



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 7 OF 2018

BETWEEN
DAVIES CHITEKWE
AND
ELECTRICITY SUPPLY CORPORATION OF MALAWI

CLAIMANT

DEFENDANT

CORAM	:	MATAPA KACHECHE	Deputy Registrar
		Kamunga	for the Claimant
		Chimowa	Counsel for the Defendant
		Mtegha (Mrs)	Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. The claimant commenced this action claiming damages for the total loss of his house, household property, chicken pen and chicken under the common law of negligence. This is following a fire originating from the defendant's power lines that gutted the claimant's house and chicken pen.
2. By a judgment dated 28th May, 2021 the defendant was found liable and the judge directed that the Registrar should assess damages.
3. The matter came for assessment on 4th November, 2021 and 13th December, 2021 when we went to visit the scene.
4. The claimant called three witnesses to testify on his behalf. PW 1 was the claimant himself. He adopted a witness statement filed prior to the date of assessment. He stated that his house was 9 by 7 Metres in size built in 1993. He also had a chicken pen built in 1995.
5. According to him the chicken pen was regularly renovated as he was using it for his chicken business.

6. Both the house and the chicken pen and their contents were completely burnt down on 1 September, 2012 by electric fire.
7. He had lost 765 chickens out of which 225 were layers producing six to seven trays of eggs per day. He was making a projected annual profit margin of K10, 800,000.00 from the eggs business and K2, 677, 500.00 per annum from the chicken business.
8. Unfortunately for him all the receipts and general accounting records from the business went down together with the house. This led to the loss of the capital and this marked the end of his business.
9. Upon assessing the burnt house and the chicken pen a contractor presented a quotation for building replacement structures amounting to K12, 484, 728.00 of which K5, 701, 663 is for the reconstruction of the house and K6, 783, 065.00 is for the construction of the chicken kraal.
10. He also enumerated the household items which got damaged as appear in the following table:

1.	2 x solar panels and accessories
2.	2 x extended metals
3.	2 x wheel barrows
4.	18 x iron sheets -12 ft by 28 gauge
5.	3 x (90 Min) bow saw
6.	1 x spirit level
7.	13 x pullet growers marsh
8.	13 Tab feeders
9.	1 x bag layer concentrate
10.	13 x chicken drinkers
11.	2 x big speakers
12.	1 x electric water pump and accessories

13.	1 x big cooler box
14.	1 x dinning set
15.	1 x double bed
16.	1 x ½ bed
17.	1 x single bed
18.	1 x treadle pump
19.	1 x manual type writer
20.	1 x wall clock
21.	1 x radio JVC 3 CD Changer
22.	1 x LG Tv Screen
23.	1 x Sonny DVD player
24.	7 x door frames and mortice locks
25.	4 x pairs louvre frames and glasses
26.	50 x hardwood timber planks
27.	3 x electric single phase motors
28.	1 x zigzag sewing machine
29.	2 x singer sewing machines
30.	3 x bags of unshelled rice
31.	1 x double mattress
32.	1 x ¾ mattress
33.	1 x single mattress
34.	2 x bicycles
35.	1 x foot pump
36.	Assorted clothes
37.	2 x cell phones
38.	Kitchen utensils
39.	3 x bags cement
40.	44 x pieces of glass

41.	3 x battery operated lamps
42.	4 x 5 litre paint
43.	2 kg omo washing powder
44.	5 litres sunflower cooking oil

11. The claimant went on to state that in preparation of the assessment of damages he obtained quotations of the items that he lost.

