IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1037 OF 1994

BETWEEN:

S N SIVASWAMY..... PLAINTIFF

and

AGASON MOTORS LIMITED ..... DEFENDANT

CORAM: **Tembo, Acting J**
Kaphale, Counsel for the Plaintiff
Ng'ombe, Counsel for the Defendant
Fukundo, Official Interpreter
Namangwiyo, Recording Officer

J U D G M E N T

This case concerns a contract of employment which was verbally concluded between the plaintiff and the defendant on 21st September, 1993. By that verbal contract, the Defendant had offered to employ the plaintiff and the plaintiff had verbally accepted to be employed in the Defendant Company as a Workshop Manager. The plaintiff is a national of India who was at that time in the country on another contract of employment with some other firm. The verbal agreement had to be reduced in writing (into a written contract) by the defendant inorder for both parties thereto to sign it. By the date of the commencement of these proceedings the defendant had not yet done so. Meanwhile, the plaintiff is claiming special and general damages from the defendant for the breach of the verbal agreement of employment, as follows:

(a) his salary from 1st March 1994 to 23rd March, 1994, to be assessed;

(b) K13,500.00 being unpaid notice pay;

(c) K10,100.00 being unpaid school fees;

(d) loss of salary for 7 months from 23rd March, 1994 to 20th October, 1994 and /or general damages.

(e) K10,038.00 being the value of air fares for the plaintiff's wife and daughter from Malawi to India;

(f) K4,000.00 being damages for unlawful ejection from the house two months before

time (calculated as two months rentals);

(g) loss of use of home furniture for two months;

(h) K600.00, being value of fuel for three months;

(i) value of services of a guard and house boy for three months to be assessed;

(j) K300.00 being value of water for two months;

(k) K100.00 being value of water for two months;

(l) damages for loss of use of the car to be assessed; and

(m) Costs.

The evidence of the plaintiff was to the effect that he had joined Agason Motors Limited in September, 1993, as a Workshop Manager; and that by then all the terms of contract for his employment in the defendant Company, in that capacity, had been verbally concluded between him and the defendant, with only one exception. The term regarding notice, or notice pay, upon termination of the contract had not been agreed. It was also the evidence of the plaintiff that the defendant had employed the plaintiff on expatriate terms. In that connection, the plaintiff exhibited a copy of an application for a temporary employment permit which application had jointly been made to the Immigration Office by the plaintiff and the defendant. It was marked Exh. P1. The application had been received by the Immigration Office on 5th July, 1993, and it was so stamp dated. Thereafter, the Immigration Office had issued to the plaintiff a temporary employment permit stamp dated 29th December, 1993, which the Immigration Office had made to have retrospectiveeffect from 24th June, 1993, and to be valid for a period of two years until 23rd June, 1995. A copy of the temporary employment permit was exhibited and marked Exh. P2. The plaintiff further stated that, as evidenced by paragraph 11 (a) of Exh. P1, he had verbally agreed with the defendant that the annual salary for the post of a Workshop Manager to be payable to the plaintiff would be K54,000.00. The other terms likewise agreed upon between the plaintiff and the defendant were as follows: that the defendant would provide to the plaintiff a free furnished house; Free electricity; free water; a company car with fuel for official and personal use of the plaintiff, free services of a watchman; a houseboy, medical facilities; air passages at the commencement and end of the contract period for the plaintiff and his family from and to India; a gratuity of 25% of the plaintiff's salary at the end of the contract

period; and education allowance for the dependant children of the plaintiff in Malawi. It was also the evidence of the plaintiff that upon his commencing work as a Workshop Manager, pursuant to the verbal employment contract, the defendant wrote to him on 2nd March, 1994, respecting the extent of water, electricity and fuel allowances. By that letter, marked Exh. P8, the defendant had placed limitations on those allowances as follows: water, maximum allowance per month K50.00, Electricity, maximum allowance per month K100.00 and fuel K200.00 per month. Any excess in expenditure beyond those limitations had to be met by the plaintiff personally. The plaintiff informed the Court that he only had one child at school whose school fees thedefendant did not pay. Instead, the plaintiff had paid all the school fees in the aggregate amount of K10,100.00 as evidenced by receipts and cheques tendered in evidence marked Exh. P5 for an amount of K3350.00, Exh. P6 for an amount of K3,000.00 and Exh. P7 for an amount of K3,750.00. The three payments represent school fees for the three academic terms during which the plaintiff's child was admitted to a private secondary school known as Lilongwe Private School in the 1993/94 academic year. The plaintiff has told the Court that the defendant did not reimburse the plaintiff of those expenses at all.

