

**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KABWE
(Civil Jurisdiction)**

2014/HB/048

BETWEEN:

- 9 JUN 2016

GEOFFREY ELLIAM MITHI

**(Suing in his own capacity and as administrator of
the estate of late Beatrice Sakala Miti)**

PLAINTIFF

AND

MOPANI COPPER MINES PLC

DEFENDANT

THE ATTORNEY GENERAL

THIRD PARTY

**BEFORE THE HON. MR. JUSTICE D.Y. SICHINGA, SC IN OPEN COURT
ON THE 9TH DAY OF JUNE 2016.**

**FOR THE PLAINTIFF: MR. M. H HAIMBE OF MESSRS MALAMBO
AND COMPANY.**

**FOR THE DEFENDANT: MESSRS H. PASI AND A. GONDOWE - IN
HOUSE COUSEL.
MRS M. MAPANI KAWIMBE - DEPUTY CHIEF
STATE ADVOCATE**

**FOR THE THIRD PARTY: MR. F. IMASIKU - SENIOR STATE ADOVATE.
MR. M. HAMANYATI - STATE ADVOCATE**

JUDGMENT

AUTHORITIES REFERRED TO:

- 1. *Donoghue Vs Stevenson (1932) AC 562***
- 2. *Bourbill Vs Young (1943) AC 92***
- 3. *Winfield and Jolwicz on Tort - 17th Edition Sweet and Maxwell***

There is before me a contested claim by the Plaintiff for damages, an injunction, declaration and order that the deceased died out of the toxic fumes released by the Defendant, any other relief, and interest and costs.

The Plaintiff is the widower as well as the Administrator of the Estate of the Late Beatrice Sakala Mithi (hereinafter referred to as the deceased). The Defendant is a mining entity which carries out its operations, in among other areas, Mufulira District of the Copperbelt Province in the Republic of Zambia. The Third Party is a representative of the Government of the Republic of Zambia from whom the Defendant claims an indemnity against the Plaintiff's claims.

The brief facts of the claim are that the deceased was attending a prayer meeting in Mufulira when the toxic fumes were emitted into the atmosphere by the Defendant. It is pleaded that the toxic fumes were inhaled by the deceased and resulted in acute respiratory failure which was the cause of her death. It is the Plaintiff's claim that the Defendant in releasing the fumes was negligent and in breach of a duty it owed to the deceased. In turn the Defendant seeks to be indemnified against the Plaintiff's claim by the Third Party on the grounds that pursuant to an agreement called "Environmental Liabilities" made on 31ST March, 2000 between the Government of the Republic of Zambia and the Defendant, in which the Government of the Republic of Zambia undertook to and covenanted with the Defendant to indemnify and hold the Defendant harmless against any and all environmental liabilities arising from the operation of the assets acquired from the Government of the Republic of Zambia.

This court is therefore called upon to assess the Defendant's liability, if any and apportion that liability to the Third Party if the Defendant is found wanting.

The Plaintiff called the testimony of six (6) witnesses who testified as follows:

PW1, MIRRIAM MWALE, 39 year old of Mufulira testified that on 31st December, 2013 she was in the company of the deceased from 05:00 hours to the time she died after 21:00 hours. She said she appeared to be well and in good spirit. PW1 said the deceased attended to various functions throughout the day including going to her office around 07:45, attending a wedding at 10:00, attending a reception at a school 17:00, going shopping; and attending a church crusade at 21:00 hours. PW1 said whilst at the crusade she complained to the deceased about the scent of sulphur and emissions from the mining plant which were visible in church. She said there was a bluish smoke that filled the church.

PW1 said other congregants were screaming complaining about the smoke and pleaded with the deceased, who was the District Commissioner to see the mines about this. She said the deceased took her seat next to her after she had delivered a sermon, and she complained that her skin was itchy. She further asked her to go out for some air. PW1 said they went out to sit in the car. She said as she opened her door she heard the deceased scream on the passenger side that she was dying. PW1 said the deceased was held by one Jenipher Lwanga. She said a lot of people come to see what was happening. PW1 said the deceased placed in the vehicle and driven to Mufulira Malcolm Hospital where she was attended to by one Dr. George in the Emergency Room, she said it was subsequently announced that she had died.

Under cross- examination PW1 said the deceased begun her day around 05:00 hours in the morning. She admitted the deceased had a busy schedule and rested a while as they decorated the chamber at the council.

PW1 said the deceased also attended to her work on the material day. She said they had been neighbours for two (2) years. PW1 said the deceased was aged 55 and suffered from Asthma. She said she was officiating at an event when she suffered the attack.

PW1 said she equally felt itchy whilst at the church. She further said she could not see where the scent was coming from but her eyes were itchy. PW1 said she as a resident of Mufulira she knew that the fumes came from the mines. She said she was aware of the presence of mines at Chambeshi. PW1 said she did not know the direction of the wind on the day. She said was not aware if there was a smelter at Chambeshi. PW1 said she was not aware the deceased's heart condition.

Under further cross – examination, PW1 said at the time she felt itchy the deceased had been preaching.

In re-examination, PW1 said she was confident that the scent came from Mufulira Mopani Mines. She said the deceased had been busy all day including attending to her personal errands. She said whilst at Chawama Hall she did not know the direction of the wind, but she was confident the fumes came from Mopani Mines. PW1 said she did not live in Chambeshi.

PW2, JENNIPHER LWANGA, 40 year old resident of Mufulira testified to the effect that on 31st December, 2013 she attended an inter denomination prayer service at Chawama Hall in Mufulira where the deceased was the guest of honour. She said the deceased came to the service around 21:00 hours in the company of PW1 and she welcomed her. She said one Pastor Alexander Mwaba invited the deceased to open the service by preaching and she also participated in the singing. PW2 said she observed some fumes entering the hall and people openly complained about Mopani operations.

She said the deceased told the people she would take it up with Mopani as people were coughing and covering their mouths. PW2 said she equally coughed and had itchy eyes. She said she felt heat in her chest.

PW2 said the deceased complained of the smell from the fumes and asked for water to drink. She further asked to go to her vehicle. PW2 said she walked unaided but after leaving the hall she held her arm for support. She said the deceased complained that she had difficulty breathing. PW2 said when they got to the vehicle the deceased realized she left her keys where she had sat and PW2 asked an usher to fetch them. She said by the time the usher returned the deceased had collapsed. PW2 said she did not respond when she called her. She said a man came to their aid and he also complained of the fumes. She said this man drove them to Malcolm Watson Hospital. PW2 said oxygen was administered on the deceased and she was attended to by one Dr. George who confirmed the deceased was dead.

