IN THE HIGH COURT OF MALAWI

CIVIL CAUSE NO. 374 OF 1979

BETWEEN:

COLD STORAGE LIMITED ..... PLAINTIFF

and

LIMANI LIMITED ..... DEFENDANT

Coram: Topping, Ag. J.
For the Plaintiff: Hanjahanja of Counsel
For the Defendant: Mhango of Counsel
Official Interpreter: Kaundama/Kadyakale
Court Reporter: Brown

JUDGMENT

In this case the plaintiff claimed the sum of K2,224.00 "being the balance of the price of the pork sold and delivered to the defendant in February, 1978, at the defendant's request, particulars whereof have already been supplied to the defendant". The plaintiff also claimed costs.

The defendant by its amended defence and counterclaim pleaded that it admitted the plaintiff's claim subject to the set-off and counterclaim. In its counterclaim the defendant alleged a contract between the parties whereby:-

> "the plaintiff agreed to sell and deliver to the defendant who agreed to buy 224 metric tons of frozen pig carcass at a price of Malawi Kwacha nought decimal point seven five (K0.75) per Kilogram, delivery to be made by 6 or 7 monthly consignments to commence October 1977.
>
> 3. IT WAS further agreed that each side of pig carcass would be wrapped at K2.00 per side defendant's costs in mutton cloth before airfreighting the same to Nigeria."

The particulars of the agreement pleaded in paragraph 4 of the amended defence and counterclaim were that the said agreement between the parties was made partly orally, partly in writing and partly by conduct. By paragraph 4 it was pleaded that:-

> "(i) In so far as it was oral, the said agreement was made at discussions on or about the 1st day of September 1977, and on or shortly after the 4th day of October 1977 between K. Lane acting on behalf of the plaintiff and R. Llewellin acting on behalf of the defendant.

(ii) In so far as it was in writing the said agreement was contained in or is to be inferred from the following documents or some or one of them:

(a) Letter dated 1st September 1977 from the defendant.

(b) Order dated 21st September 1977 from defendant's customers.

(c) Letter dated 4th October 1977 from the defendant.

(d) Letter dated 1st February 1978 from the defendant.

(e) Letter dated 3rd February 1978 from the plaintiff.

(iii) In so far as it was by conduct, the conduct consisted of or is to be inferred from the following:

(a) By the course of dealings between the parties, it was agreed between them, or alternatively the defendant signified to the plaintiff that the plaintiff's acceptance of the terms and conditions set forth in the defendant's letter dated 1st September 1977, need not be communicated to the defendant in writing, or alternatively would be signified if it did not communicate to the defendant any dissent therefrom within reasonable time of receiving the same, which the plaintiff did not do within a reasonable time or at all.

(b) Further at the material times the plaintiff well knew and the defendant showed a confirmed order to supply 224 tons to Food Division of UAC of Nigeria Limited which order contained printed additions therein, and by the course of dealings between the parties the plaintiff accepted and agreed to the printed conditions on the defendant's customer's order as forming part of the terms of the contract of sale of pork by it to the defendant, and the plaintiff thereby accepted or alternatively signified its acceptance to the defendant of the terms and conditions set forth in the said defendant's customer's order dated 21st September 1977.

(c) Further, the plaintiff with full knowledge of the terms and conditions of the defendant's customer's order, including the said printed conditions performed part of the contract, without dissenting from, or objecting to any of the terms and conditions within a reasonable time of seeing the same, and it thereby agreed to and accepted the said terms and conditions and signified its acceptance of the same to the defendant or alternatively, by its silence and conduct,

with full awareness that the defendant would proceed to sign a contract to resell the pork to its Nigeria customer it permitted and induced the defendant to believe, as in fact it did believe, that the plaintiff had agreed to and accepted the said terms and conditions.

Paragraph 5 alleges that:-

"IN PURSUANCE of the said agreement, the plaintiff sold and delivered four consignments of Pig carcass totalling 140 metric tons and the defendant resold the same to its Nigerian customer",

and paragraph 6 pleads that:-

"NOTWITHSTANDING repeated demands by the defendant therefor, the plaintiff has wrongfully and in breach of the said agreement failed and refused to supply any more pork."

A claim for loss is contained in paragraph 7 as follows:-

"BY REASON of the matters aforesaid, the defendant has lost the benefit of the said agreement and lost the profit it would otherwise have earned thereunder and has suffered loss and damage.

PARTICULARS

(i)	Loss of Profit on K63,000.00 being value of 84 M. ton short fall of supply at 20% profit mark up	K12,600.00
(ii)	Less credit on K20,152.50 value representing 26.87 M. tons supplied UK source at 20% profit mark up	K 4,030.50
		K 8,569.50
(iii)	Add pecuniary loss in relation to money held in escrow by the defendant's customers	K 2,224.00
(iv)	Add losses incurred in mitigation of resulting damage	K 6,055.90
(v)	Add Travel and Hotel expenses incurred in procuring 26.87 Metric tons	K 987.00
		K17,836.40"

so that in paragraph 8 the defendant counterclaims the sum of K17,836.40 and general damages for breach of contract to be assessed.

Paragraph 9 states that:-

"THEREFORE the defendant will seek to set off the said sum of K2224.40 in satisfaction of the plaintiff's claim herein and payment for the balance and for costs."

In its reply and defence to counterclaim the plaintiff denied any contract and pleaded that the sale and delivery of the said frozen pig carcass was subject to availability of pig carcass and

price. It also alleged that even if there was a contract between the parties then the defendant was in breach of that contract, and it denied all claims for damages arising from breach of the said alleged contract.

The onus of proof is upon the plaintiff to prove its claim and upon the defendant to establish its counterclaim on the balance of probabilities.

The transactions in question took place over a long period beginning in September 1977 and ending in 1979. It is not seriously disputed that in 1977 the plaintiff found that it had excessive stocks of frozen pig meat. It is not disputed that over a period from late 1977 to early 1978 the plaintiff supplied 140 metric tons of frozen pig carcass to the defendant, who shipped it to Nigeria. One such consignment was wrapped in mutton cloth at the defendant's request and upon its undertaking to pay. The negotiations between the parties were conducted by Mr. K. Lane for the plaintiff and Mr. R. Llewellin for the defendant. Mr. Lane was not called as a witness and did not give evidence.

It is not denied in the pleadings that the amount of K2,224.00 is due from the defendant to the plaintiff but at the trial evidence was adduced to show that it had been agreed between the parties that payment for this amount would not be made until payment was received by the defendant from its Nigerian customer. This point was not pleaded. The plaintiff is therefore entitled to judgment subject to the counterclaim.

It has to be decided in respect of the defence whether a ıtract between the parties has been established by evidence, and if such contract is proved whether there has been a breach of it and, if there has, what financial consequences flow therefrom.

In the absence of Mr. Lane, Mr. Vart the plaintiff's general manager gave evidence. It was Mr. Vart's evidence that while he was not a principal in the conduct of these negotiations between the parties he was nevertheless closely involved with them. It was his evidence that he sat in an adjoining office to Mr. Lane's with the door open and that he was able to hear all that transpired between Mr. Lane and Mr. Llewellin. This, he said, was done on purpose, so that if anything happened to Mr. Lane he, Mr. Vart, would be able to take over. Mr. Llewellin denied this and said that the negotiations between the parties were conducted in private. He said that there was a contract between the plaintiff and the defendant for the supply of 224 metric tons of pork and he relied on his evidence of his conversations with Mr. Lane and the correspondence between the parties to establish this.

It is necessary to refer in detail to the correspondence between the parties as this is fundamental to the matter. The correspondence begins with a letter from Mr. Llewellin on behalf of the defendant to the plaintiff marked "Attention: Mr. Lane" and said to have been delivered to Mr. Lane personally by Mr. Llewellin. This is not admitted by the plaintiff, who says that the letter was not in fact received until about April 1978. In his letter of 1st September Mr. Llewellin writes:-

> "We have just received a telex from our U.K. office with the following offer from our clients:-
>
> 1. 32 Metric Tons of pork carcasses unwrapped but as per specification supplied by you delivered to Chileka, first load early October.

PRICE per Kilo .397 pence sterling which converted at today's rate .6334 equals K.6267.

2. If you agreed to the above they will then sign a contract for six months to take between 24 and 48 tons (according to payload of aircraft) per month, same spec. and conditions as above at K.82.

Payment 60 days from bill of lading. We can assure you that we have done our very best to pull the best deal out for you and are making virtually nothing on the first consignment."

There does not seem to have been a reply from the plaintiff to this letter but Mr. Llewellin in evidence said it was superseded by a letter of 4th October 1977.

According to the evidence of Mr. Llewellin a question arose about the price. His evidence was to the effect that Mr. Lane suspected that the defendant was profiteering and he was not satisfied with the prices offered. According to Mr. Llewellin it was necessary for him to produce a document to Mr. Lane to show that he was not profiteering and in this connection he alleges that he showed Mr. Lane Exhibit A7. If Mr. Llewellin is to be believed, Mr. Lane decided to forgo the advantageous offer of supplying one consignment at .62 tambala per kilo and the balance at .82 tambala per kilo in favour of an arrangement whereby he would receive .75 tambala per kilo for the whole consignment. This would obviously have involved him in accepting a price which was less, and it is difficult to see why he should do this. Additionally it is suggested that Mr. Lane agreed that the terms of Exhibit A7 should be incorporated into the terms of the agreement between the plaintiff and the defendant and that Mr. Lane agreed to this.

However, be that as it may, it is clear that the offer was never accepted and no contract arose because the letter was superseded by Exhibit D. In Exhibit D which is dated 4th October 1977 the defendant wrote as follows:-

"We now have pleasure in confirming our offer to purchase pig meat from you as follows:-

1. First consignment up to 32 metric tons (according to loading capacity of transport) of top quality frozen pig carcasses average weight 130 - 145 lbs. with fillet in and kidney out. Price per kilo Malawi Kwacha .75 (seventy-five tambala), loaded on transport. Carcasses to be split down back and head removed.

   We have made arrangements for the transport to report at your premises at 0700 hours on Saturday 8th October, 1977 ready for loading and we would be obliged if you would get him away as soon as possible but in any event before noon.

2. Following consignments on a monthly basis for a further six months provided the quality is approved by our client. We will advise a delivery schedule later this month.

We trust everything will go according to plan and will advise you as soon as we get confirmation that all documents which have been submitted to the Nigerian authorities have been pre-cleared for the flight.

We have quoted our client for the supply of beef hindquarters and he has shown considerable interest. We will keep you informed on this.

We guarantee to pay for the goods within 60 days of Bill of Lading."

It is clear that Exhibit D was considered by the Board and approved by them. Mr. Vart agrees that this was so and says that they were told what action to take. Does such approval amount to a contract to supply pig meat which is legally enforceable and binding?

It is clear from Mr. Vart's evidence, which I accept, that no contract was to be entered into and that each consignment was to be on an ad hoc basis and this I think is made clear from the extract of the letter of 5th November 1977 and the general surrounding circumstances. The plaintiff replied to Exhibit D on 5th November 1977. Unfortunately neither party has a copy of this letter, but it is referred to in a further letter of the plaintiff dated 21st February 1979 Exhibit O. An extract of this letter shows that the plaintiff advised the defendant: "Our current stocks are approx. 100 tons and we could probably provide 20 tons monthly." It has been argued that this means that in addition to its current stocks of 100 t[illegible]s the plaintiff could supply a further monthly tonnage of 20 tons o[illegible]r and above the 100 tons. With the greatest respect to counsel, no such construction could be put upon this letter without unduly straining the clear and natural meaning of it.

It is clear from the letter of 5th November that no contract had been entered into at that stage. Negotiations were still continuing, and I reject the evidence of Mr. Llewellin and the contention of his counsel that a contract had been entered into before that date, either by correspondence or by conduct. The letter of 5th November 1977 is lacking in certainty of commitment in that it talks of probability.

There is further correspondence concerning the supply of meat and there are invoices for the air freight and so on.

The next significant development is a letter dated 1st February 1978 Exhibit F from the defendant to the plaintiff on the question of mutton cloth wrapping. The defendant wanted the consignment wrapped in mutton cloth at a price of K2 per side. In its letter of 3rd February 1978 Exhibit G the plaintiff agreed to do this. It was done. The contract for such wrapping was made without any reservation or extraordinary stipulation as to payment and clearly applied to that one consignment only. For the defendant Mr. Llewellin has given it in evidence that Mr. Lane and he agreed that payment for the wrapping charges would be made after the following consignment was delivered. I do not believe him. If it had been so it would definitely have appeared in the correspondence between the parties. It was not pleaded and is clearly an afterthought on Mr. Llewellin's part. On 6th February 1978 the defendant noticed that in the last paragraph of the plaintiff's letter of 3rd February 1978 Mr. Lane had written: "We would also confirm that this is for one consignment only, and other deliveries will be subject to availability and price." It then obviously realized that it was not going to get the amount of pig meat that it had thought it was going to get. It wrote as follows:-

"We are in receipt of your letter dated 3rd Feb, 1978, confirming our increased offer in price.

With regard to your third paragraph we would refer you to our letters of the 1st Sept and 4th Oct, 1977 when you insisted on us putting the sale in writing and it was clearly stated that there would be a total of seven consignments in both letters.

We were led to believe from the outset that there was around 200 tons of pig meat in your store. Our clients who are very large purchasers of beef and pig meat and who wish to sign a long term contract later this year, expect you to supply the goods as agreed.

It must be made clear that failure to complete this first contract will undoubtedly rule out any possibility of long term agreements being signed for beef or pig meat. We understand from the Ministry of Agriculture that within the next year there will be an increasing surplus of the former from the four new dairy and beef schemes now under development.

We look forward to receiving your confirmation so that we can advise our clients."

On 17th February 1978 the plaintiff replied: "We must once again emphasise that there is no agreement existing between our two companies regarding pork. When we have a surplus we will be most happy to negotiate sales."

From there matters went rapidly downhill. On 26th April 1978 the chairman of the plaintiff company wrote to the defendant company pointing out that K54,992.10 was owing and asking for immediate payment. On 10th May 1978 the defendant wrote in Exhibit K that it had delivered a cheque for K26,556.86 and pointed out that as at that date it had received 140 tons of pork only leaving a balance of a minimum of 80 tons to be supplied. It pointed out that if additional expense were involved by having to make up a shortfall from elsewhere it would advise the plaintiff in due course.

On 15th May the defendant was advised by its U.K. office that K2,224.00 was being withheld by the United Africa Company because of the defendant's failure to supply pork as per agreement Exhibit A7. On 12th February 1979 the defendant wrote to the plaintiff stating that it was in breach of contract and advising the plaintiff that if debit notes from U.K. were received it would be advised. The plaintiff's general manager wrote back, "'no contract exists' between yourselves and C.S.C.". This was on 18th February 1979 and was Exhibit M.

On 19th February 1979 the defendant wrote in Exhibit N as follows:-

"The position was quite clear from the start and was stated in our letters of 1 September and 4 October 1977 as insisted upon by you. We appreciate that there was a shortage of beef at the time and that local demand for pork therefore increased thus reducing your stocks."

This letter gave rise to Exhibit O, which has already been referred to, and which was a review of the position to date. In it the general manager of the plaintiff company wrote:-

"Facts - you have actually drawn 153.4 short tons requiring us to beg for payment despite your personal signature.

