



The Judiciary

IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL CAUSE NUMBER 132 OF 2017

BETWEEN

WINNIE KONDOWE..PLAINTIFF

AND

ETHEL MHONE.....1ST DEFENDANT

JOSEPH MWAUNGULU.....2ND DEFENDANT

CORAM: Brian Sambo, Assistant Registrar (Ag)

Mr. Mbulo, of counsel for the Claimant

Defendants, absent and unrepresented

Mr. Henry Kachingwe, Clerk/Official Interpreter

Sambo, AR

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

On the 18th of October, 2017, Justice Ligowe entered judgment on liability against the Defendants and in disposing the substantive part of the matter, he ordered as follows;

“Winnie Kondowe should therefore get back her MK3.5 million which she paid for the land. Mr. Joseph Mwaungulu is keeping MK2.8 million of this money. I order that he pays it to Winnie Kondowe. Ethel Mhone was left with MK700, 000.00 to refund on the contract price. I order that she pays it back to Winnie Kondowe. **Ethel Mhone also has to pay the damages to Winnie Kondowe**”. (Emphasis supplied).

I think the emphasized bit is the basis for the present assessment hearing.

BRIEF FACTS

The facts of this matter are simple enough. On 13th February, 2017, Ethel Mhone entered into an agreement for the sale of her house situated at Chiputula Township within the city of Mzuzu. The agreed price was MK3.5 million but the buyer first paid MK1.7 million. She agreed to pay the balance sometime later in March, 2017, according to Ethel Mhone. But according to Winnie Kondowe, the balance was to be paid at an indefinite time. The transaction was done with the help of the 2nd Defendant, Joseph Mwaungulu as an Estate Agent. The exhibited copy of the sale agreement did not show when the balance was supposed to be completed. On 13th June, 2017 when Winnie Kondowe was ready to pay the balance, Ethel had decided not to sell the house any more for the sake of her children. The 2nd Defendant received the balance amounting to MK2.8 million and asked the 1st Defendant to complete the transaction in honour of her agreement with Winnie Kondowe of the 13th February, 2017 but Ethel Mhone refused to collect the balance. Joseph Mwaungulu kept the money for too long which neither Ethel Mhone nor Winnie Kondowe accepted to receive.

ISSUE

The hearing was conducted to assess the quantum of damages payable by the 1st Defendant, Ethel Mhone for breach of the sale agreement.

DETERMINATION

I do not think, my order of assessment should be more than what the honourable judge has permitted. Going by what he says on page 6 of his judgment on liability, the quantum of damages applicable to this assessment should be the

difference between the present purchase price of the land and the contract price. The contract price is MK3.5 million. This is settled. My humble duty is to find out, through the evidence before me, the present purchase price. This mode of computation of damages attendant to matters of breach of sale agreements is supported by the case of **Hon Justice Mwaungulu in Mahata v Malawi Housing Corporation**, Civil Cause Number 628 of 2005 (HC) (Unreported) where it was stated as follows;

“A buyer’s breach of a contractual term as to time or payment entitles the seller to damages where the seller affirms the contract or, as an innocent party repudiates the contract. Damages are the difference between the contract and the selling price. Where the price falls, the seller will be unable to sell the land at the agreed price. It is, therefore unjust to allow the buyer to breach the contract and enabled to buy other cheap land cheaply and with change in hand.” (the underlined is emphasized)

I have noticed that, while counsel for the Claimant remembered to propose MK3 million to be treated as the difference between the current price of the land and the contract price, he did not provide any evidence or computation in support of his proposition. I do not think this is a matter we should permitted to bring out unjustified figures. There is need for a clear computation of the difference using the trends of the Kwacha currency over the years against a reputable foreign currency. In this case, I think it would be fair to both parties if the exchange rate to be applied would be that of **Malawi Kwacha (MK)** against the **United States dollar (USD)**, from 13th February, 2017 (the date of the contract) and today, 6th of March, 2019 (the date of this assessment). This information is available on the website of the Reserve Bank of Malawi; <https://www.rbm.mw/Dynamic/SearchResult/> (as accessed on 6th March, 2019 at 7.29 pm).

