



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 116 OF 2007**

BETWEEN

DAVID CASTLEDINE t/a ROYAL OAK INDUSTRIAL CLEANERS PLAINTIFF

-AND-

DAVID GATRELL t/a OFFICE DEPOT DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Chinula : Counsel for the Plaintiff

Kaferaanthu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff got a judgment in default for the defendant to pay him K800 000, interest, damages for breach of contract and costs of the action. This is the assessment of the interest and damages.

Notice of appointment for the assessment was dully served on the defendant but he did not turn up for the hearing. No reason for the non attendance having been given, the court proceeded in the defendant's absence.

Mrs. Joyce Castledine, the plaintiff's wife gave evidence. The facts are simple and are that the plaintiff and his wife bought a house at Area 10. Around September 2006 they contracted the defendant to install a specified kitchen set in the house. They paid a deposit of K800 000 on 13th September 2006. Their agreement was that the kitchen set would be fitted within four weeks from that date. The Castledines were only waiting for the kitchen to be fitted and then occupy the house in October 2006. Four weeks passed without the kitchen being fitted. It would appear the works had started but they were not of the quality and colour specified. The parties corresponded several times between December 2006 and January 2007 over the issue. Eventually the plaintiff rescinded the contract. He gave the defendant notice to refund the deposit paid and remove the defective materials that were being installed. He commenced the present action when he saw that the defendant was neglecting to repay the deposit.

Assessment of the Interest

Interest is awarded where a party to whom money is owed is driven to legal proceedings to recover it. In the absence of any rate specified in the contract between the parties the interest is awarded at the minimum lending rate plus 1%. It is calculated from the date on which the cause of action arose to the date of judgment at compound interest. (See **Zgambo v. Kasungu Flue Cured Tobacco Authority** 12 MLR 311) It is compound interest because the wrongdoer is presumed to have made the most beneficial use of the money and it would in any case be adequate compensation to the party wronged.

In her evidence the witness gave the average lending rate of 25.5% instead of the minimum. Thus I have not been accorded with proper evidence on which to base my award. I can only award a nominal sum of K50 000.

Assessment of damages

This is clearly a case of sale of goods. The seller delayed to deliver the goods and was in breach of the condition as to quality of the goods and the buyer rejected them. In **McGregor on Damages** 16th Edition paragraph 872, it is stated;

“If the buyer has lawfully rejected the goods the case becomes in effect one of non-delivery and the measure of damages is therefore the same as that applicable to non delivery, with the addition that where the seller wrongfully refuses to take back the goods the buyer may recover expenses incurred in keeping them either until the seller does receive them or until they can be resold on the market by the buyer.”

There are cited two cases on that principle. **Chesterman v. Lamb** (1834) 2 A. & E. 127 and **Ellis v. Chinnock** (1835) 7 C. & P. 169.

The measure of damages for non-delivery of goods is prescribed by section 51 of the Sale of Goods Act Cap 48.01 of the Laws of Malawi. It provides;

- (1) Where the seller lawfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.
- (2) The measure of damages shall be the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller’s breach of contract.
- (3) Where there is an available market for the goods in question the measure of damages shall prima facie be ascertained by the difference between the contract price and the market or the current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed then at the time of the refusal to deliver.

McGregor on Damages 16th Edition paragraph 822 comments that the measure of damages as provided in subsection 3 “represents the amount that the buyer must obtain to put himself in the position he would have been in had the contract been carried out. For, to put himself in such a position, he must go into the market and buy equivalent goods; and even if he does not choose to rebuy in the market his loss will remain the same. If therefore there is no

difference between the contract and the market prices the buyer will have lost nothing and the damages will be nominal.”

The plaintiff had to pay another contractor to fit his kitchen but the price at which that was done was not disclosed in evidence. That is another challenge to me as I have no basis for measuring the damage. I am going to award a nominal sum of K10 000.

The plaintiff is also entitled to damages for the defendant’s delay in installing the kitchen set as agreed. This would be as a consequential loss of use of the plaintiff’s house from the period he would have started using it had the defendant installed it in the four weeks agreed to the period the plaintiff employed another contractor. I would think that loss is logically reflected by the cost of continuing to stay in the rented house during that period. The witness gave it as from November 2006 to April 2007 at K31 700 to Malawi Housing Corporation which amounts to K190 200. I award the plaintiff that much for consequential losses.

In summary the plaintiff is awarded K50 000 interest and K10 000 plus K190 200 in damages. The total is K250 200. He is also awarded costs of the action.

Made in chambers this 11th day of July 2008.

T.R.Ligowe

ASSISTANT REGISTRAR