



IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY: CIVIL DIVISION
CIVIL CAUSE NO 61 OF 2015

Between
Mzuzu City Council..... Plaintiff
-and-
Lastborn Constraction.....Defendant

CORAM:

HONOURABLE JUSTICE D.A. DEGABRIELE

Plaintiff and counsel, absent, duly served

Mr. M. Amidu
Mr A. Kanyinji
Ms Msimuko

of Counsel for the Defendant
Official Interpreter
Court reporter

DeGabriele, J

JUDGEMENT

Introduction

The plaintiff herein commenced this action by writ of summons on 19th March 2015 claiming that the plaintiff and defendant entered into a contract for the defendant to install 200 signposts around the local government area at a consideration of MK2 million, which was paid at once. The defendant commenced the work in October 2014. The plaintiff then made an offer that the defendant should add the words "Mzuzu City Council" on both sides of each signpost. The defendant replied that an additional amount of Mk1.5 million would be required. The plaintiff then withdrew the offer as the additional costs was high. The plaintiff is now suing the defendant for breach of contract in that the defendant only constructed 118 signposts, 100 of which were installed and 82 of which have not been constructed or installed and has thus delayed in carrying out the construction. The plaintiff is claiming specific performance of the contract or in the alternative, damages for breach of contract.

In his statement of defence and counter claim the defendant states that he was not paid the MK2 million at once but it was paid in instalments with MK285,570.00 being in balance. The defendant claims that all the installed signposts bear the name "Mzuzu City Council" on both sides and the defendant had already incurred an expense. The defendant denies that the delays were his fault. The defendant is counterclaiming damages for breach of contract; the balance of the contract sum; MK1 million for additional costs, MK212,580.00 being retention money deducted by the plaintiff; Mk200,000.00 being 1% of the contract as liquidated damages for the delay; and cost of this action.

Determination

This matter came for hearing on 23rd March 2017 and the court ordered the plaintiff to file a trial bundle by the 3rd day of April 2017 and the matter was scheduled to be heard on 10th April 2017. The plaintiff failed to comply with this order and did not appear for the hearing of the matter. There are no reasons for the absence of the plaintiff. The matter is hereby dismissed for want of prosecution.

Counterclaim

The defendant had filed a counterclaim and the court heard the defendant on the counterclaim. I have read his statement of claim and the attachments which were adopted with leave of the court at the hearing. I am convinced that the defendant has raised a *prima facie* case against the plaintiff. However, the plaintiff has not come to court to defend the counterclaim. I therefore make a finding for the defendant and grant him his claims before this court in full. Damages will be assessed by the Assistant Registrar.

The defendant's granted costs of this action.

Made in Chambers at Mzuzu Registry this 19th day of June 2017



D.A. DeGaborie

JUDGE