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IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE NO. 621 OF 1979

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BETWEEN:

CHITATATA BUILDING CONTRACTORS ..... PLAINTIFF

- and -

R. P. CHISALA ..... DEFENDANT

Coram: VILLIERA, J

Chiume , Counsel for the Plaintiff  
Nyirenda, Counsel for the Defendant  
Kaundama, Official Interpreter  
Longwe , Court Reporter

J U D G M E N T

The plaintiff firm claims the sum of K2,500 being the balance of the agreed contract price for building the defendant's house in Limbe in the City of Blantyre. The plaintiff further claims damages for breach of contract and for costs of the action. The defendant denies being in breach of contract and claims therefore that the plaintiff is not entitled to any payment. He in turn counterclaims for damages for breach of contract by the plaintiff and for costs.

PW1 for the plaintiff firm informed the court that in or about October, 1978, he and the defendant agreed that the firm would construct the defendant's house for the sum of K7,000. Payment would be by stages and it was agreed by the parties that there would be a final payment of K2,500 on completion of the contract. It was also part of the agreement that the defendant would supply all the building materials and that the plaintiff's responsibility was to provide labour and to supervise the construction of the house.

The plaintiff's evidence was that it was paid for the two stages up to wall plate level. The third stage was then embarked upon and the greater part of the work was done. Difficulties then arose because the defendant would not supply the required materials in order to enable the plaintiff to complete the building. Letters and personal interviews between the parties followed but it appears that the defendant was either unwilling or unable to supply the required materials. The plaintiff then abandoned the project and commenced these proceedings for breach of contract.

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The plaintiff's witnesses gave evidence on the 12th and 14th October, 1981. The plaintiff's case was then closed. Mr Nyirenda for the defendant asked for an adjournment in order to seek further instructions in connection with the counterclaim. Nothing was done until June, 1982 when Mr Nyirenda successfully applied for an order allowing him to withdraw from representing the defendant.

The defendant was served with the notice of continued hearing of the matter today but has not appeared. The only evidence on record therefore is that of the plaintiff's witnesses. That evidence stands uncontradicted. The plaintiff is therefore entitled to judgment on his claim and accordingly I enter judgment in its favour.

The measure of damages in this type of case is the loss to the plaintiff occasioned by the breach. The plaintiff in the instant case has lost not only the sum of K2,500 but also the retention fee of K350 which the defendant would have paid if he had not been in breach. The plaintiff must be put in the same position as if the contract had fully been performed. The plaintiff is entitled in my view to the sum of K2,850 being the balance of the contract price and the retention fee. I accordingly award the plaintiff the sum of K2,850 with costs.

As there is no evidence to support the counterclaim, I dismiss it with costs.

Made in chambers this 6th day of December, 1982 at Blantyre.

  
J.B. Villiera  
JUDGE