FOREX EXCHANGE AS AT 13TH FEBRUARY, 2017

Currency	Transaction Type	Cash Point Forex Bureau	CLC Bureau	FDH Bureau	Finance Bureau Limited	Golden Forex Bureau Blantyre Branch	Golden Forex Bureau Limbe Branch	Golden Forex Bureau Lilongwe Branch
Buying Cash	740.00	745.00	740.00	742.00	740.00	745.00	740.00	USD
Selling Cash	785.00	788.00	785.00	785.00	785.00	785.00	785.00	

The Reserve Bank of Malawi featured 7 forex Bureaus on the 13th February, 2017. To get average exchange rate for the Malawi Kwacha against the United States Dollar, we need to add all bureau figures and divide them by the number of bureaus which is 7.

USD: - 740+745+740+742+740+745+740 = **5192USD**

5192USD / 7 = **741.71MK**

Therefore average exchange rate on 13/02/17 was **741.71MK = 1USD**

Converting MK3, 500,000.00 to USD Value we need to divide the contract price by MK741.71;

MK3,500,000.00/MK741.71 = **4,718.83USD** (13th February, 2017).

FOREX EXCHANGE AS AT 6TH OF MARCH, 2019

Currency	Transaction Type	Capital Forex Bureau	Cash Point Forex Bureau	CLC Bureau	FDH Bureau	Finance Bureau Limited	Golden Forex Bureau Blantyre Branch	Golden Forex Bureau Limbe Branch	Golden Forex Bureau Lilongwe Branch	HMS Forex Bureau
Buying Cash	760	750.00	748.00	735.00	758.00	745.00	750.00	755.00	745.00	USD
Selling Cash	776	775.00	775.00	770.00	775.00	770.00	778.00	775.00	775.00	

On 6th March, 2019, the Reserve Bank of Malawi features 9 forex bureaus. We should add the bureau figures likewise in order to get the average exchange rate; however, to be uniform and consistent, we will get the first 7 figures (if we get 9 figures, we will be lacking a solid variable when comparing our results).

USD:- 760+750+748+735+758+745+750 = USD5246/7 = **USD749.43.**

This shows that on 6th March, 2019 the average exchange rate is USD749.43

Therefore to find the current market price for the land;

4,718.83USD (of 13th February, 2017) x 749.42 (exchange rate of 06/03/2019)
= **MK3, 536,512.98**

To get damages payable by Ethel Mhone, we have to subtract the contract price (MK3, 500,000.00) from the current market price of the same land (MK3, 536,512.98).

MK3, 536,512.98-MK3, 500,000.00 = **MK36, 512.98** Damages.

I cannot do better than the honourable judge. Nevertheless, this is what is payable by the 1st Defendant, Ethel Mhone as damages for breach of the sale agreement.

I am not surprised that the above is the difference. The proximity between February, 2017 and March, 2019 is quite minimal, and I also take judicial notice that the Malawi Kwacha has, in this period, enjoyed great stability. Therefore, getting a small difference in terms of market values is utmost synonymous.

Ethel Mhone has up to Friday, the 16th of March, 2019, before 4.00 P.M to square the sum of MK36, 512.98. The rest of the judgment sum (MK3, 500,000.00) should be paid at the same time; on or before the 16th of March, 2019; in the same proportions ordered by the honourable judge. For the avoidance of doubt, it was ordered that Joseph Mwaungulu should pay back what remained in his hands (MK2.8 million) while Ethel Mhone should pay back the MK700,000.00 that she received. What this means is that Ethel Mhone will pay **MK736,512.98** (MK700,000.00 + MK36,512.98) while Joseph Mwaungulu will pay **MK2,800,000.00**.

Costs of this action are for Winnie Kondowe and shall be borne by Ethel Mhone, only.

Made in chambers today Friday, the 6th of March, 2019.

Brian Sambo
Assistant Registrar

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke extending downwards.