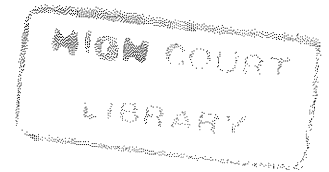




REPUBLIC OF MALAWI



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 1023 OF 2019

BETWEEN

HAMIDA HUSSEIN.....CLAIMANT

AND

MAI MWALABU.....1ST DEFENDANT

HP CHIKOPE.....2RD DEFENDANT

CORAM: KAPASWICHE	: ASSISTANT REGISTRAR (AR)
Mataka	: Counsel for the Claimant
Defendants	: Absent/ Unrepresented
Mr. Kumwenda	: Clerk/ Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES AND INTEREST

BACKGROUND

The claimant commenced the present proceedings claiming refund of money paid to the defendants for the purchase of a piece of land at Area 46 in the city of Lilongwe; damages for inconvenience and interest on the purchase price paid. A default judgment was entered on the 22nd day of June 2020 on account of absence of defence from the defendants. The claimant then commenced these proceedings for assesment of damages and interest. The defendants were served with the present assesment notice and bundle but they did not attend the hearing for unknown reasons hence the court proceeded hearing the claimant in the absence of the defendant.

THE EVIDENCE

Two witnesses were paraded for the claimant's case. The first witness was the claimant herself. The claimant is a business lady based in the city of Lilongwe and on 5th day of June 2016, she purchased a plot from the defendants located in Area 46 at the consideration of MK2,700,000.00. Following the purchase of the plot, she erected a fence around the entire plot. Later on, she was surprised to learn that another person had started developing the said land and her inquiries revealed that the defendants had sold the land to another person. The claimant demanded a refund of her money from the defendants to no avail. She claims refund of her money, damages for inconvenience and interest on the purchase price. The second witness was Lucky Kasopa; an accountant by profession. He calculated interest on the purchase sum from 2016 to March 2021 and the total interest payable came to MK7,216,329.12.

THE LAW ON DAMAGES

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by Lord Blackburn in the case of **Livingstone v. Rawyards Coal Company (1880) 4 AC 25** in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money

which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

SUBMISSIONS AND ANALYSIS

The present matter is not a complicated matter and it is not disputed since the defendants never wanted to waste court's time in defending the matter. From the clear facts of the present case which have been already heightened above; the claimant suffered loss due to the unlawful acts of the defendants by reselling the piece of land that had already been sold to the claimant. The claimant paid MK2, 700, 000.00 and it is obvious that this money has to be paid back to the claimant. The claimant is also entitled to received interest on her money as she could have used the money in other profitable endeavors as she is a business lady. Interest has been assessed at MK7,216,329.12 and having checked the calculations I do not see any problem with the said calculations hence in addition to the MK2,700,000.00 being the purchase price, the claimant is also entitled to the MK7,216,329.12 being the interest from 2016 up to March 2021 when the matter came for hearing before this court. The claimant is also at liberty to claim further interest.

DAMAGES FOR INCONVIENCE

It is trite law that where a party suffers inconvenience due to the wrong doing of the other, he is entitled to damages as inconvenience is the cause of action on its own right see **Pemba vs Stagecoach (Mal) Ltd**, 16, MLR 348 and **Kalulu vs Blantyre Water Board**, 13 MLR 160. In **Moyo vs Mkandawire and Another**; Civil Cause no. 188 of 2018, the court awarded the Claimant damages for inconvenience. In **Manja vs Zidana Civil Case No. 759 of 2002** damages for inconvenience were awarded for breach of contract where the breach had caused discomfort to the plaintiff, the court held that the Plaintiff may recover damages. (see **Burton vs Pinkerton (1867) LR. 2EX.340**. It was held in the case of **Watts vs Morrow (1991) 1 W.L.R 1421** that the quantum of such damages should be a modest one.

In the present case, the defendant's breach of contract caused inconvenience to the claimant as she had plans to develop the land as seen from her efforts of erecting e fence on the plot. Looking at the circumstances of the present matter; I proceed to award MK1, 000,000.00 as damages for the said inconvenience.

FINDING

In view of the above discussion, this court proceeds to award the claimant a sum of MK2,700,000.00 being the purchase price; MK7,216,329.12 being interest and a sum of MK1, 000,000.00 being damages for inconvenience. The total sum payable to the claimant is MK10,916,329.12. The claimant is further awarded costs of this action and it is my order that the said costs be paid in the sum of MK800,000.00.

MADE IN CHAMBERS THIS.....^{16th} DAY OF DECEMBER 2021



ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR