



The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 86 OF 2018

Between

SALIM MATONDWE.....CLAIMANT

-and-

ELECTRICITY SUPPLY CORPORATION MALAWI LIMITEDDEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Maele, for the Claimant

Chipembere and Mbendera, for the Defendants

C. Kazembe, Clerk/ Official Interpreter

JUDGMENT ON ASSESSMENT OF DAMAGES

Banda

Background

On 19th March, 2018, Aumar Salim Matondwe (Claimant) obtained a default Judgment against Electricity Supply Corporation of Malawi Limited, (ESCOM) (Defendant) for damages for negligence, damages for the replacement of all household properties that were destroyed in a fire, at the current market value, damages for renovation of the roof of the claimant's house; and damages for inconvenience as the claimant lost habitable premises. All these were subject to assessment. I heard the parties for assessment.

Evidence

The claimant called one witness. This is Aumar Salim of Machinjiri in Blantyre, who adopted her witness statement in which she stated that she was 19 years old, and an orphan who was staying with her brother, the Claimant here-in and his wife and his child at Makhetha in Bangwe, Blantyre. She said that they were staying in a house that was left by their parents, both of whom were deceased. It was her evidence that the house caught fire on the 29th of

January, 2017 due to an electricity wire which passed over the house and came into contact with the roof of the house.

It was her evidence that the house and many household items were severely damaged due to the fire. She listed the items that were damaged in Exhibit marked AM1, which was communication from Bangwe Police Station to "Whom it May Concern" as follows; three mattresses, three expand bags, a cooler box, a carpet, two displays, curtains, four bed sheets, three blankets, two sofa sets, double bed, hot plate, two mobile phones, assorted clothes and shoes, two flasks, food warmer set, glass plates set, set of glass tumblers, set of mug cups, 21 inch television screen, home theatre, a Rising radio and kitchen wares.

It was Aumar Salim's evidence that the house was left in an uninhabitable condition leaving the occupants with no other option but to vacate the house. She said herself and the claimant were jobless and inconvenienced as they lost a lot of property and had to stay with other people who were not even related to them. The claimant's wife had to go to her home as the claimant could not manage to rent a house. She said that the claimant had been trying to look for a job but could not get any until he had to go to Mangochi, when he fell ill and could not walk, and hence his inability to come to court and give evidence. She exhibited pictures of the burnt house marked 'AM2'.

Aumar Salim further said that the house was assessed for renovations and this was assessed at K1, 424,040.59. A valuation report was tendered and it was marked 'AM3'. She also said that a sum of K125,000.00 was spent to pay assessors. The invoice was marked 'AM4'. Copies of quotations for the prices of various properties that were destroyed were also attached and marked 'AM5a' to 'AM5g'.

It was the evidence of Aumar Salim that together with the claimant she went to ESCOM to report the fire accident and they were told to bring a police report and to fill a form which they did but on two occasions they were informed by ESCOM that the documents were lost, with the claimant having replaced the first loss.

Lastly, she prayed to be compensated for damages under the heads as outlined in the background of this judgment, and also to be given costs of the action.

In cross examination, Aumar Salim told the Court the brand names of the television and home theatre as L.G, the phones as Samsung and Itel and said that she could not remember the make of the other items. She said that she could not tell the prices that the household items that perished in the fire were bought for but only remembered a sofa set that was purchased at the price of K350,000.00. she said that she was not Salim Matondwe but that Salim Matondwe was her brother and that the quotations were sourced by her, except that of blockbuster which was not offered to her which was offered to Messrs Maele. She said that the television quotation was not authored for her and hence she could not tell why the quotation was for an Ecco branded television when the one that was burnt was LG by brand.

On the valuation report, Aumar Salim said that the report was written for Salim Matondwe and that she did not know the person who authored it and that she did not have proof of payment for the valuation report. The testimony of Aumar Matondwe closed the case of the claimant.

The defendant called one witness too, Mr. Yamikani Kambauwa. He dopted his witness statement in which he stated that he was the defendant's legal services manager. He said that the claimant had failed to prove the special damages that he sought, and that he had failed to provide proof of the values of the items the claimant alleged were damaged in the fire.

Mr. Kambauwa further said that the police report which was the substance of exhibit 'AM1' was prepared from information supplied by the claimant himself. There is no proof that the police investigator who prepared the report, whose name he said was not even mentioned, even visited the scene of the fire and saw the items burning. He said exhibit 'AM1' did not explain the formula by which the police arrived at the amount of the total loss of K4,000,000.00.

Mr. Kambauwa stated that it was inconceivable that the claimant had possessions amounting to K4,000,000.00 when he was jobless, lived in a house valued at K1, 424, 040.59 and had no means to afford electricity and was only 22 years of age at the material time. He said that the claims had been grossly exaggerated and unreasonable and that the Court should consider awarding him damages for the damaged property in the sum of K300,000.00.

In cross examination, Mr. Kambauwa confirmed that the house was burnt by fire started from ESCOM and that ESCOM personnel visited the scene. It was his evidence that the personnel from the defendant made their report but he could not recall whether the report contained a list of the damaged items. He said there was no valuation by ESCOM and that ESCOM did not follow up as to where the inhabitants of the house went after the fire. He agreed that the occupants of the house were inconvenienced after the house was caught up in fire.

The witness of the defence said that a hotplate, 21 inches television screen and a rising radio were unusual properties for a house that was not connected to electricity. He admitted that it was possible for the inhabitants of the house to have had the appliances before they moved into the house that was without electricity. He said the house could not have had electricity because it was an incomplete house and ESCOM does not supply electricity to incomplete houses.

It was his evidence that he was not aware that the value reflected on the report was a cost of repair and not the value of the house. He admitted that value of the house could be higher than cost of repair.

In re-examination he said that the claimant had not provided proof of what he owned before the fire accident. He also said that he could not remember whether ESCOM personnel were allowed access to the house to do an assessment. The defence rested their case.

Issue

The issue that the Court must determine at this stage is the amount of damages to be paid by the defendant to the claimant for the claimant's loss.

The Law and Fact

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370 (HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**.

Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

"The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*."

It is not difficult to calculate loss that is monetary. However, it is not easy to quantify damages for losses that are not monetary in nature. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

Damages for Negligence

The claimant prayed for damages for negligence. The defendant submitted that this head of damages is not known to law. I agree with the defendant. Negligence is the grounding of a cause of action which must then be particularised. It is the wrong, damages are paid for the result, that is to say the loss that results from it. There is nothing therefore to award under this misnomer of a head.

Damages for the Replacement of All Household Properties

The defendant in its submission disputes the authenticity of the list in exhibit 'AMI' as it should not have been tendered by the witness that did, when it was a police officer who prepared it, and who never showed that he visited the scene. Further, the defendant states that some items are those that need electricity to run, yet the house was uncompleted and had no electricity, and that the claimant could not own such items being a jobless youth. I disagree with that objection.

The defence had a chance to send own experts to the scene and from the evidence of the defence witness, they in fact, did. Why they did not come up with their own assessment of damage to controvert anything they found not correct from the claimant, we cannot tell. As alluded to by the defence witness in his cross examination that he was not sure if there was any report at that. The claimant did assess his loss as a lay man in fire accidents and obviously reported his lost items to the police that authored the to 'whom it was concerned' report for the benefit of the claimant and gave it to the claimant to take to relevant institutions, and interested parties. The witness of the claimant could as such tender it as the facts were as she knew them, the same that were referred them to police.

Further it is on record that the jobless and young claimant is an orphan. He may have inherited the items from his late parents, just as he did with the uncompleted house, that he may not also have had the means to construct himself, but he claims to own it too. He may have been forced to leave a house with electricity, and occupy the unfinished ones by the circumstances of his bereavement. The fact that the items cannot be seen in the photos is that they are said to have been consumed in the fire and those that made the assessment of damage, and evidence gatherers being lay and traumatised, cannot be expected to be as thorough and exceptional as would be one from a fire accident expert. The long and short of all this is that the properties listed are reasonable in the circumstances.

The defendant further submitted that the claimant failed to specifically prove the specific damage of these items and that the items quoted for are different. The issue is restitution. The market now may not have exactly the same items. The quotations also had to be as on the market value as of today. I therefore find the quotations of the listed items reasonable and reflecting the principle of restitution. The total amount for quotation was K2,355,000.00, and I add 20 percent, for loss of value over the almost two years that it has taken since the quotations were taken. I therefore award the claimant the total quoted sum of **K2, 826,000.00**.

Damages for Renovation of the Claimant's House

The claimant prayed for the sum of K125,500.00 being money for payment of the valuation report, and the sum of K1, 530,569.04 being money for materials and labour to repair the house building. The defendant submits that they do not have problems paying that, though they only quoted price of materials, without labour and transportation of materials among others, as

placed in the valuation report by the firm engaged by the claimant. The sum is K1,656,069.04. I again add 20 percent to cater for loss of value since the quotation. The total amount to be paid under this head is **K1,987,282.84**.

Damages for Inconvenience

The claimant also prayed for damages for a non-monetary loss of inconvenience. In law of torts, damages for distress and inconvenience are rarely given, or strictly given only where the claimant can show that he has suffered substantial physical discomfort and that it was foreseeable to the defendant that the claimant would suffer such loss if he does the act or omits to do something negligently, see **Hobbs v. LSW Ry (1885) 10 QB111**. In this matter it is easy to see that it was foreseeable that if the claimant's house is rendered uninhabitable, the claimant and other occupants would have nowhere to stay and would have to ask for charity of friends and relatives. They also suffered loss of use of their household property at the discomfort of having to make use of other peoples'.

The claimant being jobless failed to rent any house and had to separate with his wife. He actually got so sick in Mangochi where he was forced to go for refuge, that he failed to come and testify in Court. Even though the claimant through his witness has failed to show nexus between the sickness and the inconvenience of leaving the house, the fact that the claimant had to go all the way to Mangochi looking for alternative place to stay from his favourite Blantyre shows a great deal of discomfort. I award the claimant the sum of **K1,500,000.00** for inconvenience.

Conclusion

The claimant is awarded a total sum of **K 6,313,282.84** in damages under the different heads as pleaded. The claimant is also awarded costs of the assessment of damages.

Made this 16th day of February, 2022.



Austin Jesse Banda

ASSISTANT REGISTRAR