

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1800 OF 1995

BETWEEN:

BEATRICE KACHINGWE
.....**PLAINTIFF**

VERSUS

BR. NGA MTAFU**DEFENDANT**

CORAM: M A TEMBO, ASSISTANT REGISTRAR
Mankhanamba, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff commenced this action against the defendant for damages for trespass to her plot and conversion of her timber thereon. The writ of summons dates as for back as 1995.

The plaintiff then obtained a default judgment herein on 23rd February, 1996. This is an order on assessment of damages pursuant to the said judgment.

The plaintiff took out a notice of hearing of this assessment which was then duly served on the defendant. The defendant however did not appear at the hearing leaving the plaintiff's testimony totally uncontroverted. The plaintiff was the only witness herein.

She informed this court that the defendant entered her plot Number BC 961, Mount Pleasant in Blantyre and cut down her 65 trees. She informed the court that the defendant did this without her authority. The plaintiff further stated that the defendant took away the trees he had cut down namely 50 blue gum and 15 Pine trees.

The plaintiff also informed the Court that upon consulting the Ministry of Forestry they told her that her trees which were cut down and taken away by the defendant, and which the plaintiff says were massive, could have easily yielded 140 planks. The plaintiff then tendered in evidence 2 quotations on the price of a single plank from a blue gum and from a blue gum and from a pine tree. The first quotation was from wood Industries corporation dated 11th February, 2003 which was marked as **Exhibit P. 1. Exhibit P. 1.** quoted the price of plank of a blue gum tree at K448.80 and that of a plank of a Pine tree at K420.75.

The second quotation was from Southern Timbers and was dated 11th February, 2003 and marked as **Exhibit P. 2 Exhibit P. 2** quoted the 2 prices for 2 planks of a pine tree of different dimensions. The small of the 2 planks was quoted at K350.00 whilst the larger of the 2 was quoted at K500.00. The court notes from examining **Exhibit P. 2** that the dimensions are not very clear in terms of whether they are from the imperial or the metric system of measurement. As such the court shall not rely on **Exhibit P 2** in its assessment.

The plaintiff then went on to state that she has lost use of her timber and would like to claim for such loss of use. The Court hastens to point out that damages for loss of use have not been particularized as part of the claim herein and the court can not award then. The court shall only consider the damages claimed namely for conversion and trespass.

The Court shall deal firstly with the claim for damages for conversion of the plaintiff's timber herein. Conversion consists of an action for recovery of damages for misappropriation of goods. Authoritatively the normal measure of damages in conversion is the market value of the goods assessed at the time of the conversion. See **Henderson v Williams** (1895) Q.B. 521 and **Soloway v Mc Longlilin** (1938) A.C. 247.

This general however, has over the years failed to address all the problems arising from the need to achieve **restitution in integrum**. In Consequence thereof **Mc Gregor on Damages** 15th Edition at para. 1283 has recommended that the general rule should be a starting point in order to achieve awarding adequate compensation in redressive the wrong suffered by the viction. In cases where the defendant had kept the plaintiff's goods and has not returned then, the court will presume against the defendant the greatest value of the converted goods. See **Mc Gregor on Damages 15th Edition at Para 1341. This is usually the present value of the goods.** See **Ella Banda V Attorney General** Civil Cause No. 1727 of 1993. This is so because the Court seeks to give an award that compensates adequately for the wrong committed. See **Sachs v Miklos** (19480 2 k.b. 23.

The Court notes herein that the present value of the trees converted herein would be the only measure of damages that would achieve adequate compensation to the plaintiff.

The plaintiff's uncontroverted evidence is that her trees would have yielded 140 planks as per the advice from the Ministry of Forestry. According to **Exhibit P. 1** the price of a plank of a blue gum tree is K448.80 and that of a plank of a pine tree is K420.75. the obvious problem here is that the plaintiff did not give evidence on how many planks could have been obtained from 1 blue gum tree or from 1 pine tree. She simply stated that in total she would have had 140 planks. In the interests of fairness the court shall use the average price between the price of a plank of a blue gum tree and a plank of a pine tree as appears in **Exhibit P. 1** to represent the price of each plank of the 140 planks.

The average price shall be $(K448.80 + K420.75) \div 2$ which gives us K434.78.

The loss occasioned to the plaintiff shall therefore be 140 planks x K434.78 which becomes K60,869.20 is therefore awarded as damages for conversation. The next item to be dealt with is the claim for trespass. The court notes that herein the damage caused to the plaintiff's land was the removal of the trees for which the plaintiff has been compensated.

Nevertheless, the court notes that damages are also awardable for transitory trespass to the land as was the case in **Blantyre Water board v Makhalira** 11 MLR 121. In that case K50.00 was awarded when water Board officials entered the plaintiff's premise's without authority to wrongfully disconnect water supply thereto. This was in 1984 about 19 years ago. The court notes that since then the value of the Kwacha has depreciated. In the circumstances of the instant case the court considers an award of K5,000.00 to be fair and adequate for the trespass herein.

The total award is therefore K65,869.20. Costs of this action are also awarded to the

plaintiff.

MADE in Chambers at Blantyre this 28th February, 2003.

M A Tembo

**ASSISTANT REGISTRAR OF HIGH COURT AND
SUPREME COURT OF APPEAL**