



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL DIVISION**

Civil Cause Number 913 of 2019

**BETWEEN:**

**DAUD ISSA HUSSEIN.....CLAIMANT**

**AND**

**S LOVANI .....DEFENDANT**

**CORAM: CM MANDALA: ASSISTANT REGISTRAR**

Mataka: Counsel for Claimant of Henderson, Whitney, & Associates

Chibwana & Associates: Absent (Unrepresented)

Kumwenda: Court Clerk

**ASSESSMENT OF INTEREST AND DAMAGES**

**CM MANDALA, AR:**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Default Judgment issued on 5<sup>th</sup> February 2020 by the Honorable Assistant Registrar. In this Judgment, the Defendant was ordered to pay the Claimant the sum of K2,250,000.00, interest at 5% above the current commercial bank lending rate from the date of collection of money to date of payment, damages for inconvenience, and costs of the action.

The Claimants commenced the present action on 13<sup>th</sup> November 2019. The basis of the claim was the a land purchase agreement between the parties. The Claimant paid the sum of K2,250,000.00 as an advance payment for purchase of land at Area 36, Lilongwe. The Defendant has neither given possession of the land to the Claimant, nor has he refunded the sum paid as advance payment.

**EVIDENCE**

The Claimant paraded two witnesses in support of their case. The Claimant himself was the first witness. He adopted his witness statement as evidence in chief. It states:

The 1<sup>st</sup> Claimant adopted his witness statement that stated thus:

1. *My name is DAUDI ISSA HUSSEIN of Bibi Kuluunda Village TA Bibi Kuluunda in the District of Salima. I make the following statement on assessment of interest and damages on my own behalf.*
2. *I am a businessman based in the city of Lilongwe.*
3. *On or about the 22<sup>nd</sup> day of December 2016 I purchased five plots of land from the defendant located at Area 36 in the city of Lilongwe, at a consideration of MK2,250,000.00. See copy of the sale agreement thereto attached and marked 'DIH1.'*

4. *Later I was surprised to learn that another person had started developing on my piece of land. Upon enquiry I discovered that the defendant had sold the piece of land to another person.*
5. *I confronted the defendant on this, and they agreed to have sold the said land to another person.*
6. *I asked the defendant several times to refund the money paid to them but to no avail.*
7. *The defendant should further be condemned to pay damages for inconvenience.*
8. *I engaged Mr Lucky Kasopa through my lawyers, Henderson, Whitney & Associates to calculate interest on the principal sum following this honorable court's entry of default judgment against the defendant for their failure to defend the writ of summons and statement of claim.*
9. *I pray that the court must order the defendant to pay the sum of MK2,250,000.00 being the purchase price paid, the sum MK4,439,827.21 being accrued interest on the purchase price paid to the defendants, damages for inconvenience and costs of action.*

The Claimants second witness was Mr Lucky Kasopa, an Accountant at AS Investments. Mr Kasopa adopted his witness statement that contains the interest computation. Mr Kasopa used the Reserve Bank of Malawi lending rate that is updated every month. The Reserve bank rate is the base lending rate, and no bank can go below it. The witness' statement is set out below:

1. *My name is Lucky Kasopa of PO Box 615 Lilongwe. I am an accountant by profession working AS Investments as an Accountant.*
2. *I am a holder of a Bachelor's degree in accounting from Malawi Adventist University of Eastern Africa (Baraton). I also hold a certificate in financial accounting (PAECM/ICAM).*
3. *Whilst working for the above company I have acquired vast knowledge and experience in computation of interest. As p[art of my work I do credit reviews and verifications of accrual of interest for company's clients.*
4. *I have been asked by the claimant through his lawyers, Henderson, Whitney & Associates to calculate interest for purposes of assessment by this Honorable Court.*
5. *I have made computation of interest based on the Reserve Bank of Malawi policy rate, which is much lower than the current interest rates, prevailing at commercial banks in the country. The said computation covers the period running from December 2016 to March 2021. Refer to 5th copies of calculations and rates for the said Bank marked 'LK 1.'*
6. *I believe that the calculations I have made are correct and that the claimant should be awarded the sum of MK4,439,827.21 as accrued interest.*
7. *I have computed the accrued interest on monthly basis over the said period.*

### ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.<sup>1</sup>

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<sup>1</sup> See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.<sup>2</sup> Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd**<sup>3</sup> by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In **Malamulo Hospital (The Registered Trustees) v Mangani**<sup>4</sup>, the Supreme Court states: “*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*”

In **Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu**,<sup>5</sup> the Court states: “*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*”

In **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*’

## COMPENSATION

### *Interest*

The Default Judgment awarded the Claimant 5% interest on the sum of K2,250,000.00 from the date of collection of money to the date of payment. Counsel for the Claimant made the following submissions in this regard:

*It is a long-standing principle that when someone borrows money they should expect that on repayment they are also required to pay interest over and above the loan. See **Burco Electronic Systems Ltd and Estate of David Anthony Vandell (Deceased) v NICO Life Insurance Company Ltd**, Commercial Cause Number 81 of 2012 (unreported).*

*Lord Nicholls of Birkenhead in **Sempa Metals Ltd v Commissioners of Inland Revenue and Another** (2001) 4 All ER 657 stated that:*

*‘We live in a world where interest payments for use of money are calculated on compound basis. Money is not available commercially on simple interest terms. This is the daily experience of everyone, whether borrowing money on overdrafts or credit cards or mortgages or shopping around for the best rates when depositing savings with banks or building societies. If the law is to achieve a fair and just outcome when assessing financial loss, it must recognize and give effect to this reality.’*

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<sup>2</sup> **British Commission v Gourley** (1956) AC 185.

<sup>3</sup> **West v Shepherd** (1964) AC 326 at 346.

<sup>4</sup> [1996] MLR 486.

<sup>5</sup> Quoting from **HQ Chidule v Medi** MSA 12 of 1993.

*Halsbury Laws of England 4<sup>th</sup> Edition Reissue Volume 12(1) Paragraph 1063, page 484 provides 'upon breach of the contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with such interest from the time when it becomes payable under the contract.'*

The Claimant paraded one witness who submitted their evidence on the computations of interest and the basis upon which those computations were made. This evidence was uncontroverted, and this Court wholly accepts it. The Claimant is therefore **awarded K4,439,827.21 being interest accrued on the purchase price of K2,250,000.00.**

#### *Inconvenience*

Counsel for the Claimant made submissions under this head that will be reproduced below:

*Damages for inconvenience are awarded where substantial physical inconvenience and discomfort was caused or effected by the negligent or otherwise unlawful action or omission of the Defendant. This discomfort should not just be psychological or emotional see **Hobbs v L.S.W. Ry [1985] 10 QB 111 per J Mellor, Charles Kambendera v Daniso Qongwani Prime Insurance Company Civil Cause number 178 of 2018 (HC)***

In the matter of *Ausman Nyasosela v The China Lilongwe Grand Holdings Limited* Personal Injury Cause Number 235 of 2020, (Assessment of Damages delivered on 2<sup>nd</sup> August 2021) the Claimant was awarded K300,000.00 as damages for inconvenience where the Claimant was bitten by the Defendant's dogs and had to go to the hospital on several occasions to get an anti-rabies vaccine. In the *Charles Mbendera Case*, the Claimant was awarded K500,000.00 as damages for inconvenience when his car was damaged, and he had to walk on foot.

Since 2016, the Claimant has made numerous attempts to gain possession of the land. When he discovered that the land had been sold, he has been communicating to the Defendant for a refund of the purchase price. The Claimant has been deprived of both the land and the money for over five years, a very great inconvenience indeed. Based on this, the Court hereby **awards K500,000.00 to the Claimant as compensation for inconvenience.**

#### DISPOSAL

The Claimants are hereby awarded the purchase price of K2,250,000.00, K4,439,827.21 being interest accrued on the purchase price of K2,250,000.00, and K500,000.00 as damages for inconvenience. A total award of K7,189,827.21.

Costs of the action will be taxed if not agreed. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 6<sup>th</sup> day of August 2021 at High Court, Civil Division, Lilongwe Registry.



CM Mandala

**ASSISTANT REGISTRAR**