What can you do to adjust this unsavoury atmosphere which has been created purely by your unwillingness to honour your signature in regard to payment?"

As nothing further transpired the plaintiff instructed its lawyers to write a letter of demand. This they did, but the matter was not resolved, and the present action resulted.

It is trite law that a contract consists of an offer and an acceptance with an intention by both parties to create legal relations. The evidence in this case must therefore be examined to see whether there was an offer and, if there was, whether such offer was accepted and whether there was an intention to create legal relations. Proof of an offer to enter into legal relations upon definitive terms must be followed by the production of evidence from which the court may infer an intention by the offeree to accept the offer. It is clear that either such offer may be expressly accepted in writing or acceptance may be inferred from the conduct of the parties. There must however be some external manifestation of consent, some word spoken or some act done which the law can regard as communication of the acceptance to the offeror. The silence of the offeree is not a satisfactory basis for implying assent and some positive act of assent must be shown. While no particular form of acceptance is necessary it must be clear on the evidence that acceptance has taken place.

It is clear from the evidence that there was no express acceptance by the plaintiff of the various offers made by the defendant to purchase meat. I accept the evidence of Mr. Vart in preference to that of Mr. Llewellin. Apart from the fact that Mr. Llewellin was an extremely evasive witness, he was particularly unconvincing in relation to the question of the delayed payment of the charges for wrapping the pork sides, saying initially that he did not at first advise the plaintiff that the defendant's London office had stated that payment for wrapping would be made with the fifth consignment. When questioned closely about this he altered his position and claimed that while he had not so advised them in writing he had advised Mr. Lane personally. I do not think this can be true, and in any event there was already a completed written agreement in relation to this matter. Mr. Llewellin agreed that such variation was never confirmed in writing, although one might have expected a prudent business man to have so confirmed.

He was unconvincing when questioned about Exhibit T, a report of the meeting which was attended by Mr. Kamanga, a director of the defendant company, on behalf of the defendant. He asked the court to believe that Mr. Kamanga attended the meeting with no knowledge of the defendant company's position in relation to pork and the plaintiff company. Yet he admitted that Mr. Kamanga, whose position in the company he seemed to me anxious to minimize, was given instructions as to the meeting. He stated that Mr. Kamanga merely attended as an observer. If he did so it is clear that he exceeded his brief and took an active part.

Mr. Llewellin was questioned on the threat of proceedings in relation to the supply of the pork when the breach of contract occurred and was asked why he did not advise the plaintiff that the defendant was being threatened with proceedings, and his reply was that he constantly pressed the plaintiff for supply. This sort of evasion was fairly typical of his replies in cross-examination.

He was cross-examined on his evidence that the initial price for the pork offered was 62 tambala. His reply on that matter was that if someone offered him 75 tambala per kilo he would jump at it. However this was of course only a half-truth, as Mr. Llewellin must have well known, for to obtain 75 tambala per kilo the plaintiff would have had to sacrifice the following consignments at 82 tambala per kilo.

I did not feel that Mr. Llewellin was a frank witness whose evidence could be relied on, although this does not mean that his evidence is valueless and carries no weight, but it does mean that it must be viewed with great care.

I do not think that the facts adduced in evidence support the defendant's case. It is common ground as earlier indicated that the plaintiff had a surplus of frozen pork which had been in its cold rooms for a considerable time. The plaintiff was anxious to dispose of the surplus. The defendant was aware of this, and according to Mr. Llewellin was anxious to assist the plaintiff. It is in evidence, and cannot seriously be disputed, that the plaintiff did not have in its cold rooms the sort of tonnage that the defendant was looking for if the defendant's case is true. I do not think that it is possible to read the paragraph in Exhibit O as the defendant seeks to read it. Nor is the defendant's case strengthened by a production of the records relating to local consumption and supply In my view these figures prove that at no time could the plaintiff have supplied 224 metric tons of pig meat. Mr. Vart's evidence shows that local production was between 24 and 37 tons per month from October 1977 to April 1978. This was not sufficient to cover at all times the demands of the local market, which he estimated to be between 30 and 40 tons per month. It is clear from the evidence that the primary object of the whole operation entered into by the parties was to clear the stocks of what may loosely be described as "old pig meat", not to establish an export trade.