PW2 said PW1 then called the deceased's husband and son to come to the hospital. PW2 said she had received the deceased at the church and she had been in a good mood as she participated in the singing and dancing.

Under cross-examination, PW2 said PW1 had tried to administer an inhaler to the deceased but failed. She said she could not tell if she had been breathing as no one had checked her pulse. PW2 said the deceased had been wheezing earlier before she collapsed.

She said she could not tell where the scent had been coming from. PW2 said she was born in Mufulira and had lived there for 40 years. She said she remembered seeing fumes from her primary school years. She said there was no vegetation that grew near the mining plant. PW2 said she had not experienced the scent in the last three months. PW2 said she did not

personally know any of the people that died from the fumes. She had been a member of the church where the service took place.

PW2 said the deceased was taken to the intensive care unit at the hospital. She said the deceased moved with an inhaler as she was asthmatic. She said she did not experience breathing problems all the time.

PW2 said the time when the Zambia Consolidated Copper Mines Limited operated the mines the scent had not been so strong as it was now. She said the effluence was white in colour then, but it was now black to blue.

In re- examination PW2 said the deceased choked as the scent came through the hall. Then she wheezed and collapsed.

PW3, ALEXANDER MWABA KANYANTA, 41 year old resident of Mufulira testified that on 31st December, 2013, he attended an overnight worship service at Chawama Hall in Kantanshi area where the deceased had been the guest of honor. He said between 21:20 and 21:30 hours the deceased was ushered into the hall. PW3 described Chawama Hall as being near Shinde stadium and compound 8P. He said there was a tarred road that run from town and further ahead was Kankoya Township, then Mutondo township. PW3 said across the road was the mine where he worked. He said Chawama Hall was 15 minute walk to the mine.

PW3 said he saw the deceased at church, and he called upon her to deliver her message. He said she read from the bible and led the congregants in song. PW3 said he saw blue fumes coming through the window and the vents. He said he experienced itchy eyes and he coughed. He said a lot of people went through the same experience. PW3 said the deceased covered her nose and mouth. He said he observed people shouting and saying they were dying. He said he knew of people that had died at Kankoyo. PW3 said

the deceased was aided by PW1 and PW2 to go outside as the prayer service continued.

PW3 said he did not know where the fumes came from. He said the deceased appeared to be in good health when she came. He said he was later informed by PW2 that the deceased had passed on. PW3 said a lot of people had died in Kankoyo from sulphur dioxide. He said the scent came from the Mopani Mine Plant smelter.

Under cross - examination, PW3 said he was employed by Mopani as a pump attendant, circulation. He said he had worked for Mopani for 8 years and had lived in Mufulira since 1980. PW3 said he had never heard of anyone dying from the scent. He said he did not know if Mopani had a list on fatalities. He said he was aware that sulphur dioxide came from the smelter. PW3 said he was not familiar with the operations of the smelter. He said he knew that the acid plant belonged to Mopani. PW3 said he did not know anything about the smelter upgrade. He said he did not know if the acid plant produced sulphuric acid before the mine was privatized. He said he last saw fumes released in April 2015. He said he smelt the same.

PW3 said he had worked for Mopani since 2007 and learned of mining operations from that time. PW3 said he had never worked for ZCCM. He said his church had congregated at Chawama Hall for three years. PW3 said he had lived in Mufulira for 35 years. He said the scent had been stronger now.

In re- examination, PW3 said his duties were to make electrolyte in liquid form. He said his job had nothing to do with the release of sulphuric acid.

PW4 GEOFFREY ELLIAM MITHI, 62 year old Widower and Businessman

testified that he was the Plaintiff in the matter. He recalled that on 31st December 2013 he had returned from Lusaka in the early morning around 03:00 hours and the deceased opened the door for him. He said she was in a jovial mood.

He said she got up at 05:00hours to attend church at the Reformed Church of Zambia. PW4 said she had been in PW1's company. He said the deceased returned home around 07:00 hours and she prepared to go to work. He said she informed him of her schedule which included attending a wedding. PW4 said the deceased lived a busy life as District Commissioner. He said he had called her around 11:00 or 12:00 hours and she informed him she was at the civic centre. He said he met her there and she appeared well. PW4 said he saw her again at home between 19:00 and 20:00 before she went out to attend an interdenominational prayer service. He said he later received a call from his son, Mumbonya, that his wife had been hospitalized after an asthmatic attack. PW4 said he went to the hospital where he learnt from Dr George that his wife had passed on.

PW4 said the deceased had earlier suffered an asthmatic attack in October, 2013 while attending an official event at Kankoyo due to sulphur dioxide from Mopani Plant. He said he was informed by the hospital that sulphur dioxide has caused her attack. He said she had been admitted for 3 days. PW4 said after that episode, the deceased told him she would pursue the issue with the mines. He said told him she would pursue the issue with the Mines after receiving complaints from Kankoya section 8P, and section 6.

PW4 said he had been married to the deceased for 33 years. He said apart from being a District Commissioner, the deceased baked cakes

commercially and was involved in charity work. He said they had four adult children and a dependant.

PW4 said the deceased did not have a heart condition. He prayed for the court to grant him damages as per the statement of claim.

Under cross –examination, PW4 said he had no proof on record to show that he was the Administrator of the deceased's estate. He said was her husband. PW4 said he had obtained letters of Administration from Mufulira local court. He said her estate was worth K500,000.00. PW4 said he had not received any compensation for her death. He said the deceased was entitled to receive benefits from the government including her leave days, repatriation and gratuity in accordance with her contract of engagement.

PW4 said the results of Post mortem examination were explained to him by medical personnel. He said he did not attend the post mortem examination. PW4 said the deceased had officially pursued the issue of sulphur dioxide. He said he knew one Dr Mukuka of Malcolm Watson Hospital, but he did not know him well.

PW4 said he did not know his wife to be a diabetic patient. He said she was asthmatic. PW4 said the deceased was the breadwinner of the family and his contribution to the family was between 5% to 10%. He said his four children lived independently. He said the dependant, Mary Daka was 16 years. He said his two grand children depending were on him.

PW4 said he did not know when the acid plant was to be completed nor why it was important. He said he read reports about it from the press.

PW4 said he had taken out this action against Mopani as per postmortem report. He said he sought damages.