The plaintiff told the Court that the contract of employment had been negotiated between him and the defendant in 1993, upon the expiration of the plaintiff's contract of employment with another firm then operating here in Malawi. The plaintiff had served on expatriate terms even with that earlier firm. So, at the end of the plaintiff's employment with that firm and before the plaintiff had joined the defendant Company, the plaintiff was required to travel to India for which he was given return air tickets by the defendant subject to the plaintiff reimbursing the defendant of the expenses involved in the purchase of the tickets for the plaintiff's travel from Malawi to India at that time. The total cost of all the air tickets was K18,593.00. This amount included the cost for the air tickets for the plaintiff and his family from India to Malawi as well as a one way ticket for the travel of the plaintiff only from Malawi to India. The plaintiff conceded before me that it was not part of the responsibility of the defendant to have provided an air ticket to the plaintiff for him to travel from Malawi to India in June, 1993. It was for that reason that the plaintiff further told the Court that he still owed the defendant an amount in respect of the price of the air ticket which the plaintiff used when he travelled to India from Malawi in June, 1993.

The plaintiff also told the Court that upon noticing that the defendant had continued to show no intention of reducing the verbal contract in writing, he on several occasions in writing sought appointments to discuss the same and other issues related thereto with the Managing Director of the

defendant, but to no avail. Eventually, the plaintiff received a letter from the defendant dated 23rd March, 1994, which was marked Exh. P9 by which the defendant terminated the plaintiff's contract of employment; and thereunder issued to the plaintiff a cheque for salaries of the months of March and April, 1994. The defendant had by that letter informed the plaintiff that the plaintiff had gratuitously been paid the salary for the month of April, 1994, as, in the view of the defendant, the plaintiff ought to have given to the defendant notice of termination since, the defendant alleged, it was the plaintiff who had earlier on expressed his intention to leave employment. The plaintiff further told the Court that when he went to cash the said cheque at the Bank, he noticed that the defendant had already issued instructions to the Bank for stopping payment of the chequeand accordingly the cheque was not cashed as evidenced by Exh. P10 and Exh. P11.

The plaintiff also told the Court that, as a matter of fact, he had not himself given notice to the defendant for the termination of the contract as it was alleged by the defendant. The plaintiff, by his letter dated 4th February, 1994, Exh. P13, had merely sought an amicable settlement of a number of outstanding issues between him and the defendant, most important of which was the need for a written contract. The plaintiff so much wanted a written contract then in order that, inter alia, he could be authorised to effect remittances of part of his earnings to India. It was incumbent upon the defendant that upon signing a written contract, the defendant would have submitted a copy of the same to a Commercial Bank of the plaintiff notifying the Bank of the fact that the plaintiff could effect remittances abroad, in particular India, of any amount not exceeding two thirds of the plaintiff's salary and further that the plaintiff was in possession of a valid temporary employment permit from the Immigration Authorities in that regard. Besides that, the plaintiff also wanted to seek a refund from the defendant of expenses the plaintiff had incurred in respect of school fees of his dependant child, then, with the plaintiff in Malawi. The plaintiff further told the court that he had not accepted the one month notice for the termination of the contract given by the defendant. It was the view of the plaintiff that the circumstances of his employment contract, and due regardbeing had to the position which had been occupied by the plaintiff in the defendant company, an appropriate notice therefor would have been a period of three months. Accordingly, the plaintiff is now claiming damages therefor in the amount of K13,500.00 being unpaid notice pay. Consequent upon receipt of the defendant's letter of termination, Exh. P9, the plaintiff was allowed to remain in the Company house until May, 1994, when he was ejected therefrom, for which the plaintiff claims K4,000.00 as damages for unlawful ejection from the house, same being calculated as two months rent. The defendant had not issued to the plaintiff air tickets for the plaintiff's return to

India together with his family, then. Consequently, the plaintiff purchased air tickets for his wife and child to travel to India at the total price of K10,038.00. The plaintiff is claiming a refund of the same from the defendant. This amount is evidenced by a copy of an invoice dated 24 June, 1994, from SKYlinks Travel Bureau on which was endorsed cash receipt No. 7259 of the same date for the amount K10,038.00. The invoice was Exhibited and marked Exh. P12. Besides these claims, the plaintiff has made all of the claims set out above, namely, refund of K10,100.00 being unpaid school fees by the defendant for the dependant child of the plaintiff; 7 months salary, calculated from 23rd March to 20th October, 1994 or general damages, it being the view of the plaintiff that upon termination of the employment contract, the defendant did not issue to the plaintiff air ticket for the return of the plaintiff to India until on 20th October, 1994, upon the intervention ofthe Immigration Authorities, who had then compelled the defendant to do so. It is the case of the plaintiff that during those months he could not seek any other employment in the country, but on the other hand had he immediately travelled to India, in March or April, he could have found employment; hence he now makes that claim. The plaintiff also claims damages for loss of use of furniture for two months, K600.00 being value of fuel for three months, value for services of a guard and house boy for three months. The plaintiff also claims K300.00 being value of electricity for three months and K100.00 being value of water for two months. He also claims damages for loss of use of a car and the costs for this action.

Mr Panjwani was the only witness of the defendant. He is the Managing Director of the defendant Company. It was his testimony that the plaintiff had applied for a job in the defendant company and that the plaintiff had been granted the job. Mr Panjwani also told the court that the negotiations for the contract of employment in that regard, had been conducted in Malawi. He also informed the court that for that purpose an application for the temporary employment permit had jointly been made by himself, on behalf of the defendant, and the plaintiff, that indeed consequent upon that application being made the Immigration authorities issued to the plaintiff a temporary employment permit. The two documents hereby referred to are the same documents referred to by the plaintiff and which were exhibited by the plaintiff, then, marked Exh. P1 and Exh. P2. Mr Panjwani further agreed with the plaintiff that the contract of employment under consideration in this case had been concluded verbally with the condition that the defendant would put it in writing ; and further that all the conditions had been agreed except the one relating to notice upon termination of the contract. The terms and conditions of employment were the same as those mentioned to the court by the plaintiff. However, Mr Panjwani, told the Court that the oral contract was not reduced to writing by him because of the subsequent conduct of the plaintiff. In the view of

Mr Panjwani, the plaintiff had then made numerous inconsistent demands which rendered the defendant unable to reduce the oral contract in writing, and eventually resulted in the termination of the contract by the defendant. A letter of the plaintiff dated 7 Janauary, 1994, marked Exh. D1 was relied upon by the defendant in that regard. The defendant, thereby, maintained that the termination of the contract, on supposedly one month notice, was not wrongful as the oral contract had not settled the question of notice. To support the view that a notice period was not agreed upon, a letter of the plaintiff's legal practitioners dated 4th May, 1994, marked Exh. D2, was exhibited by the defendant. The defendant made a counter claim for a refund from the plaintiff of half the value of the air tickets bought for the plaintiff and his family in June, 1993, namely, K18,593.00. The defendant maintained that half the value thereof, gave an amount of K9,296.50 to be refunded to the defendant by the plaintiff. However, the defendant conceded the fact that the value of the ticket to be refunded to him by the plaintiff ought to be less the amount for the unused ticket at the value of K1,621.00 in respect of the plaintiff's son who did not travel to Malawi from India or at all, see Exh. D4, therefor. The value of that ticket had been refunded to the defendant by the Travel Bureau from which the tickets had been bought. The net result is that the plaintiff ought to pay back to the defendant the sum of K7,675.50t.

The foregoing is the evidence adduced by both parties to this action with and by which I should determine the claims made by the parties against each other. I remind myself of the evidential rule that he who asserts must prove the claims and not he who denies. The effect of that rule is that the obligation of satisfying the Court on an issue rests upon the party who asserts the affirmative of the issue. On the standard of proof required for that purpose, the plaintiff should be entitled to the verdict if his evidence establishes a preponderance of probability in his favour, that is to say that, if he persuades me of the fact that his version of the facts is more probable than that of the defendant in respect of any or all of the claims he has made against the defendant or indeed in respect of the counter claim made against him by the defendant.

