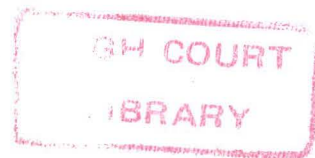




The Judiciary



IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

---

MISCELLANEOUS CIVIL CAUSE NUMBER 28 OF 2016

---

BETWEEN

MTAFU A.Z. MANDA ..... PLAINTIFF

AND

MALAWI RED CROSS SOCIETY..... DEFENDANT

---

CORAM: A.J. BANDA, ASSISTANT REGISTRAR

Mr. M. Mbotwa, of counsel, for the Plaintiff

For the Defendant, None present

Mr. A. Kanyinji, Clerk/Official Interpreter

---

Banda, AR

**ASSESSMENT ORDER**

**Factual Background**

This matter was initially commenced on 28<sup>th</sup> February, 2015, in the Senior Resident Magistrate's court sitting at Mzuzu by way of summons in which the plaintiff claimed outstanding rentals against the defendant in the amount of K475, 000.00 plus interest at 1% above the bank lending rate on the sum and the claimant's solicitor cost of the action. The defendant did not enter an appearance nor file a defence within the prescribed time, such that a default judgment was entered. A warrant of execution was subsequently issued on 23<sup>rd</sup> July, 2015.

On 3<sup>rd</sup> November, 2016, the plaintiff applied to the High Court under Section 11(a)(vii) of the Courts Act as read with Order IV of the Rules of the High Court and Orders XV and XIV of the Subordinate Court Rules to have the matter transferred to the High Court, as well as to amend the Statement of Claim. Honourable Justice D.T.K. Madise granted the order.

In the Amended Statement of Claim was added that there was an implied contract that the defendant would be responsible for repairing damages they caused to the house. It was further stated that the defendant did cause damage to the house. The defendants did not respond to the amended statement of claim as well, and a default judgment was entered subsequently, and the High Court registrar appointed the 25<sup>th</sup> day of May, 2017 as the date for the assessment of damages hearing. The date was later moved to 8<sup>th</sup> June 2017. The defendant did not avail himself. The plaintiff was reportedly sick and the matter was moved to 12<sup>th</sup> July, 2017. Again ~~the defendant did not turn up despite evidence of service of the notice.~~ The registrar proceeded to hear the plaintiff in the absence of the plaintiff.

### Evidence

The only witness in the assessment hearing was Mr. Osman Manda. He told the court that he was an uncle to Mr. Mtafu A.Z. Manda of T/A Mkumbira, Nkhata-Bay. He told the court that Red Cross were renting the house of Mtafu Manda of which he was a manager. He said the defendant came out of the building without giving any notice and did not pay rentals from the month of March, 2014 to July, 2017. He told the court that the defendant owed K1, 975,000.00 in rental arrears.

He further told the court that the defendant broke a lot of things such that the building was damaged. He said the quotation for the repairs showed it would cost K 6, 019, 231. 50 to do repairs. He tendered a quotation which he obtained from Kaulanda Building Contractors. He also tendered a letter that was sent to the defendants, communicating rental adjustment, and another document outlining the rentals that the defendant owed.

### Issue

The issue the court has to determine is the payable rental arrears owing and costs of repairing the damage caused by the defendant.

### Determination

A plaintiff is duty bound to prove his assertions in court, even for assessment hearing. The burden is discharged on the balance of probabilities in civil cases- **Mponda v. Air Malawi 10 MLR**. The defendant did not defend this matter at any level at all. The evidence brought by the plaintiff's house manager Mr. Osman Manda is therefore uncontroverted. It is probable that the defendant incurred rental arrears between the months of March, 2014 and July, 2017 amounting to K1, 975,000.00, and that the defendant caused damage that would cost K6, Page 2 of 3 | **Mtafu v. Malawi Red Cross Society Misc. Civil Cause No. 28 of 2016**<Assessment Order> Banda, A.R.

019,231.50 to repair, in the absence of any challenge to the evidence or indeed any evidence to the contrary.

It is on the premise above that the court finds that the plaintiff has proved that he is owed rental arrears and cost of repairing of the house in the region of K1, 975,000.00 and K 6, 019, 231.50 respectively. I award the plaintiff those awards.

**Conclusion**

I award the plaintiff the total sum of K7, 994,231.50 as rental arrears and repair costs for the house in which the defendants were tenants. I also award the plaintiff costs of the proceedings which should be assessed by the registrar if not agreeable by the parties.

---

Made this 22<sup>nd</sup> day of June, 2018



Austin Jesse Banda  
ASSISTANT REGISTRAR