The following stock figures are relevant to show the plaintiff's cold room stocks of frozen pig meat.

September 1977	147 tons
October 1977	100 tons
November 1977	54 tons
December 1977	43 tons
January 1978	23 tons
February 1978	11 tons
March 1978	Nil. Stock exhausted

These may be contrasted with the figures for local production.

October 1977	24 tons
November 1977	36 tons
December 1977	34 tons
January 1978	37.08 tons
February 1978	29.70 tons
March 1978	37.68 tons
April 1978	33.60 tons

The evidence showed that local consumption over this period ran at about 30 to 40 tons per month. It is common case that shortages occurred because the supply position was aggravated by a shortage of beef and fish over the Christmas period. It can be seen therefore that the plaintiff had hardly sufficient supplies to meet local demand let alone export pork. Mr. Vart made it clear that the plaintiff considered its duty to be the supply of the local market and not to provide the defendant with pork for export. This

position is wholly consistent with the report Exhibit T, and not inconsistent with the position adopted by the plaintiff in the minutes Exhibit A6 which refer to "trial consignments to Nigeria beginning from the last quarter of last year and it was following this" - continues the minute - "that a firm order was now being sought."

Additionally, the defendant's claim that the plaintiff's conduct in delivering the meat was referable to the contract which was alleged between them is not supported by the facts. It is true that deliveries were made but not in accordance with the alleged contract as the quantity supplied did not relate to the proposed quantities in the alleged contract. In my view it is clear that such deliveries were made on an ad hoc basis as and when the plaintiff had pork available. Support for this view can be drawn from the variety of weights of pig meat supplied, e.g. a third consignment of 35 tons, Exhibit F requesting 36 tons, and so on. It was in my view simply a case of what the plaintiff was able to supply at the time. If as the defendant argued the terms of the order Exhibit A7 were agreed between Mr. Lane and Mr. Llewellin as being the basis for the supply of pig meat by the plaintiff to the defendant, then there should have been two air charters per month of 16 tons each or possibly one of 32 tons, but it is clear that this was never so with the exception of the first consignment and that the defendant was anxious to have as much pork from the plaintiff as it could get.

There are also minor variations between the terms of Exhibit A7 and those of Exhibit D such as an absence of any reference to trotters in Exhibit D and an absence of directions as to removal of the feet and separate packing. These are minor details to which no great significance can be attached, but they further suggest that Exhibit A7 was not the basis for the purchases from the plaintiff. Moreover, having set out his own terms in Exhibit D it must be asked why it was necessary for Mr. Llewellin to show Mr. Lane Exhibit A7 with a view to incorporating its terms. The reply to that would probably have been that it was shown to Mr. Lane to convince him that the defendant was not profiteering. However, if Mr. Lane was satisfied with the price and had agreed to sell, it is difficult to understand why he should be concerned with the amount of profit the defendant was making.

I find that the plaintiff never had any intention of entering into a legally binding relationship with the defendant on a long-term basis.

The minutes of a meeting held on 12th January 1978 at ADMARC have been put in evidence but they are mostly irreconcilable with a report of the meeting Exhibit T which was taken by Mr. Nyirenda who was there. In this report it is clear that even at that stage the plaintiff had only about 7 tons of pork left. It was stated in the report Exhibit T that there was no legal or binding agreement at all between the plaintiff and the defendant and any new export requirements would attract a new price. Mr. Kamanga, present on behalf of the defendant, did not deny this allegation. This seems to tie up with Mr. Lane's letter of 3rd February 1978. However, in Exhibit A6 which was produced by the defendant and presumably tendered as credible, there does not seem to be any corresponding statement. But Exhibit A6 does show that the original price offered by the plaintiff was a very low one and was to cover the first 100 tons only, and it speaks of "trial consignments to Nigeria beginning from the last quarter of last year and it was following this that a firm order was now being sought". This suggests that there was really no prior contract at all. This suggestion of no existing contract is borne out by paragraph 2(d) of Exhibit A6 which says:

"The exporting company should enter into direct contract with the Cold Storage Company." It would be not unreasonable to infer that if there already was a contract as the defendant claims the words "a further contract" or "a fresh contract" might have been used. If Mr. Kamanga was aware of the alleged existing contract he did not, according to the minutes, mention it.

The position adopted by Mr. Vart as shown in the minutes Exhibit A6 paragraph 6 is consistent with the plaintiff's case and quite inconsistent with the defendant's case. This was in January 1978 and suggests to me that the plaintiff has a genuine defence, not one made up to defeat the counterclaim.

The total effect of Exhibits T and A6 is to add a further element of uncertainty and to raise the question, if there was a contract what were its terms? The onus of proof of the contract and its terms is on the defendant. He must show that it is more likely that there was a contract as claimed than not. He must also prove the terms to the same standard. In my view there is no adequate proof that there was a contract between the plaintiff and the defendant because the defendant's offer to purchase on a long-term basis was never accepted by the plaintiff either expressly or by conduct since the plaintiff well knew it could not supply the quantities sought. Even if some sort of agreement were proved it is clear that no proper terms of agreement were ever arrived at between the parties.

The defendant's counterclaim fails. It is dismissed with costs, and there will be judgment for K2,224.00 in favour of the plaintiff.

If I should be wrong in this and a contract did exist, it would be necessary to consider whether the plaintiff was in breach of such contract and, if it was, the measure of damages which would flow.

I do not think that it could be argued that there was no breach of contract. If a contract existed it is clear that the plaintiff failed to fulfil it and the reasons for such failure are not relevant. The defendant would be entitled to take such action as was necessary to mitigate the damages. Such action is claimed to be the action set out in paragraph 7 of the amended defence and counterclaim.

It has been suggested that the correct measure of damages would be the net profit and not the gross. I do not think that this is correct. It would be impossible to arrive at a correct net figure unless taxation and office expenses were considered. These would not be ascertainable until the end of a financial year.

If the defendant were entitled to loss of profit for breach of contract I would have awarded it K12,600 as claimed on 7(i) less credit set out in 7(ii), that is to say K8,569.50 in total. I would not have allowed the pecuniary loss set out in item 7(iii) as the defendant was liable to pay for this in any event, but I would have allowed item 7(iv) in the sum of K6,055.90. I would not have allowed travel and hotel expenses claimed in item 7(v). It seems to me clear that the defendant had available to it in the person of Mr. Harding, who was a foods expert with Limani (UK) Limited, a food purchasing agent who was probably the most competent man to handle the job. I do not accept that it was necessary for Mr. Llewellin, who does not appear to be an expert in the procurement of pork, to fly to England in order to rectify this matter. I do not accept that it was necessary for Mr. Llewellin to be in England for the length of time that he was, and indeed one would have suspected that if he had

been on a business trip as he claimed he would have stayed at an hotel and charged his expenses to the plaintiff. I found his evidence on the dinner which he gave at the Crown Inn, Bray-on-Thames totally unconvincing. I do not believe that it was necessary for him to take out the entire managerial staff of Limani (UK) Limited and to ply them with food and drink. I would not have allowed these expenses.

In the final analysis, if a breach of contract had been established I would therefore have awarded the defendant K14,625.40, which would have been set off against the amount due to the plaintiff of K2,224.00. I would have awarded costs to the defendant. However, as I have already held that no contract has been proved, and as I have awarded the plaintiff K2,224.00, it follows that the plaintiff is entitled to the costs of this action.

Pronounced in open court this 4th day of July, 1980, at Blantyre.

R.G. TOPPING
ACTING JUDGE