The first issue I should determine is one relating to the question whether the evidence adduced discloses that a valid employment contract had been concluded between the plaintiff and the defendant. In his submission, counsel for thedefendant urged me to find that there was no employment contract concluded as there was so much in dispute that the parties had to settle such disputes by discussions sought by the plaintiff. Counsel for the defendant further submitted that even if I find that there was a valid oral contract of employment concluded between the parties such contract would be invalid for lack of compliance with the provisions of section 12 (1) (e) of the Employment Act, which provisions,

counsel submitted, required that contracts of employment of the kind to which that of the plaintiff related ought to be made in writing and bear signatures of parties thereto. To begin with let me observe that as between the parties, thus the plaintiff and the defendant, the question as to whether there was ever made an oral contract of employment between them was not disputed. It was indeed the clear evidence of both parties that they had verbally concluded between them an employment contract, by which the plaintiff was offered a job by the defendant and the plaintiff had accepted the offer to work for the defendant company as a workshop manager and for which the defendant had further agreed to pay the plaintiff an annual salary of K54,000.00 with several fringe benefits including the provision to the plaintiff by the defendant of free fully furnished company house, free services of a watchman, house boy, water, electricity and a company car, to mention but a few of those benefits. I refer to **Chitty On Contracts, 25th Ed. at pages 1, 25, 157 and paragraphs 1, 41 and 261,** respectively, on the phenomena of contract, as follows:

> "A contract is a promise or set of promises whichthe law will enforce. The main justification for legal enforcement of promises is an economic one (namely that) trade and commerce would be seriously impeded if the law permitted a promisor to break his promise without, at least, placing him under an obligation to pay compensation for the loss occasioned by his default... There may be said to be three basic essentials to the creation of a contract (namely) an agreement, contractual intention and consideration. The normal test for determining whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other.
>
> In answering this question, the courts apply an objective test: if the parties have to all outward appearances agreed in the same terms upon the same subject - matter, neither can generally deny that he intended to agree....The traditional definition of consideration concentrates on the requirement that "something of value" must be given and accordingly states that consideration is either some detriment to the promisee (in that he may give value) or some benefit to the promisor (in that he may receive value)....The general rule of English law is that contracts can be made quite informally: no writing or other form is necessary
>
> ...all formal requirements in the law of contract are contained in statutes which deal with specific contracts.".

Section 3 of the Employment Contract Act (Cap. 55:02) defines "contract" as follows:

> "means a contract of employment, whether oral or in writing, whether express or implied, by which an employee enters the service of an employer but does not include a contract of apprenticeship made in accordance with the "Apprenticeship Act.".

In the instant case, the parties had verbally exchanged a set of promises which I hold that the law must enforce. Indeed there was an offer made by one party, namely the employer (who is the defendant in this case) and the offer was accepted by the employee (who is the plaintiff in this case). The offer was for a job, in the post of a workshop manager which the plaintiff accepted. There was consideration too. For the work done or services rendered by the plaintiff, in his capacity as a Workshop Manager, the defendant promised to pay, and in fact paid, to the plaintiff an annual salary of K54,000.00. and fringe benefits setout above. Both parties to the oral employment contract exactly did what each promised the other in accordance with the terms of that contract, except for the conduct which constituted the breach thereof, to which I will revert later in this judgment. Thus, the conduct ofboth parties in implementing the oral contract according to its terms, evidenced the fact that they must have thereby meant business or in other words, they had by their oral contract intended to enter into legal relations. Accordingly, I do find that the evidence adduced before me clearly establishes that there was concluded a valid oral employment contract between the plaintiff and the defendant. As to the submission of counsel for the defendant that I should hold that section 12 (1) (e) of the Employment Act rendered that oral contract void, on account that upon its conclusion the contract was subsequently not reduced in writing and, therefore, not signed by the parties thereto, I have this to say. The provisions of that section are as follows:

> "Every contract for employment of persons not ordinarily resident in Malawi who do not pay a rate levied by a District council under Local Government (District Councils) Act, shall be signed by the parties thereto, attested and registered in accordance with section 13.".

Counsel for the defendant had submitted that the contract of employment under consideration belonged to the category of contracts of employment to which section 12 of the Employment Act applies; that the requirements for the contract to be in writing and to bear the signatures of the parties thereto were mandatory; and that the contract under consideration should be held to have been invalid as theparties did not comply with the mandatory provisions of section 12 (1) (e). It may well be that the contract under consideration belonged to the category of contracts to which section 12 (1) (e) of the Act applies, but I will in this judgment not determine that issue, as I hold that section 12

(1) (e) of the Act is not applicable to the contract under consideration by reason of section 2 (1) of the Employment Act. That section provides that:

> "The Minister may, by notice published in the Gazette, apply all or any of the provisions of this Act to such contracts or classes of contracts or to such employees or classes of employees as may be specified in such notice, and the relevant provisions of this Act shall apply accordingly to any employers or employees who are parties to such contracts.".

The Minister did make an order for that purpose, namely, Employment Act (Application) Order which makes the following provisions:

> "2 The provisions of the employment Act shall apply to every employee except:
>
> (a) an employee whose earnings (exclusive of overtime earnings, commission or other emoluments) are equivalent to a rate of or exceeding K480.00 per annum; Provided
>
> that sections 11, 51, 52, 54, 55, 56, 57, 58, 59, 61, 62, 63, and 64 shall apply to every employee.".

Consequently, I hold that the oral employment contract between the plaintiff and the defendant was valid and is not rendered void by reason of section 12 (1) (e) of the employment Act as that section is not applicable to the contract and the parties thereto since the plaintiff's annual salary, at K54,000.00, was clearly in excess of K480.00.

I must now determine the question respecting the party to the employment contract who was responsible for its breach and termination. The plaintiff, in his evidence, told the court that upon concluding the contract with the defendant, the defendant was subsequently in breach thereof in several respects. Firstly, the defendant did not reduce the verbal employment contract in writing. It is indeed the clear evidence of both parties that the duty to reduce the oral contract into writing had been placed upon the defendant, and it is also a fact that by the date of termination of the oral contract, the defendant had not yet done so. In his evidence, the defendant sought to impress upon the court to hold the view that the oral contract had not been reduced in writing and that it was eventually terminated by reason of the inconsistent demands of the plaintiff. Upon a careful review of the evidence before me, I do not agree with thedefendant that he failed to reduce the oral contract in writing because of the too many inconsistent demands of the plaintiff. The defendant did not adduce evidence of the

inconsistent demands which he alleged that had been made by the plaintiff and which demands had rendered the defendant unable to reduce the oral employment contract in writing. As a matter of fact, the evidence clearly shows that the conduct of the defendant in not having reduced the oral contract in writing, as agreed, had been the more reason why the plaintiff had on several occasions sought appointments to discuss that issue among others, with the defendant, most of which requests had not been granted by the defendant. By reason of that conduct on the part of the defendant, the plaintiff was unable, throughout the entire period of his engagement in the defendant company, to remit any part of his earnings in the country to India. This was, quite naturally, a matter of great concern to the plaintiff. Secondly, the defendant did not pay school fees for the defendant child of the plaintiff and the plaintiff had paid his own school fees in the aggregate amount of K10,100.00. The plaintiff's letter to the defendant marked Exh. P13, represented an act of desperation on the part of the plaintiff in the quest for amicable solution to his employment problems caused by the conduct of the defendant then. The defendant subsequently terminated the contract purportedly on the ground that by Exh. P13 the plaintiff had expressed his intention to leave employment. I do not see anything to that effect in that letter. Quite to the contrary, the plaintiff had thereby urged the defendant tosettle their differences amicably, and in so doing he had called on the defendant to preserve the interests of both parties to the employment contract. It is, therefore, quite obvious that a call by the plaintiff for an amicable settlement of the concerns of the parties, was inconsistent with the allegation of the defendant that by that letter the plaintiff had expressed his intention to leave employment. As a matter of fact, in that letter the plaintiff had merely recorded his own impressions as to what the defendant had wanted to see the plaintiff do in the unfavourable employment climate which the defendant had deliberately created, supposedly to frustrate the plaintiff. I, therefore, do not find that the plaintiff had expressed his intention to leave employment. It is expedient that I set out herebelow the text of Exh. P13, as follows:

> " To the Managing Director
> Agason Motors.
>
> Dear Sir,
>
> I have very clearly understood from your attributes and recent developments that you expect me to give you a letter of notice effecting my disassociation from the services of "Agason Motors".
>
> As I am a foreigner and working for a proprietoryship management, I have no option but

to agree with the decision of the proprietor, with certain reservations. As this is a matter of family concern, I have called my daughter from Lilongwe and we are discussing the pros and cons of my acceptance to the present situation.

In the absence of any (written) contract, we have to settle this issue amicably. I suggest that a meeting be arranged on Monday the 7th March, 1994, wherein we can discuss the said matter in a cordial atmostphere and reach a final decision without jeopardising the interest of any party.

I am sure this Monday meeting should settle this issue once and for all.

4th February 1994
LIMBE

Thanking you
Sincerely"

END

The discussions were held as sought by the plaintiff and arising from the outcome of the meeting, the defendant had endorsed on Exh. P13 the following remarks:

"We had meeting and agreed that should be given one month salary Extra and by end of April. He will leave the house and give back the car.".

It is not clear if the meeting was attended by the plaintiff. Be that as it may, one thing is very certain, namely, that Exh. P13 did not convey an expression of the plaintiff's intention to leave employment and further that the endorsement on Exh. P13 had merely evidenced the views of the defendant as to what the defendant had intended the plaintiff to do, or the defendant to do for the plaintiff, in those circumstances. Thereafter, the defendant wrote to the plaintiff, in effect, terminating the contract as follows, (as evidenced by Exh. P9):

"Dear Mr Siva Swamy,

Letter of Termination

Enclosed find cheque number **945729** for **K6,682.00** as you have given us notice that you would like to leave. The cheque is made up as follows:

March, 1994 salary	K3,341.00
April, 1994 salary	K3,341.00
	K6,682.00

> We have just paid you April salary but you were supposed to pay us as you are the one giving us notice.
>
> We wish you the best whereever you go.
>
> **P/S** As discussed the car and the House should be surrendered soon not later than 30th April, 1994.".

As I have observed above, the defendant did not adduce evidence to show that the plaintiff had at all voluntarily expressed his intention to leave employment. The text of Exh. P13 is quite inconsistent with any such allegation. When the text of Exh. P13 is read together with the text of Exh. P9 I feel quite certain to hold that the latter merely and unequivocally evidences the fact that the defendant, and not the plaintiff, had eventually formally terminated the oral contract of employment between the parties.

Last but one, I should determine the question of notice for the termination of the oral contract under consideration. Both parties were agreed, in the evidence adduced by them before me, that they had not settled the question of notice under their oral employment contract. Counsel for the plaintiff submitted that where a contract of employment is silent as to the notice which is to be given by either party to terminate the contract, the law is that a term must be implied that reasonable notice should be given. This isindeed a common law position which was affirmed by Bayley J in the case of **Winstone v Linn (1823), 1 B and C 460.** In the case of **Swale v Ipswich Tannery (1906), 11 Com. Cas. No. 88** it was also held that in the absence of an express agreement as to the determination of an employment contract, the question in each case must be one of the reasonableness of the notice. If in the particular type of contract a custom or practice can be found to exist, that custom or practice may be treated by the court to govern the relations of the parties in that respect. As to what would constitute a reasonable notice, it is a question of fact to be decided according to the circumstances of each case, and it was so held by the court in the case of **Payzu v. Hannford (1918) 2 K B 348.** Let me mention or cite a few periods of reasonable notice to which persons in various employment have been found to be entitled. In the case of **Speakman v Calgary City (1908) 9 W L R 264** it was held that in the case of a city engineer a period of less than six months would not be reasonable notice. In the case of Lazarowicz v Orenda **Engines Ltd (1961) O R 141,** it was held in respect of a professional engineer with a back-ground of educational and considerable technical experience that he was entitled to three months notice. In the cases of **Hill V C A Parsons and Company Limited (1971) 3 ALL E R. 1345 and James V Thomas H. Kent and Company Limited (1951) 1 K B 551,** it was held that any period of six to twelve months would constitute a reasonable notice for a chartered engineer.

