



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY
CIVIL DIVISION
MISCELLANEOUS CIVIL CAUSE NO 75 OF 2016**

BETWEEN

STUART SIMWINGA.....CLAIMANT

AND

PRINCE NTHAMBAZALE.....DEFENDANT

CORAM:-

Brian Sambo, Assistant Registrar

Mr. Mwayi Banda, of counsel for the Claimant

Defendant, absent and unrepresented

Miss Joana Siame, Court Clerk and official interpreter

ASSESSMENT ORDER

BACKGROUND

On February 12, 2019, Hon Justice Ligowe ruled in favour of the Claimant and ordered the Defendant, Prince Nthambazale to pay damages for trespass committed against the Claimant. My duty is nothing more than assessing the said damages payable by the Defendant herein.

BRIEF FACTS

The Claimant commenced proceedings against the Defendant claiming damages for trespass and violation of his right to property. The Claimant had built a three-bedroomed house on the land which the Defendant demolished when he encroached the land in 2015. At the time of encroachment in 2015 the Claimant's tenant was paying MK12, 000.00 per month. The Defendant demolished the Claimant's house and built a maize mill, foundation of a house, toilet and timber structure. The Defendant had been wrongfully possessing the

Claimant's land since the year 2015 up to the year 2019 when the Court ruled in favour of the Claimant. The Claimant's land was no longer in its initial value and quality because of the structures which the Defendant had built on it during the wrongful occupation and possession period.

EVIDENCE

The Claimant testified that he owned a parcel of land Code Number 1163673 situated at Geisha in the city of Mzuzu. He registered the land with the Mzuzu City Council who gave him the Code Number. He had been paying city rates and ground rates in relation to the said piece of land. He referred the court to copies of the Receipts marked SM1.

He proceeded to testify that he managed to build a three bedroom-house with iron sheets on it and put a tenant in the house. By then, in the year 2013, the house that he constructed on the land costed him about MK3, 000, 000.00. He said four years down the line, to build the same house would cost him about MK10, 000, 000.00. In June 2015, whilst he was in Karonga, his wife called and informed him that the Defendant had entered on the land and demolished his house. At the time of the encroachment, in 2015, he had a house on the land in question which the tenant was paying MK12, 000.00 per month. Since the Defendant had been on the land for about 4 years, the loss of rentals incurred was K12, 000 x 12 x 4 totalling to MK576, 000.00. After encroaching and demolishing his structures, the Defendant put a maize mill building, a foundation for a house, a pit latrine and a timber structure. On this, the witness tendered copies of photographs of the structures marked SM3.

He said the Defendant had been wrongfully trespassing on the land since 2015 up until the present date and because of that he halted all his plans of developing the land. He said, by reason thereof, the Defendant had greatly inconvenienced him. His land was no longer in its initial value and quality because of the structures which the Defendant had built on it during the wrongful occupation and possession period. He complained that the Defendant had greatly deprived him of his right to own property and not to be arbitrarily deprived of it. He finally prayed that the court had to consider the trespass and

all the inconvenience he had suffered at the instance of the Defendant when assessing damages.

ISSUES

The hearing was conducted in order to assess the appropriate measure of damages to be awarded to the Claimant herein.

DETERMINATION

DAMAGES FOR TRESPASS AND VIOLATION OF THE RIGHT TO PROPERTY

It goes without saying that land is one of the most valuable and adorable assets one can ever hold in this life. Where one trespasses it without the consent or warrant of the owner, it constitutes a complete violation of the right to own property. The victim is entitled to damages.

I read the case of **Chiwaya Luncheza Town Assembly** (Civil Cause No 985 of 1998 [2006] MWHC 89 (01 April, 2006) where the Court referred to the case of **Jones v Gooday** (1841) M and W 146 stating that:

Torts affecting land are classified into two, wrongful damage to the land on one hand and wrongful occupation and user of the land on the other. Where it is a trespass involving damage is the amount of the diminution of the value of land. Where a trespass consists of a mere user of the land by passing over it, the damages recoverable will be the price which a reasonable man would be willing to pay for the right user. Where the land has been occupied wrongfully the Plaintiff is entitled to have as or the trespass the value of property as it would fairly be calculated that is the ordinary letting value. That is according to per Meagaw LJ **Swordheath properties Ltd v Tabet** (1979) All ER 240,242.

Nevertheless, the Claimant is entitled to damages for both wrongful damage to the land and wrongful occupation and use of the land. Obviously, the Claimant's land herein has been damaged as a result of the structures that the Defendant erected on it. The Defendant, without the Claimant's consent, constructed a maize mill, a foundation for a house, pit latrine and a timber structure. Nevertheless, the Claimant's land is not in the same condition it was.

It is also true that Claimant is also entitled to damages of wrongful occupation and user of land because the Defendant had wrongfully occupied the Claimant's land for a period of about 4 years. The Claimant is further entitled to be compensated for the loss of the value in property. See **Chikaoneka t/a Madalitso Clothing Factory v Indefund Ltd** (MSCA Civil Appeal No 22 of 2001) [2002] MWSC 7 (11 November 2002) where the Court held that damages for loss of use are basically general damages and that they are awarded on a modest scale. The award of such damages is a task which lies within the exercise of the Court's discretion. Considering the period of 4 years over which the Defendant had been deprived the use of the property, and also considering the devaluation of the Malawi Kwacha since then up to the present date, as well as the circumstances of the present case, I award the Claimant **MK3, 000, 000.00** as damages for trespass to the Claimant's land.

CURRENT MARKET VALUE FOR RE-BUILDING THE DEMOLISHED HOUSE

I am also called upon to assess costs for rebuilding the house that the Defendant, without the permission of the Claimant, demolished. To do so, I will need to consider the current value of the local currency and the value of the building to be replaced. In **Mrs. E.M Nyirenda v Pride Africa**, Civil Cause No. 3646 of 2001 the Court noted that the tort of conversion and trespass to goods overlap and that the appropriate remedy where goods are interfered with to such an extent that they are never returned to the owner the appropriate remedy is in damages for conversion as opposed to trespass to the said goods. In the case of loss of goods by misappropriation the measure of damages in trespass is in general the same as in conversion.

In the instant case, the Defendant demolished the Claimant's house and the Claimant cannot recover the said house. In these circumstances, I award the Claimant the sum of **MK7, 500,000.00**.

FOUR YEARS RENTALS RECOVERY

It was also not disputed that the Defendant encroached the Claimants land in 2015, and at that time the Claimant had a tenant who was paying the sum of MK 12, 000.00 per month. Admittedly, the Claimant deserves to receive rentals

for the 4 years that he was denied the right to use his land. I therefore allow him to recover the said rentals amounting to **MK576, 000.00** (MK12, 000.00 x 12 months x 4 years).

CONCLUSION

In summary, the Claimant is awarded as follows;

MK3, 000,000.00 being damage for trespass to land amounting
MK7, 500,000.00 being the cost of rebuilding the Claimant's house
MK576, 000.00 being the lost rentals recovery.

The total quantum of damages is, therefore, **MK11, 076, 000.00**. These have to be paid within 7 days from today Thursday, the 2nd of May, 2019.

Made in chambers today the 2nd of May, 2019.

Brian Sambo
Assistant Registrar

