

Megrina Kapasule (on her own behalf and on behalf of other beneficiaries of the estate of Ralph Nkawasenga (Deceased)) v Edna Mikola Nkawasenga and The Administrator General

Summary

Court:	High Court of Malawi
Registry:	Family and Probate Division
Bench:	Honourable Justice Jean Rosemary Kayira
Cause Number:	Probate Cause Number 132 of 2022
Date of Judgment:	October 01, 2023
Bar:	appellant unrepresented respondent unrepresented

The Claimant sought an order in the High Court of Malawi, Principal Registry, for a minor child to be recognised as a beneficiary of the deceased estate. The Claimant alleged that she had been in a romantic relationship with the deceased, which resulted in the birth of a son in 2009. At the time of the proceedings, the child was sixteen years old and thus qualified as a minor under the Constitution. To verify the claim of parentage, the parties submitted biological samples for Deoxyribonucleic Acid (DNA) testing at Mwaiwathu Private Hospital to assess

whether the deceased was the biological father of the child.

The primary issues for determination were; whether the person who is said to be a child of the deceased is a child under the laws of Malawi and whether he was indeed the biological child of the deceased, thereby entitling him to a share of the deceased estate as a beneficiary.

With regards to the 1st issue, the Court examined the definition of a child across various statutes, including the Constitution, the Deceased Estates (Wills and Inheritance) Act, and the Marriage, Divorce and Family Relations Act. The Court held that Malawian law provides for the child as someone under the age of eighteen. It noted that under the Constitution and the aforementioned statutes, all children are entitled to equal treatment and maintenance regardless of the circumstances of their birth, whether born in wedlock, out of wedlock, or adopted. Turning to the 2nd issue, the Court observed that the right to benefit from a father's estate is predicated upon an undisputed or established paternity. Given that scientific evidence from the DNA test results in this matter indicated an incompatibility with paternity at more than two markers, confirming that the deceased was not the biological father, the Court found that it would be unfair and inequitable to allow the child to benefit from the estate; consequently, the claim was dismissed.