Turning to the instant case, the plaintiff is claiming compensation or damages on the basis that appropriate and reasonable notice in the circumstances of the employment contract of the plaintiff would have been three months notice. I take note of the fact that the plaintiff was an engineer who had occupied a position of Workshop Manager and designer; that he was employed on expatriate terms and indeed that the plaintiff was a person of considerable experience in his field of expartise. In those circumstances, it would not be appropriate to regard one month notice as having been a reasonable notice for the determination of the contract of employment of the parties to this case. Accordingly, I hold that three months would have been a reasonable notice period for the determination of the contract of employment in the instant case.

Having found that the plaintiff and the defendant had concluded between them a valid employment contract; that the defendant was in breach of the contract in a number of respects as set out above; and finally that the defendant wrongfully terminated the contract; I order that the plaintiff be granted, and he is hereby granted, all the damages which he has claimed from the defendant, as follows:

(a) K3,375.00 being salary (inclusive of income tax to be deducted) for March 1st to March 23, 1994;

(b) K13500.00 being unpaid notice pay clculated at the plaintiff's monthly salary of K4,500.0 multiplied by the notice period of three months;

(c) K10,100.00 being an amount in respect of school fees paid by the plaintiff in respect of his daughter which fees the defendant had not reimbursed the plaintiff;

(d) K31,500.00 being the plaintiff's loss of salary from 23rd March 1994, when the defendant had wrongfully terminated the contract, to 20th October, 1994, the date on which the defendant had provided air tickets to the plaintiff for the plaintiff's travel from Malawi to India;

(e) K10,038.00 being the expenses for air fares in respect of the plaintiff's wife and daughter travel from Malawi to India, which expenses had been incurred by the plaintiff and which the defendant did not reimburse the plaintiff;

(f) K4,000.00 being damages for unlawful ejection of the plaintiff from the company house two months before the expiration of the notice period (calculated as two months rent);

(g) loss of use of home furniture for two months;

(h) K600.00 being value of fuel for three months;

(i) value of services of a guard and house boy for three months;

(j) K300.00 being value of electricity for three months;

(k) K100.00 being value of water for two months; and

(l) damages for loss of use of the car.

Unfortunately, I am unable to fix the quantum of damages for items (g) in respect of loss of use of home furniture for two months; (i) in respect of value of services of a guard and house boy for three months; and (l) in respect of damages for loss of use of the car. My inability in that respect is due to the lack of material on which I could basethe assessment of the damages sought. It seems expedient to me that I order that counsel be heard on these points and accordingly I direct that counsel do attend for that purpose, before the Registrar at Blantyre on a date to be appointed by the Registrar. Last but one, on the question of damages, the defendant succeeds in respect of his counter claim against the plaintiff in the amount of K7,675.50t.

Finally, I turn to the plaintiff's claim for costs in this action. In the case of **Agricultural Development and Marketing Corporation versus Stambuli M S C A Civil Cause No. 6 of 1984,** the Supreme Court noted the following:

> "In quoting 0.62, r.2 sub - rule 9, Mr Msaka emphasized that the exercise of discretion by a judge in awarding costs must be done on fixed principles, namely that costs must follow the event, unless special circumstances are shown which may justify a judge in depriving a successful party of his costs. We agree with this observation which lays down the correct principle.".

Let me observe that the plaintiff had never disputed the substance of the defendant's counterclaim both during, and before the commencement of, these proceedings. In fact, it

has been clearly shown that the plaintiff, prior to the termination of his employment contract, had sought appointment with the defendant to determine the manner inwhich the plaintiff would have repaid to the defendant the expenses for air tickets, the subject matter of the defendant's counter claim. The plaintiff has succeeded in all of the claims he has made against the defendant, although the defendant too has succeeded in respect of the counter claim. In the circumstances, I award the costs to the plaintiff.

PRONOUNCED in open court this 8th day of February, 1995, at Blantyre.

A K Tembo
ACTING JUDGE