12. The following are the values on the various goods that he lost:

a. Quotation from Robray Limited:

single 6 inch mattress	—	K33, 610.00
¾ mattress	—	K39, 110.00
double 6 inch mattress	—	K50, 100.00
1 restafoam pillow	—	K 1, 770.00
1 foam filled pillow	-	K 2, 880.00
1 polyester pillow	-	K 3, 560.00
20% discount	-	(K26, 206.00)
VAT	-	K17, 295.76
Total -	-	K122, 119. 96

b. Quotation from Bwanaissa Furniture and General Dealers

6 chair, one table dining set	—	K275, 000.00
1 double bed	—	K 85, 000.00
One ¾ bed	—	K 65, 000.00
One single bed	—	K 50,000.00
7 door double face	—	K 595, 000.00
7 door frames	—	K 126, 000.00
Total	—	K1, 196, 000.00

c. Quotation from Asrifi Electronics

One audionic radiator —	
Battery —	
Three microphones —	
Total	—K590, 000.00

d. Quotation from Luminous Limited

Six 150W solar panels	—K480,000.00
Two 225 AH solar batteries	—K500,000.00
1600 W inverter	—K200, 000.00
Total	—K1, 180,000.00

e. Quotation from Toppers Limited

Petrol Water pump	—K175,000.00
Heavy Duty lay flat pipe	—K 425, 000.00
Total	—K600,000.00

13. He lamented that he has failed to replace the lost household items and his business to date.
14. His second witness was Mr. Wyson Paulo who stated that he knew the claimant as his neighbor. He further confirmed that the claimant used to run a poultry business and that he used to make a lot of money from it. He was unable to state the exact amount of money or the numbers of chicken he used to keep.
15. The third witness was a construction contractor who testified that he had prepared a quotation for the rebuilding of the house and chicken pen. The total quotation came to K12, 484, 728.00 comprising K5, 701, 663. 00 for the construction of the house and K6, 783, 065.00 for the construction of the chicken pen. He testified when we visited the scene.
16. In cross-examination counsel for the defendant purported to show that the claimant's evidence was inconsistent with the case that he originally brought to court.
17. Indeed, the claimant's testimony claimed more in certain items and less in other items. There was at least one quotation that seemed to include items which were not part the original claims. The claimant conceded that some of the claims appeared for the first time in the witness statement and agreed to have them taken out. But I found the claimant a generally honest witness despite the fact that his testimony was tinged with emotions.
18. When we visited the scene we measured the area where the house and the chicken pen were once standing. The exact measurements for the house were not much different from the ones that the claimant claimed but my measurement of the chicken pen area revealed a much reduced size from the ones originally claimed. Instead of 96 square metres that was claimed it came to 57 square metres.

19. In cross-examining the third witness, Counsel for the defendant purported to establish that the witness was not an expert in establishing the real cost of rebuilding the two damaged structures. However, it was clear that the witness did not come as an expert but as the building contractor who had provided a quotation for the reconstruction of the two structures.
20. Having made this observation, it is clear that, subject to a few contradictions, the evidence proffered by the claimant remains solid and uncontroverted.
21. The aim of an award of damages is to put an injured person in the same situation as they would have been in had the tort not been committed (*Livingstone v Rawyards Coal Company Ltd* (1880) 5 App Cas 25.) In *Cassell and Company v Broome* [1972] AC 1027 it is stated that the aim is to compensate the party as nearly as possible as money can.
22. Ordinarily, therefore, the measure of damages where the damage is to property is the diminution in value of the property where the property is in a reparable state and, where the property has been completely damaged, the measure of damages is the replacement value of the property.
23. In this case it is not in dispute that the claimant's house and chicken pen and their contents were completely destroyed. What is disputed however is the replacement value for each structure and its contents.
24. I will start with the rebuilding value of the house and the chicken pen. As I pointed out earlier the defence purported to discredit the evidence of the third witness on the ground that he was not an expert. The third witness however is a contractor who provided the quotation. My assessment of the witness was that he was an honest witness who, although being a businessman obviously intended to gain some profit from the work to be done, did not seem to exaggerate the estimates for rebuilding the structures.