In re-examination, PW4 said the deceased was not being treated by Dr. Mukuka. He said she would be attended to by one Dr Banda. He said he had seen a letter written by Dr Mukuka after he commenced a suit against Mopani. He said the letter was signed on behalf of Dr. Mukuka. He said the deceased was entitled to benefits from her employer. PW4 said a postmortem examination was carried out on various parts of the deceased's body.

PW5, LWABA MUBIKAYI, 68 year old Pathologist of 34 years standing and a medic of 40 years standing testified that he conducted a postmortem examination on the deceased's body and produced a report at pages 1 to 4 in the Plaintiff's bundle. He said he microscopically examined the deceased body and found most organs appeared normal. He said he was told by the police the deceased was asthmatic died within 5 minutes of choking. He said in his estimation the deceased died less than 5 minutes after choking. He said he collected lung and heart tissue samples which he examined. PW5 said this had been a case of acute respiratory failure due to inhalation of toxic fumes.

PW5 explained that Asthma by definition was the narrowing of the bronchi. He said it was also known as Broncho Spasm or Broncho constriction which looked normal but would have a certain degree of broncho constriction which meant they took less oxygen than healthy people. He said their oxygen reserve was low. He said while a person saturated more than 95% in hemoglobin, an asthmatic patient has a lower saturation rate of oxygen owing to a permanent broncho constriction. PW5 said an asthmatic patient was extremely sensitive to irritants. He said in this case the deceased was sensitive to sulphur. He said this explains why the deceased quickly suffocated.

PW5 further explained that the heart was a muscle that required oxygen to function. He said if a patient went into broncho spasms the heart would have problems including irregular beats (or Arithmia).

With regard to the summary of significant, abnormal findings, PW5 explained Emphysema referred to too much air in the lungs which was not being expelled in the atmosphere. He said disarray of normal pattern referred to the cells which were not aligned in a normal pattern. He said the heart stopped owing to broncho spasm. PW5 said the anomalies he found on the deceased were consistent with an asthmatic patient. He reiterated that the deceased died as a result of an accurate respiratory failure caused by toxic fumes.

PW5 said he was not informed that the deceased was a diabetic patient. He said a diabetic patient would not have died in the way the deceased died. PW5 said diabetic patients gradually slip into a diabetic coma before they die.

When shown one Dr Victor Mudenda's opinion at page 155 of the Defendant's bundle PW5 said he thought Dr Mudenda had not been aware that a microscopic examination had been done because his opinion was such that the same had not been done.

Under cross - examination, PW5 said he was one of the pathologists at Ndola Central Hospital and one of the three in the Copperbelt Province. He admitted that at times they were overwhelmed as pathologists. He admitted the finding was done before the tissues were examined as a provisional report.

PW5 said he examined the deceased's lungs appeared normal. He said he did not see signs of congestion. He said an asthmatic patient would secrete

a lot of mucus found in the bronchi. He said an inhaler was used to dilate the bronchi. He said the deceased's heart appeared normal as it did not appear large or have liquid around it. PW5 said the document titled "Summary of Significant, abnormal finding" in the Plaintiff's supplementary bundle was prepared after a microscopic examination. He said the two reports had to be read together. He said the two reports were not collected at the same time. PW5 said he put the same dates on both documents to show they were the same case.

PW5 said they were many irritants including dust and pollen. He said physical exhaustion could also induce an asthmatic attack. PW5 said he was not informed that the deceased commenced her day at 05:00. He said sulphur dioxide could cause injury to lungs and bronchi if exposed for a long period or in a short period if it was highly concentrated. He said he did not find any such injury to the deceased. PW5 said a cardiac arrest occurred when the heart stopped pumping.

In re-examination, PW5 said he followed procedure in examining the deceased's body. He said there was a forbade a provisional report. He denied that he back dated his report. He said he was not aware that Mopani had sought an opinion of his report. He said exhaustion was not likely to cause an asthmatic attack.

PW6 CLIFF NGWATA, 50 year old Environment Scientist with the Zambia Environment Management Agency (ZEMA) testified that the Agency was formed by an Act of Parliament to inter alia look into various aspects of the environment including water and air pollution control, pesticides and substance management, and ozone depletion control. He said the agency was guided by statutory instruments in pollution control which set standards and conditions for licenses. PW6 said Mopani was issued with a

licence specifying conditions including regular measurements of discharge into the air such as sulphur dioxide, and dust particles. He said they had to file returns with ZEMA every six months. PW6 said ZEMA equally issued reports twice a year.

PW6 explained that at page 20 of the Plaintiff's bundle was a Report on sulphur dioxide. He said raw material that Mopani used had sulphur content, and when heated it released sulphur dioxide. He said the ZEMA limit was 125mg/m³/245. PW6 said when the Environment Council of Zambia Act was passed, the government begun the process to regulate the emission of pollutants and limits were put in place. He said owing to the fact that Government had sold machinery to the investors a stator instrument was prepared to ensure compliance in the long term.

PW6 said the report showed Mopani was not compliant. He said one of the emission tables in the report showed emissions were 70 times above statutory limits. He said Mopani was not complying. PW6 said ZEMA had engaged them and they requested an extension which they did not agree to in principle. He said emission at Mufulira were always above limits. PW6 said pollution was a problem in Mufulira.

Under cross – examination, PW6 said the document at page 20 of the Plaintiff's bundle was an internal document and that was why it begun with 'background'. He said the inspectorate Department prepared the report and he participated in the same. He said he did not participate in preparing the report at P67 of the Plaintiff's bundle. He said according to the Report the allowable statutory limit for sulphur dioxide emissions was 100mg per cubic metre. He said if a mine exceeded this limit it ought to be penalized or prosecuted. He said to his knowledge Mopani had never been fined but

cautioned through letters. He said this had not been reported in the report. PW6 said the regulations did not give directions to caution a mine.

PW6 said the history of not penalizing the mines could be traced to Agreements they entered into the Government. He said mines still had to comply. PW6 said the guidelines specified how much sulphur dioxide should be discharged. He said the mines had developed an Environment Management Plan (EMP) which they submitted to ECZ for approval. He said the EMP would spell out the commitments to reduce sulphur dioxide emissions to 50% and thereafter to 97%. PW6 said the EMPs worked as a waiver to the statutory limit until December 2014. He said ZEMA had to monitor the implementation of EMPs.

PW6 said he had not had sight of returns as at 15th January 2016. He said there had been a reduction in emission from the time the smelter was upgraded. He said the report at page 20 of the Plaintiff's bundle was for 2013. He said the reports were based on 6 months returns. He denied that ZEMA selectively chose the data to include in the report. He said July to December 2013 was not part of the report.

PW6 said ZEMA did not commission any study on the effect of sulphur dioxide in Mufulira as it did not have the expertise. He said the report showed at page 71 of the Plaintiff's bundle that over 50% of sulphur dioxide had been captured. PW6 said the acid plant did not capture all the sulphur dioxide.

PW6 said he knew one Joseph Sakala who authored the letter at page 7 of the Defendant's supplementary bundle of documents. He said the letter covered the period September 2009 to December 2014. PW6 said that the current position was that Mopani was still not complaint on sulphur

emissions as they were releasing more than 1000mg per cubic metre. He said the company had not been prosecuted. PW6 said ZEMA had failed the people of Mufulira.

PW6 said he was aware that at the time of privatization of the mines the Government had entered into Development Agreements with the mining companies. He said his understanding was that the Development Agreements were not legally binding after the enactment of the Mines and Minerals Act of 2008.

In re- examination, PW6 said ZEMA started regulating industries through various statutory instruments under the Environment Protection and Pollution Control Act No. 10 of 1990. He said after the enactment of the Environment Management Act of 2011 all previous statutory instruments were amalgamated into one statutory instrument but the contents remained the same.

PW6 said Mopani had initiated a Acid Plant in 2009 and there was a drastic decrease in sulphur dioxide emission to 2014. He said from 2009 to 2014 50% of sulphur dioxide was being captured. He said there was further improvement from 2014. Pw6 said on 31st December, 2013 the capture of sulphur dioxide was about 55% and 45% was discharged.

This marked the Plaintiff's case.

The Defence called the testimony of five witnesses

DW1, VICTOR MUDENDA, 56 year old Pathologist of 23 standing testified that he was availed a postmortem report regarding the deceased by Mopani who sought his opinion as an independent pathologist. DW1 said he wrote an opinion and availed it to Mopani who wanted to use it as evidence. He said the postmortem Report indicated that the cause of death was acute

respiratory failure due to inhalation. DW1 said he felt such a determination could not be made because the Postmortem done indicated all organs were normal and indicated as such. DW1 said there was need for a microscopic examination.

DW1 narrated the elaborate process of tissue examination which he said could take at least 5 days. He said in practice only organs that appeared abnormal were examined. He said in a microscopic report one had to list the organ and state the findings and diagnosis.

DW1 said the report must be dated as at the time it was done. He said Mopani informed him of a report of microscopic findings in this case which was linked to a previous report. DW1 said he found the heart and lungs to be organs of interest. He said the lungs showed emphysema which is the widening of air spaces in the lungs, and the heart showed some muscle in the heart had died or was damaged and non functional.

DW1 said in his opinion emphysema was not expected in a asthma case because asthma affects the upper areas and not air sacks. He said asthma affected the bronchi and bronchios (tubes). He said he suspected something else caused have caused emphysema, such as smoking.

DW1 said there was no supportive evidence that the diagnosis was asthma. He said the findings of the heart were elaborate but it was not clear which part was sampled. He said based on what he had seen, He would likely conclude that the heart was not in good shape because the fact that the report indicates that muscle fibres were in disarray. He said based on the fact that the report stated the deceased was hypertensive, it would have been good to investigate that aspect. DW1 said Audei occurs when a heart

enlarged usually caused by hypertension. He said there was no evidence that the heart was weighed.

DW1 said the two reports were not telling the same story. He said the first report said death occurred due to toxic fumes whilst the second referred to problems with the heart. DW1 said he favoured the latter report.

Under cross- examination, DW1 said he had appeared in court in his capacity as the Head of laboratory at the University Teaching Hospital but relied on information availed to him by Mopani. He admitted that samples were retained by a hospital but did not request for them. DW1 said he simply made comments as requested by Mopani. He said it was not unusual for two experts to have different views.

DW1 admitted it was possible for a preliminary diagnosis to be done but a microscopic examination was necessary to make conclusions.

DW1 said it was correct for PW5, Dr Mubikayi to have examined that lungs and heart based on his suspicions. He further admitted that PW5 could have ruled out what was not significant. He further said his opinion was secondary to that of PW5. He said it was possible for a person who had inhaled toxic fumes including sulphur dioxide over a long period of time to present emphysema.

DW1 described hypoxia as the low oxygenation of the blood. He said there was poor ventilation in the lungs a patient would go into broncho spasm as the air would be held in the lungs, which would be unable to ventilate. He said if one had emphysema then they would not be able to oxygenate, and death could occur. DW1 said he preferred to conclude that the deceased's heart was in a poor state. He said hyposia could have accelerated the cardiac arrest.

In re- examination, DW1 said, that he had indicated in his report that the histology of the deceased needed to have been looked at. DW1 said he did not carry out any investigations on the samples. He said it was not unusual in practice to interview the author of the postmortem report as all the information was based on the microscopic examination. He said there was no information in the postmortem report that a further investigation would be carried out.

DW1 said pollutants including sulphur dioxide lead to asthmatic attacks. He said patients could be allergic to different things. He said in his opinion PW5 showed that there was something with the heart. He said hypoxia was low oxygen within the heart. DW1 said emphysema on its own could cause hypoxia. He said death by hypoxia could reduce the amount of oxygen supply to the brain. He said it could happen suddenly depending on the degree of hypoxia. He said it was difficult to diagnose this.

DW1 said the Microscopic finding showed the deceased's heart was under some pressure. He said the weight of the heart was unknown and that could have something to tie the two reports.

DW2, GIBERT CHITEMBO MUKUKA, 55 year old Medical Doctor at Malcolm Watson, said he was a doctor of 26 years standing out of which he spent 12 years at Malcolm Watson as Medical Superintendent. He said his duties were to administratively run the hospital. However, he at times performed medical duties. He said the hospital was run by Mopani Copper Mines. DW2 said he knew the deceased as the District Commissioner of Mufulira and as a patient of the hospital. He also knew her as a Rotarian.

DW2 said he had access to deceased's medical record. He said the document at page 151 of the Defendant's Bundle was a Report highlighting the deceased's medical history and prepared by one Dr Banda.

DW2 said he knew the deceased was living with Asthma and Diabetis. He said on 30th July 2012 she was admitted for a chest infection. In April, 2013 she had seen a surgeon for abdominal pains which turned out to be gall stones. He said she opted to have surgery in India.

DW2 said on 15th October 2013 she was admitted for a severe asthma attack. He said often times she attended hospital for asthmatic attacks and to receive her medical prescription for asthma. He said her medical records had revealed this. DW2 said he did not file the same in court for ethical reasons.

Under cross – examination, DW2 said the Medical Report at page 151 of the Defendant's bundle was address "To whom it may concern". He said the release of documents followed strict confidentiality and that the Medical Report contained confidential information. DW2 said he believed it was addressed to the Medical Manager. He said the primary documents were not before court.

DW2 said the deceased registered as a member with Malcolm Watson in 2012 and since she was known to be asthmatic. He said the Medical Report was authored and signed by Dr Banda on his behalf as he was on leave.

DW2 said he was a specialist in women reproductive health which work he performed prior to his education as Medical Superintendent. He said he did not attend to the deceased. He said on 30th July 2012 he did not attend to her chest infection but she was cured of it. DW2 could not state if the gall stones were fatal. He said the report summarized the deceased's medical

history. DW2 said he did not see any heart problems in her records. He said he never attended to any complaint of the heart by the deceased. DW2 declined to say anything on diabetes having caused the deceased's death. He did however say a diabetes patient would fall into a coma before succumbing. He said he did not have statistics on how often it happened like that.

He said hypoxia was a condition that deprived the brain tissues of oxygen. DW2 said the heart could die as a consequence of hypoxia. DW2 declined to answer further questions on hypoxia.

In re- examination, DW2 said gall stones presented in different sizes and the big ones could be fatal. He said most diabetic patients had the risk of having a stroke. He said those with type 2 diabetes usually succumbed to heart vascular complications and not high levels of sugar (hypo glycemia) He said hypo glycemia was fatal and resulted in a patient going into coma.

DW2 said a lack of oxygen in the body could result in death if there was no intervention. He said he was not disqualified to speak on other medical areas even though he was not a specialist.

DW3 KENNEDY CHITUNDU, 39 year old Metallurgical Engineer at Mopani Copper Mines' smelter testified to that effect that ore concentrates were received in the smelter and placed in furnace to upgrade the ore to 60% copper from the initial 20%. He said oxygen, diesel and coal were used to do this.

DW3 said the smelter had three parts- Primary, Acid Plant and Secondary section. He said the primary part upgrades the concentrate to 60% copper and removes 40% acid. DW3 said the 60% copper concentrate was moved to

secondary part and upgraded to 90% copper. He said the by products of sulphur dioxide goes to the acid plant.

DW3 said Arnod furnaces upgrade the concentrate to 99.5% copper which is the final product of the smelter. He said the smelter can now capture 97% of sulphur dioxide produced as at June 2014. DW3 said the smelter was structured to be upgraded in stages. The primary was completed in September 2006; Acid Plant in March 2007 and commissioned in January 2013; 2nd Acid plant commissioned in June 2014 captures gas from convertors.

DW3 said in the first stage 50% of sulphur dioxide was captured and the other 50% released in the atmosphere. He said the new convertor commissioned in January 2013 captured 50% of sulphur dioxide.

DW3 said on 31st December, 2013 he was at work. He said the smelter run normally, the Primary at a 100% for 24 hours. The Acid plant run at 100% for 24 hours, and the convertors and Arnord furnaces equally run at 100% for 24 hours without stopping. He said control measures for the plant were in place including production controller who work in 8 hour shift; and foremen in 8 hour shifts. DW3 said a plant information system captured data for every millisecond and was installed in all homes for their supervisors and smelter management including himself.

DW3 said the mine also had a short messaging system (sms) which would alert management on their personal phones if the plant malfunctioned. He said further the mine had an interlock system would stop operation if the acid plant had a problem. He said this was to stop the making of sulphur dioxide (SO₂).

DW3 said the Secondary section was able to capture 50% of the sulphur dioxide it produced. He said on 31st December 2013, the mine was able to capture sulphur dioxide. He said the plant operated normally. He said sulphur dioxide was colourless. DW3 said about 700 to 800 tons of acid was produced. He said on 31st December 2105 sulphur dioxide capture was above 50% which was normal. He said the smelter/ acid plant was shut down if there was a break down.

DW3 said a report would be sent to ZEMA to show how much sulphur dioxide was captured or released. He said from June 2014 the mine had captured 97% of sulphur dioxide. He said data was sent online from various stations to ZEMA and management.

Under cross- examination, DW3 said 50% of sulphur dioxide was being captures as at December 31st 2013. He admitted that there was a corallation between the amount of acid produced and gas released into the atmosphere as sulphur dioxide. DW2 said the primary section captured 50% sulphur dioxide and other 50% would be released into the atmosphere. He said if the concentration of sulphur dioxide was high it was diluted with air at the acid plant. He said treating more concentrate would cause more production of sulphur dioxide. He said more concentrate, the more sulphuric acid was acid was produced and the more sulphur dioxide was released at the converters.

DW3 said the maximum limit imposed by ZEMA was 1000 parts per million of gas at starks. He said the limit imposed by ZEMA was 500 ppm in ambient air. He said the stark/ chimney was 70 metres high. He said the stark sulphur dioxide would decent to grant level and be diluted. DW3 said a highly concentrate of emission at stark could still be highly concentrated

when it descended. He said the ambient air would also have a high concentration.

DW3 admitted that dust, arsenic, cadmium, copper and lead were also released into the atmosphere. He said the amount was minimal and depended on analysis and capture.

DW3 said when emissions encounter moisture, sulphur dioxide would form a weak acid (rain acid) which is like a haze visible depending on concentration. He said the flow of emissions also depended on the wind. He said he did not know if it rained on 31st December, 2013 but 52% of sulphur dioxide was captured. DW3 said he was not able to tell how many parts per million were released.

DW3 said ZEMA regularly produced reports. He said a company called Alfred H. Knight conducted the capturing exercise on behalf of the Mopani. He said emissions released at starks on 31st December were 14.3 times higher than the permitted limit. DW3 admitted that the matt settling electric furnace stark also produced sulphur dioxide to a lesser extent. He said this was not among the starks where sulphur dioxide was captured. DW3 said added sulphur dioxide to the ambient air. It was not included in the 48% not captured.

DW3 said prior to 2014 50% of sulphur dioxide was being captured because there was only one acid plant and the other plant was under construction. He said the purpose of the upgrade was to bring sulphur dioxide emissions capture to 97% in Mufulira. He said the mine wanted to clear the air of sulphur dioxide because the environment was not fine.

