,500,000.00** for loss of expectation of life and another **K2,500,000.00** for loss of companionship as well as other smaller provable damages on record.
14. All in all a total sum of **K70,000,000.00** is a reasonable sum unlike the **K138,000,000.00** which the claimant through Counsel wanted this Court to award. We award **K70,000,000.00** as a reasonable compensation for her loss on all heads.

15. Costs are awarded to the claimant.

16. It is so ordered.

Any party aggrieved by the decision of this Court, has the right to appeal within the prescriptions of law and procedure.

**PRONOUNCED** in chambers this 16th day of March 2025 at the High Court of Malawi, Principal Registry.

A handwritten signature in blue ink, consisting of a large initial 'E' followed by a series of sharp, repetitive peaks and valleys, resembling a stylized wave or a series of 'Z' characters, and ending with a horizontal flourish.

Elijah Blackboard Dazilikwiza Pachalo Daniels

**ASSISTANT REGISTRAR**