25. The estimates in my view are not unreasonable and in the absence of an alternative valuer they can be safely relied upon.
26. The defendant proposes that we should award K2, 000,000.00 being a sufficient figure to build a decent house in Nancholi.
27. My view is that we cannot just pluck a figure from the air as the defendant is proposing. We have a figure from a contractor on the estimated cost of building a house. I find that the proposed cost is reasonable. I award K5, 701, 663.00.
28. The same reasoning applies to the cost of reconstructing the chicken pen. However, the size of the chicken pen as claimed and testified by the claimant is substantially higher than what we found on the ground. The third witness testified that his quotation was based on the dimensions given to him by the claimant. Therefore, the quotation represents the cost of a bigger structure than the one that was on the ground. I will therefore reduce the quoted amount by 15 percent. I therefore award K5, 765, 605.25 for the loss of the kraal.
29. Let me come to the contents of the structures. I will start with the chicken pen. The claimant stated that he had 765 chicken in the pen – 225 of these being layers and the rest being non layers. According to him he used to make a projected annual profit K10, 800, 000.00 per annum from the chicken business and K2, 677, 500.00 per annum from the eggs business. This makes MK13, 477, 500.00 per annum profit. If this is translated into monthly profits it would be K1, 123, 125.00.
30. A reading of the statement of claim however reveals that he used to make annual sales of K10, 800,000.00 and K2, 677,500.00 respectively which is different from stating that those were profit margins. For a person to determine profit and profit margins he would have to subtract the cost of production

including expenditures on feed, transport cost and other expenses.

31. The claim was for loss of profits and not loss of sales. In my view 30% of the sales would represent a fair estimation of the profit. I will therefore award K4, 043, 250 as damages for loss of profits on the whole business.
32. The claimant also claimed K32, 200.00 as the cost of 14 trays of eggs lost in the fire. The defendant did not contest this figure. I award it.
33. The next claim is for the loss of the household items. The claimant listed the items that were in the house at the time of the fire. Some of the estimated prices were supported by quotations attached to his statement of claim. However, for some inexplicable reason he did not attach or replace all of them during the assessment proceedings.
34. I wish to acknowledge the defendant's submission questioning the truth in the claimant's testimony. The defendant made a general statement in the submissions stating that the claims were generally exaggerated and that the structures that could have been built at the visited site could not contain the volume of items that the claimant claims to have possessed at the time of the fire.
35. In my view we cannot simply dismiss the claimants claims in that manner. I do not know how a person can prove the previous existence of something that no longer exists other than telling whoever is listening that such a thing existed and may be calling some other person to corroborate. But corroboration, though good practice is not a legal requirement in proving a case in civil cases. The standard is always on a balance of probabilities. Now the question is whether, on a balance of probabilities, the claimant's claims have been proved.

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36. It was stated in *Miller v Minister of Pensions* [1947] 2 All ER 372 that the evidence must carry a

reasonable degree of probability, but not so high as required in a criminal case. In this case, in my view, the claimant has proved the total damage to his property. The question is just one of value.

37. It is possible that the claimant might indeed have included some items for the purposes of enhancing the claim. The claimant included 28 gauge iron sheets, 12 feet in length. I wonder how there could be total damage of iron sheets in what we can safely call a fast fire. In my view 28gauge iron sheets stored together in a bundle cannot be expected to completely perish. The same goes to wheel barrows and metals. In my view these could not have suffered total damage.
38. Further, apart from the items outlined at paragraph 36, the claimant did not bring in evidence of latest prices for the rest of the items. For special damages that were pleaded by the claimant, he needed to bring quotations during assessment to prove their value. Especially considering that the final submission maintains the pleaded sum. How the claimant came to that sum, is not known.
39. Admittedly, the list of documents filed together with the claim, contained quotations for most of the lost items. But that list is not evidence. The claimant needed to file a fresh list or adopt that list in evidence for it to be used for assessment. He did not.
40. In view of the observation I can only award the specifically proved values as loss of household goods. The other loss can safely be covered in the damages for inconvenience that will be considered later.
41. Let me acknowledge that in some cases, he explained that he could not find exact or comparable replacement, so he got a quotation for the alternative on the Market. The following is thus my assessment on the loss of household items:

- a. Solar panels and accessories

The claimant produced a quotation worth K1, 180,000.00. He was taken to task over the difference in price from what he originally claimed. In fact, he claimed a far much lower figure from the original claim. His explanation was that the panels in the quotation were different from the ones he found on the market. The original ones were apparently of a high capacity than the ones he found. I find this explanation plausible and I award him K1, 180,000.00 on this claim.

b. Petrol water pump

In the statement of claim the claimant claimed that he lost an electric water pump and accessories. However, in the witness statement he claimed the price of a petrol water pump and a heavy duty flat lay pipe. His explanation was that he claims the petrol water pump as an alternative. Again, in my view, you do not expect to get an exact copy of what was lost in the fire 10 years down the line. The price of the alternative pump sounds reasonable to me. I award the claimant K600,000.00 for the water pump.

c. Audionic Radio

The claimant original claim stated that he lost a JVC 3 CD changer. He did not bring any evidence of the current price for the CD changer. However, he did manage to get a quotation for an audionic radio, battery and microphones. Whereas the CD changer can be replaced by a Radio I do not think the rest of the items on the quotation are justified in the circumstances. Unfortunately, there is no way to assign the prices to each item as the quotation has come as a single price covering everything. In the circumstances I am unable to make an award on that head.

Doors and door frames

- d. In paragraph 25 of his witness statement the claimant claimed 14 doors. In the claim it was 7 doors and 7 frames. He was forced to remove the item in the heat of cross-examination. However, in re-examination he clarified that it was just an error that stated 14 doors, what he actually meant

was 7 doors and seven door frames. Indeed, the quotation shows seven doors and seven door frames. However, the claimant indicated that some of the doors/frames were supporting the house. My understanding is that they were fixtures to the structure. He did not elaborate how many were fixtures and how many were for future use. In any event those that were fixtures to the structure have been adequately compensated in the amount awarded for the rebuilding of the house. Since we do not know the numbers of those that were just being kept as stores I will not make an award on this one.

e. Furniture

The undisputed prices for the rest of the furniture are as follows:

- i. Dining set of six chairs and one table – K275, 000.00
- ii. 1 double bed- K85,000.00
- iii. 1 three quarter bed – K65,000.00
- iv. One single bed – K50,000.00

I award the amounts as submitted.

- f. Counsel for the defendant took issue with the submission of a quotation for new mattresses and pillows. In my view the claimant was justified to base his claim on such a quotation. The simple reason being that this was a total loss and the measure of damages is a replacement cost. It is common knowledge that there are no second hand mattresses commonly sold on the open market. Even if there were it would be impossible to gauge the degree of wear. In the circumstances I award the claimed sum of K122, 119.96.

42. The claimant also pleaded for damages for the inconvenience suffered following the fire. This is a nonpecuniary loss for which I must award a general sum. In the case of *William Bwanamakowa v Electricity Supply Corporation of Malawi Limited* (2013) CC no. 516 (Zomba District Registry) the claimant was awarded K1, 600,000.00 as Damages for inconvenience.

43. A long time has passed since that award. I am also aware of the fact that the value of the kwacha has

been lost due to exchange losses and inflation since the assessment exercise took place. I am of the view that the general award for inconvenience will adequately cover these losses. In this case I will award K10, 000,000.00 as damages for inconvenience.

44. The summary of the award is therefore as follows:

- a. Damages representing the loss of the chicken kraal – MK5, 765, 605.25
- b. Damages representing the loss of the house – MK 5,701, 663.00
- c. Damages for loss of profits – MK 4, 043, 250.00
- d. Damages for loss of chicken eggs – MK 32, 200.00
- e. Damages for loss of household items – MK2, 377, 199.96
- f. Damages for the inconvenience –MK10, 000,000.00
- Total – MK 27, 419, 718.21

45. I also award costs of these proceedings to the claimants.

Delivered this 12th day of January 2023



CHIMBIZGANI MATAPA KACHECHE

DEPUTY REGISTRAR