In re- examination, DW3 said the more acid produced, the more sulphur dioxide captured. He said acid was produced from sulphur dioxide. DW3

said no sulphur dioxide was released from primary section. He said dust was part of sulphur dioxide that was vented.

DW3 said the Alfred H. Knight reports were produced every month. He said the starks did not produce sulphur dioxide but only released it. He said the weather played a part in the high concentration that descended to the ground from the stark.

DW4 VICTOR SICHAMBA, 40 year old Environmental Engineer at Mopani copper mine testified that on 1st June 2014 he received a call from the Manager – Health Safety and Environment to attend to the Mufulira Mine site to check on monitoring station for sulphur dioxide following the demise of the deceased. He said he produced a report on emissions released on the night of 31st December 2013 which he availed to the Manager. DW4 said his findings were that there was nothing unusual about the emissions because the amount emitted was as per agreement with ZEMA. He said the sulphur capture was 53% whilst the average for the month was 50%. 47% was released.

DW4 said the document at page 150 of the Defendant's bundle showed the amount of sulphur dioxide captured and used to make sulphuric acid. He said on 31st December 2013 53% was captured. He said the requirement from ZEMA was 50%.

DW4 said there were 7 sulphur dioxide stations around Mufulira to measure sulphur dioxide in the air in different townships. He said the stations monitor various parameters to ensure that limits given by ZEMA were not exceeded. DW4 said ZEMA inspected the stations and the mine could also write statutory returns every 6 months. He said at times ZEMA would mount their own monitoring equipment near the plant.

DW4 said there was no feedback from ZEMA over the report sent. He said sulphur dioxide was released from a chimney which was taller than surrounding building so it could be diluted and reduce its concentration, He said since June 2014 97% of sulphur dioxide had been captured. He said through a second acid plant sulphur dioxide was being converted to sulphuric acid. DW4 said there were sanctions in the ZEMA guidelines for non – compliance including closure and imposition of fines. He said Mopani had never been sanctioned.

DW4 said the report at page 72 of the Plaintiff's bundle shows that the stark was not complaint with ambient air at that time. He said ambient air guidelines were not applicable to Mopani owing the agreement with ZEMA. He said the agreement with ZEMA was achieved through an Environmental Management Plan that the smelter would be brought to 95% compliance by 2015.

DW4 said if the smelter did not capture 50% then the plant would be shut down. He said he was not sure if the plant was shut down on 31st December 2013. DW4 said there was a smelter at Chambeshi which could have emitted sulphur. He said sulphur dioxide colourless but appeared whitish when in contact with moisture.

Under cross – examination, DW4 said the monitoring stations were a ZEMA requirement to monitor areas close to the plant including Butondo, Kantanshi, Eastly and Kamuchanga. He said Chambeshi was not with the Defendant's vicinity but was about 35km away. He said stations were checked on 31st December 2013 and they showed sulphur dioxide in the air. He said the information was sent to ZEMA but the reports were not part of the bundles.

DW4 said statutory limits with regard to ambient air were:

Stark emissions – 1000 milligrams per normal cubic metre;

Ambient air - 24 hours = 125 milligrams per normal cubic metre; and
10 minutes = 5000 milligrams per normal cubic metre

DW4 said the limits were set to protect the environment and once exceeded harm could occur including to human beings. He said the letter at page 7 of the Defendant's supplementary bundle did not allow Mopani to exceed statutory limit. DW4 said prior to 2014 Mopani was compliant with the agreement with ZEMA.

DW4 said he was familiar with the Environment Liabilities Agreement between Mopani and the government of the Republic of Zambia stipulated that GRZ would indemnify Mopani for loss. DW4 said he was aware of the termination date.

In re- examination, DW4 said monitoring system had to be placed where one could say emissions came from the Mopani plant. He said Chambeshi was about 30 km away by road. DW4 said he was not asked to produce any report except those sent to ZEMA. He said damage to the environment did not occur when guidelines were exceeded.

DW5, ALEXIE MPISHI, 58 year old Environmental Superintendent at Mopani Copper Mines testified that he had worked for the Defendant's company since 2000. He said prior to that he had worked for the Zambia Consolidated Copper Mines Limited. DW5 narrated that during the process of buying the mine Mopani notes that some aspects of the mine were not in compliance with existing environmental laws of Zambia. He said the Government and Mopani thus entered into an agreement. DW5 said he was part of a due diligence team for environmental performance of the assets.

He said the Mufulira smelter was one of the non complaint assets because since inception in 1937 it had no abatement facilities for sulphur dioxide, and as such 100% of sulphur dioxide was released in the atmosphere. He said this was the situation in 2000 at the time of purchase.

DW5 said his understanding of Environmental Liabilities Agreement was that as long as Mopani was to operate within the approved environmental management plan, liabilities would remain with the Government. He said Mopani prepared an Environmental Management Plan (EMP) which was done by SRK consulting. DW5 said he was then part of the local team giving guidance to the study team. He said the EMP was submitted to the Environmental Council of Zambia, ECZ now ZAMA. He said it was approved in April 2004 but had been executed on 31st March 2000. DW5 said the Agreement was to expire on the 15th anniversary in 2015. DW5 said Government executed the Agreement in order to prevent job losses.

DW5 said pursuant to the agreement Mopani developed a project termed "Smelter Upgrade Project" which was in three phases in order to comply with the agreement. He said phase 1 was completed in 2006. It enabled Mopani to reduce sulphur dioxide emissions by 50% after installing an acid plant. Phase 2 was concluded in March 2009. He said it was neutral in terms of sulphur dioxide. Phase 3 concluded in March 2014. He said date on the plan was March 2015. He said sulphur dioxide capture increased from 50% to an average of 97%. DW5 said Mopani complied with its obligations in the agreement.

DW5 said an interpretation of the Environmental Liabilities Agreement was given by the Government which became a reference point (page 84 to 94 of the Defendant's bundle of documents).

DW5 said the government monitored the Environmental Management Plan. He said in 2011 ZEMA asked Mopani to prepare an environmental assessment study for the final stage of the smelter upgrade. He said if Mopani abrogated any of the provisions, the Government would have been liable for the loss.

Under cross – examination, DW5 said regulations were set out in a statutory provision. He said according to the Environment Management Plan, Mopani was to meet certain mile stones. He said existing laws were not applicable to Mopani on account of the EMP. He said statutory limits only became applicable in 2015.

