



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
LAND CAUSE NO. 65 OF 2018**

BETWEEN

**AM'DAFANCHANU LILIAN SANGALA
AND
ISHMAEL SABADIA**

PLAINTIFF

DEFENDANT

**CORAM : MATAPA KACHECHE Deputy Registrar
Jere for the Plaintiff
Defendant absent
Mtegha (Mrs) Official Interpreter**

ORDER ON ASSESSMENT OF DAMAGES

1. The claimant commenced this action against the defendant claiming the following:
 - a. An order compelling the defendant to surrender title deeds in respect of title number LK 1174 and also to execute all necessary documents [to effect] a transfer of land to the claimant;
 - b. An order compelling the defendant to pay the current market value of plot number LK 1173 upon the same being valued by Messrs Knight Frank;
 - c. Damages for breach of agreement and inconveniences.
2. On 26th March 2020 the High Court (Honourable N'riva J) entered summary judgment having found that the defendant had entered a general denial for defence. He further ordered that the Registrar should assess damages. This therefore is the assessment exercise.
3. Before I proceed to the merits let me outline what happened prior to the assessment proceedings.
4. The matter first came for assessment of damages on 19th October, 2021. On that day Counsel for the defendant, Mr. Kaliwo, asked for adjournment on the ground that he had just been appointed to represent the defendant and that he had not had an opportunity to get full instructions from his client. The other reason was that, since the claimant was relying on an evaluation report which had been obtained after the action had already been commenced, the defendant needed to obtain his own report to counter the one obtained by the claimant.

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5. The claimant objected to the adjournment on the ground that, although on the face of it the defendant had changed his legal practitioners, in essence it was Mr. Kaliwo who had all along been representing the defendant.
6. I adjourned the matter for a full month to 23rd November, 2021. Although I did not record my reason for allowing the adjournment, I reasoned that, technically the defendant had changed legal practitioners as the legal house on record, under which Mr. Kaliwo was initially working was Chagwamnjira and Company. Additionally, it would be fair, in my view to allow the defendant an opportunity to obtain his own evaluation report.
7. Come 23rd November, 2021, the defendant had another request for adjournment. He gave a number of reasons for the new request:
 - a. the defendant's health condition was not good. He would be required to travel to South Africa in the near future. Let me point out that the defendant was present in court on this day.
 - b. he had just discovered that he had not received any money from the claimant. The claimant had paid the money through an agent who is now dead and the defendant was still searching for documents relating to the transaction;
 - c. he had intended to engage Knight Frank to do the valuation for him. However, he had just discovered that Knight Frank were the same firm that had valued the property on behalf of the claimant. However, the defendant had just identified another valuer to do the valuation for him.
8. The claimant again objected to the adjournment mainly on the basis that it had become a pattern on the part of the defendant to find any reason for adjourning and delaying the matter even before the matter reached this stage.
9. I agreed with the claimant that the matter must proceed basically because proceeding with hearing the evidence of the claimant would in no way prejudice the defendant. Specifically, I gave the following reasons:
 - a. The defendant had ample time to identify an alternative valuer to Knight Frank;
 - b. The newly discovered documents did not go to challenge merits of the claim itself which is not, in my view, to be considered at this stage. In any event the defendant would have a chance to give his own testimony to challenge the claimant's evidence;
 - c. Whereas I sympathized with the defendant on his medical condition I did not find that a good reason for adjourning the assessment of damages in which it is counsel who would conduct the cross-examination.
10. At that point Counsel for the defendant asked to talk to his client. After a few minutes, the defendant and his counsel returned to report that the defendant had just fired his lawyer and needed an adjournment to appoint new counsel.
11. The claimant objected again on the ground that the defendant wanted to get the adjournment through the back door.

12. I gave the defendant another lifeline by adjourning the assessment again. This time I gave him two weeks to do the needful. The next date was 8th December, 2021.
13. Apparently he did engage new counsel. New counsel even filed a notice to cross-examine the experts who had prepared the valuation report. Come the 8th December, 2021, at the time appointed, neither the defendant nor counsel appeared in court. The claimant came. The valuers also attended to be cross-examined.
14. At the time scheduled for the hearing there was no excuse from the defendant or his counsel communicated to us. We therefore decided to proceed in the absence of the defendant or counsel. The evidence for the claimant therefore went unchallenged in the circumstances.
15. The claimant was her own sole witness. She adopted a pre-filed witness statement. In it she stated that in or around the year 2006 she had bought two plots of land from the defendant. The plots were numbers LK 1173 and LK 1174. A few years later she discovered that LK 1174 had been sold by the defendant to a third party.
16. On 26th July 2018 the two parties agreed that the defendant would surrender the title deeds for LK 1174 and either give the claimant a replacement of LK 1173 or pay her the market value of the same within 15 working days.
17. By a subsequent addendum the parties further agreed that the defendant would pay the current market value of LK 1173 within 30 to 40 days and surrender the land certificate in respect of LK 1174 within 10 days.
18. The defendant did not honour the agreement. The claimant thus sought the court's intervention which led to the summary order aforementioned. The claimant engaged Knight Frank who valued the land at K40, 000, 000.00. The claimant exhibited the report.
19. Now, my understanding of the judgment is that all the reliefs that were pleaded were awarded. One of the reliefs was that the defendant should pay the current market value of plot number LK 1173 upon the same being determined by Knight Frank. Since the evidence proffered by claimant is unchallenged I award K40, 000,000.00 as the market value of the property at the time of assessment of damages.
20. The judge went further to award damages to be assessed by the Registrar. The specific claim was for damages for breach of agreement and inconvenience.
21. Now the law on damages is settled. Where a party sustains loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed – per Parke B in *Robinson v Harman (1848) Ex Rep 850* at 855.
22. However, it is incumbent on the claimant to prove the loss. It is not enough for the claimant to show that there is a breach of contract but must show the loss sustained as a result of the breach. I am aware that the head of damages pleaded by the claimant are general in nature, but the claimant needed to prove how the breach affected her for this

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court to determine the amount to be awarded. But all the claimant did on assessment was to show the market value of the property. Therefore, she can only be awarded nominal damages.

23. To be fair to the claimant however, I take cognizance of the fact that a lot of time has lapsed after the assessment of damages took place. The ruling comes a bit late in time. This has been caused due to circumstances beyond my control and the claimant cannot be blamed. I therefore award the claimant K10, 000, 000.00 as general damages for inconvenience.

24. Finally, I award costs of the present proceedings to the claimant.

Made this 23rd day of June 2023.



CC Matapa Kacheche
Deputy Registrar