

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1695 OF 2002

BETWEEN:

G.A. MWELUZA.....PLAINTIFF

AND

ATTORNEY GENERAL

(MINISTRY OF EDUCATION)DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Ziyendam'manja, Counsel for the plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages arising out the destruction of the plaintiffs' property by students of Luchenza Secondary School who were negligently managed by the Ministry of Education represented by the defendant.

The assessment is done pursuant to a default judgment dated 23rd March, 2004. The notice of hearing of this assessment was duly served on the defendant who never appeared at the hearing. That left the plaintiff's evidence uncontroverted. The pupils of Luchenza Secondary School completely destroyed the plaintiffs property at his residence which was near the Luchenza Secondary School. Some of the property was domestic and

the other property was commercial. The plaintiff consequently claims damages for the destruction of the property as well as for loss of business arising from that destruction.

The plaintiff lost a lot of property as follows, a sofa set, dining set, 5 beds, 5 mattresses, coffee table, a cupboard, one radio cassette, a radiogram, kitchen utensils and other house hold goods, blankets, bed sheets, clothing for all his 14 children, handbags, shoes, 27 chickens, 7 pigs, an entire orchard, 76 x 70 kg bags of maize, 2 x 50 kg of beans, 2½ bags of sorghum, 3 x 50 kg bags of peas, 2 grocery shops, 6 one bed roomed houses, 7 non-bed roomed houses 2 toilets, 2 bathrooms, a pigsty, 34 iron sheets, 3 door frames, 2 bicycles, hoes, axes, wheelbarrows, 2 weighing scales, 10 crates of coca cola.

The plaintiffs' grocery stock was worth about K45,000.00 at the time of its destruction. The plaintiff let out his 6 one bed roomed houses at K600.00 per month and the 7 non bed roomed houses at K300.00 per month. The plaintiff used to realise about K3000.00 daily from his grocery sales.

The plaintiff bought each bag of maize at K250 and would sell the same at K800.00 making a gross profit of K550.00 per bag. The net profit per bag is unknown. Each of the plaintiffs' pig was worth K4,500.00. The plaintiff alleged that by now he would have had 147 pigs due to breeding. But that is purely speculative in the absence of credible supporting evidence.

The plaintiff valued all his property destroyed herein at K938,000.00. He could not produce receipts for his properties that he had acquired since the same were destroyed by the fire herein. The uncontroverted evidence on the value of the plaintiffs' appears credible when one considers the magnitude of his property destroyed herein. This court therefore accepts the valuation of the plaintiffs' property in the absence of proof of purchase thereof that was destroyed herein. The normal measure of damages for property that has been destroyed is the market value of such property. See **Leisbosch Dredger v S.S. Edison [1933] A.C. 449**. And so, this court awards the plaintiff the sum of K938,000.00 damages for loss of property destroyed herein.

This court now turns to the plaintiffs' loss of business. This is with respect to the plaintiffs' grocery stock, his maize, pigs and rentals. For rentals the loss of business is represented by the value of lost rentals lost between date of destruction up to date of assessment **See Banda v Attorney General Civil Cause No. 1727 of 1993**. And herein the loss of business works out as the product of the number of rooms and cost per room and the number of months since July, 2000 when the rooms were destroyed to May 2004 when the assessment was done i.e. 47 months.

Thus 7 rooms x 300/month x 47 months plus 6 rooms x 600/month x 47 months. This comes up to K267,900.00. The sum of K267,900.00 for loss of rentals is awarded to the plaintiff. With regard to the loss of business with respect to the plaintiffs' maize, pigs and

grocery stock this court is of the view that the best measure of loss of business ought to be the interest on the capitalized value thereof of K95,500.00 from the date of destruction of 17th July 2000 to the date of the assessment herein of 13th May, 2004. This is in line with the measure of loss of profits as laid out in the case of **Leisbosch Dredger v S.S. Edison [1933] A.C. 449 at 468-469** that loss of profits be measured as interest on capitalized value of the lost chattel, and in that particular case a ship. The rate of interest applicable shall be the investment rate applicable for the relevant period from time to time at either Stanbic Bank or the National Bank. The computation shall be done and be certified by the bank for the endorsement by this court. Cost of this action are for the plaintiff.

Made in Chambers at Blantyre thisJune 2004.

M. A. Tembo

ASSISTANT REGISTRAR