In re- examination, DW5 said he thought the regulations remained the same. He said there were a number of regulations to do with quality of water discharged in the environment and emissions in the atmosphere. He said the regulations were not applicable to the Defendant as long as the Defendant was in compliance with approved management plan.

This marked the close of the Defendant's case.

The Third party opted not to call any witness and closed its case.

At the close of trial I directed the parties to file written submissions.

I am grateful for the submissions filed.

On behalf of the Plaintiff, the learned counsel Mr. Haimbe submits that it is not disputed that the Defendant released sulphur dioxide into the atmosphere on the fateful day. It is also submitted that there is no dispute that sulphur dioxide fumes are toxic and have harmful effects on the environment, including human beings. The Plaintiff thus contends that the question for determination is whether or not the Defendant was negligent in

the manner in which it emitted the sulphur dioxide fumes into the environment vis a vis the deceased and whether or not the Defendant consequently caused the death of the deceased.

It is submitted that the Defendant owed a duty of care to all Mufulira residents to ensure that it did not cause harm when they breathe the air. Mr. Haimbe submits that the evidence on record (page 105, Defendants bundle) shows that the Defendant was at all material times well aware that operations at Mufulira had an impact on the environment including affecting the air quality of communities and environment plants in the vicinity. It is submitted that the Defendant cannot deny it owed the deceased a duty of care.

It is submitted that the Defendant is estopped from denying that the effect of sulphur dioxide emission on the deceased were foreseeable.

On the question of the Defendant breach of duty of care, Mr. Haimbe submits that the uncontroverted evidence before the court, as confirmed by DW3 is that on 31st December, 2015, as on any other day in December 2013, the Defendant caused approximately 48% of the sulphur dioxide it produces to be released into the atmosphere. This was 14.3 times above the statutory limit.

It is submitted that DW4 confirmed in cross – examination that the statutory limit represented a level of emission that could safely be let into the atmosphere and that exceeding it would result in harm to the environment, a constituent part of which included the deceased and other human beings.

It is submitted that the Defendant breached the duty of care it owed to the deceased not to carelessly or recklessly discharge such quantities of sulphur dioxide into the air.

Mr. Haimbe contended that the Defendant's arrangement with the Government could not absolve it from compliance with environmental regulations because of the levels of emission were not reasonable. It is submitted that the Environment Liabilities Agreement does not, in any event, waive the requirement for the Defendant to comply with statutory limits, but rather deals with the issue of where liability would lie in the event that a third party, such as the Plaintiff sued on account of the Defendant's failure to meet the obligations imposed upon it by statute.

On the Medical evidence before the court, Mr. Haimbe submits that there was no evidence to suggest that the Defendant succumbed to diabetes, a heart problem or nay other condition. It is submitted that the medical report relied upon by the Defence at page 151 of its bundle fails foul of the rules of evidence relating to such documents and must not be given any weight whatsoever.

In the main Mr. Haimbe has urged the court to rely on the evidence of PW5 as he came to definitive findings of the cause of death. It is submitted that the only inference from the medical evidence is that the cause of death was hypoxia which was ultimately caused by inhalation of sulphur dioxide.

Mr. Haimbe submits that the Plaintiff has proved his case on a balance of probabilities all the elements requires to prove negligence. It is submitted that the Plaintiff is entitled to exemplary damages as the Defendant continued to exceed statutory limits for years to such extents that at times

measured up to 42 times above the statutory limits while knowing that the environment was harmed.

The Plaintiff thus prays for all the reliefs sought.

The Defence did not file any submission as directed.

The Plaintiff claims a range of damages from the 1st Defendant. For the Plaintiff to succeed he must show that the Defendant was negligent towards the life of the deceased or failed to perform a lawful act which resulted in harm to the Plaintiff. I must determine in this matter whether the Defendant breached its duty of care to the Plaintiff which would entitle the Plaintiff to the relief sought, which is damages.

In the case of **Donoghue Vs Steven (1932) AC 562 HL**, Lord Alkim put it more succinctly in the following terms-

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyers’ question, who is my neighbour receives a restricted reply. You must take reasonable care to avoid acts and omissions which you can reasonable foresee would be likely to injure your neighbour. Who then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected when I am directing my mind to the acts or omissions which are called in question”.

This was approved by Wright in **Bowbill Vs Young (1943) AC 92** as establishing ***“the general concept of reasonable foresight as the criterion of negligence”.***

Thus in order to establish the tort of negligence, one must show that-

1. The Defendant owed the Plaintiff a duty of care;

2. The Defendant breach its duty of care to the Plaintiff;
3. The Defendant's failure caused the Plaintiff harm; and
4. The harm suffered was foreseeable.

The legal burden is on the Plaintiff to establish his claim on a balance of probabilities. The basis of the Plaintiff's claim is owing to the fact that the Defendant's operations affected the atmosphere in Mufulira generally rendering it difficult for residents to breathe including the deceased. Under cross-examination DW3 said the Defendant was able to capture 50% of sulphur dioxide as at 31st December 2013. He said the other 50% would be released into the atmosphere. He told the court maximum limit imposed by ZEMA was 1000 parts per million of gas at starks. He admitted that the emission released at starks on 31st December 2013 were 14.3 times higher than the permitted limit imposed by ZEMA. He further admitted that the matt settling electric furnace stark also produced sulphuric acid and released the same into ambient air. This, he said was not included and in the 48% sulphuric acid not captured.

DW4, an environmental engineer at Mopani said the limits imposed by ZEMA were set to protect the environment. He said once the limits were exceeded harm could occur to the environment including to human beings. He said the letter at page 7 of the Defendant's Supplementary bundle written by ZEMA to Mopani did not allow Mopani to exceed the statutory limit.

I thus find as a fact that the Defendant emitted high volumes of sulphur dioxide from its smelter which exceeded the limits imposed by ZEMA. I accept the submissions on behalf of the Plaintiff that the Defendant cannot deny that it owed the community it operated in, and in particular the deceased a duty of care. I am satisfied from the evidence that the Defendant

recognized that its smelter operations would affect air quality owing to sulphur dioxide emissions. The evidence clearly shows that the Defendant had various monitoring stations in the community to monitor the levels of its emissions and report the same to ZEMA. The significance of this, in my view, was to ensure that safety levels of its emissions were maintained. I am satisfied that the Defendant cannot deny that it owed the deceased a duty of care, and accordingly I take the view that the Defendant is estopped from denying that the effects of its activities on the deceased were foreseeable, and I so find.

As regards the standards of care, Mr. Haimbe submitted that the court was entitled to adopt the standard prescribed by statute. My attention was drawn to Winfield and Jolwicz on Tort 17th Edition and where the learned authors state at page 252-

“Many matters other than general practice may be adverted to for guidance on the standard which the Court should adopt as the measure of reasonable care. For example, the Highway Code does not itself give rise to any liability but it is specifically provided that failure to observe it may be relied upon to establish (or negative) any liability which is in question in a civil action. As to criminal law, it may be said that (putting aside cases where statute gives rise to direct civil liability, which are dealt with in chapter 7) failure to comply with it is normally good evidence of negligence but it is not possible to lay down any hard and fast rule.”

The evidence on record was that the statutory limit for sulphur dioxide emissions was 1000mg/m³. In my view, given the foreseeable harm effects

of high emission levels, it would be fair to hold the Defendant to a standard that did not exceed 1000mg/m³. By exceeding this limit, I hold the Defendant to have acted negligently. The uncontested evidence is that on the material day emissions of sulphur dioxide exceeded that statutory limit by 14.3 times. In this context, I accept the submissions highlighted by the Plaintiff on this point.

The 1st Defendant in its defence avers that it is not liable to the Plaintiff in any case, pursuant to an agreement called 'Environmental Liabilities Agreement' made on 31st March, 2000 made between the Government of the Republic of Zambia, one hand, and the 1st Defendant on the other in which the Government undertook to indemnify and hold the 1st Defendant harmless against any and all environmental liabilities arising from the operation of the assets acquired from GRZ by the 1st Defendant. The terms of the said agreement were highlighted by the evidence of DW5. Under cross-examination, DW5 said the 1st Defendant was exempt from complying with statutory limits.

I am not persuaded by the position taken by the 1st Defendant that the Environment Liabilities Agreement exempted the 1st Defendant from complying with statutory limits. Having perused the agreement at pages 71 to 83 of the Defendant's bundle, I have not found any express provision highlighting exemptions from statutory limits. What the agreement specifically provided for in paragraph 2 indemnity for environmental liabilities including losses of death injury, disease, or disability of any person resulting from pollution or harm to the environment.

I am fortified in any position by what is stated at page 94 in the Solicitor General's opinion-

“My understanding is that these are liabilities, which could arise if an aggrieved party (third party or otherwise) through a suit against an Environmental cause. If Judgment could be entered against Mopani, and hence the statutory indemnity to Mopani by GRZ pursuant to the Mines and Minerals (Amendment) Act 2000 for any and all environmental liabilities that may arise as a result of the operations with the Environmental Plan. Such Liabilities vest in GRZ. However, the Environmental Liabilities do not arise of a matter in respect of which the company is not in compliance with the Environmental Plan”

I accept that the Defendant was not absolved from complying with limits imposed by statute on account of the Environmental Liabilities Agreement, and I so find.

At trial the 1st Defendant tried to assert that the deceased could have succumbed due to other medical conditions such as asthma, diabetis, and poor heart conditions.

DW1 evidence was such that the first Postmortem Report and the subsequent report did not tell the same story. Under cross examination he admitted that it was possible for a preliminary diagnosis to be done but a microscopic examination was necessary to make conclusion whilst he agreed that it was possible for a person who had inhaled toxic fumes including sulphur dioxide over a long period of time to present with

emphysema, DW1 hard pressed, he preferred to conclude that the deceased's heart was in a poor state.

In contrast with the evidence of PW5, he concluded that the deceased died as a result of emphysema, a condition related to respiratory failure. He said the deceased's heart stopped owing to broncho spasm. He reiterated that the deceased died as a result of an acute respiratory failure caused by toxic fumes.

During trial, it was plain for me to see that DW1 and PW5 were both highly respected scientists of international repute. In my assertion, was called to show that the deceased could have died from other caused other than respiratory failure caused by toxic fumes. However, he did not examine the deceased's body nor examine any microscopic evidence that PW1 did.

I accept PW5's testimony because firstly, it was corroborated by other testimony, in particular that of PW1, PW2 and PW3 all who highlighted the circumstances and which the deceased fell ill after inhalation of toxic fumes. Secondly, PW5 examined the deceased's body. He performed the initial examination and the subsequent microscopic examination. Thirdly, I find that he was an independent witness with no interest that would be self serving. Even under vigorous cross – examination, PW5 stood firm to his findings that the deceased died as a result of acute respiratory failure caused by toxic fumes. I accept PW5's testimony and find that the deceased died as a result of respiratory failure after inhalation of sulphur dioxide emitted by the 1st Defendant. This is the only inference I make upon a consideration of the evidence before me. I equally accept the Plaintiff's submissions that even if they had other conditions, the "egg – shell skull" rule meant the Defendants must take its victim as it found her. I reject the testimony of DW2, Dr Gibert Chitembo Mukuka as he was often times

evasive and further fell short of assisting the court. His evidence was simply calculated at deceiving the court. His demeanor in remaining quiet when convenient for him spoke volumes that this testimony was unreliable. I am thus forced to rule out his testimony.

In conclusion, I find that the 1st Defendant owed a duty of care to the deceased, Beatrice Sakala Miti. By emitting Sulphur dioxide into the environment exceeding statutory limitations, the 1st Defendant, breached its duty of care owed to her and the community. The 1st Defendant's failure to uphold the standard of care thus entitled the Plaintiff to damages. The Plaintiff has categorized the damages claimed. I have noted these categories damages for expenses incurred during the funeral, for example cannot be sustained. This is because I take judicial notice of the fact that the deceased was accorded a state funeral. This essentially meant that the Government of the Republic of Zambia incurred the expenses associated with the funeral. Further, damages for loss of income are vogue. The Plaintiff, PW4 in his evidence told the court that he was a businessman. In fact on the material day he had returned in the early hours of the morning from a business trip. I thus find the claim for loss of income and dependency unsubstantiated.

I have in any event noted that the deceased was aged 57 and in gainful employment. In my view a global sum would be most appropriate to represent the general damages sought. I thus award the Plaintiff the sum of Four hundred Thousand Kwacha (K400,000.00 with interest at ten percentum (10%) per annum from the date of judgment to the date settlement of the principle sum.

I award costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal to the Court of Appeal is granted.

DATED THIS 9TH DAY OF JUNE 2016.


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D.Y SICHINGA, SC
JUDGE