



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
SITTING AT LILONGWE  
CIVIL DIVISION  
CIVIL CAUSE NUMBER 605 OF 2020

BETWEEN:

DONALD KOMANI MKANDAWIRE

CLAIMANT

AND

THE ATTORNEY GENERAL

DEFENDANT

BEFORE: CHILUNGA-CHIRWA (ASSISTANT REGISTRAR)

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APPEARANCES:

Mr. Phombeya for the Claimant

Mr. Kumwenda, Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order upon assessment of damages in this matter. The assessment followed a default judgment which adjudged that the Claimant be awarded repairing costs, hiring costs and costs of the action.

The claimant was the sole witness during assessment and he gave evidence which is uncontroverted. In this witness statement he states that he is the owner of motor vehicle registration number NA

6515, a Mercedes Benz AMD Salon, which was extensively damaged as a result of a road traffic accident that occurred on the 23<sup>rd</sup> day of January, 2020. It is stated that on the said day his wife Otchiwe NKosi, was using the car. It later collided with another vehicle which was negligently driven by the defendant's agent/servant in the course of his employment. According to the statement, the accident led to damage of the claimant's vehicle, as it had its front bumper damaged, offside lens broken and offside fender damaged. Attached are pictures of the damaged motor vehicle marked as DKM2. When the claimant went to Malawi Defence Force where the driver of the other vehicle was working, he was asked to bring quotations for the repair of the vehicle. The claimant obtained the quotations and produced the same to the Malawi Defence Force, upon which they told him they would get back to him.

The claimant states that when he noted that he got no feedback from the MDF, he decided to hire alternative cars from the month of March until the Month of August, 2020 and the total hiring amount came to MK13, 650,000.00. He attached copies of invoices from Kambwali Investments marked as DKM3 as evidence of the hires.

He further states that in the month of August, 2020 he had EZK general supplies to fix the said vehicle and this amounted to MK7, 430, 427.00. He attached a copy of the invoice marked and exhibited as DKM4 as proof of money used in repairing the vehicle.

He prayed that he be awarded the repairing costs, costs of hiring a replacement vehicle and costs of the action.

The issue falling for consideration is how much should be awarded under the two heads of damages claimed.

In the case of **Ngosi t/s Mzumbazumba Enterprise v H. Amos Transport Company Limited** [1992] 15 MLR 370 it was stated as follows:

*"assessment of damages.... presupposes that damages have been proved. The only matter that remains is the amount or value of the damages"*

In the case of **Livingstone v Raywards Coal Co (1880) 5 App Cas 25 at 39** it was stated as follows:

*"...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party*

*who has been injured or who has suffered, in the same position as he would have been had he not sustained the wrong for which he is now getting his compensation or reparation”*

There is a demarcation between general damages and special damages: the former are such that the law will presume to be the direct natural or probable consequence of the action complained of. The special damages, on the other end are such as the law will require special proof of what is claimed. (See the case of **Stros Bucks Aktie Bolag v Hutchinson (1905) AC 515**).

Special damages are required to be specifically pleaded and must also be strictly proved. This is according to the case of **Govati v Monica Freight Services (Mal) Limited [1993] 16(2) MLR 521 (HC)**. Accordingly, evidence must be adduced by the claimant claiming special damages. And where the evidence brought by a claimant fail to meet the strict requirement of proof, the special damages will not be awarded. (see **Wood Industries Corporation Ltd v Malawi Railways Ltd [1991] 14 MLR 516**).

I have considered the evidence by the claimant in this matter in light of the above provisions of the law. The claimant has brought evidence supporting the hiring costs claimed, namely DMK3 and also evidence supporting the repairing costs, DMK4. None of these have been challenged by the Defendant. I find that what is contained in the documents is in line with what is claimed. I therefore award the damages claimed, namely:

- i) MK13, 650,000.00 as damages for hiring costs
- ii) MK7,430,427.00 as damages for repairing the vehicle

Party and party costs shall be assessed by the Court. The Claimant should file bill of costs within 14 days of today's date. It is ordered.

Any aggrieved party may appeal against this order within the stipulated time frame.

Made in Chamber at Lilongwe this.....<sup>7<sup>th</sup></sup> day of July.....2022



Patrick Chilunga Chirwa

**ASSISTANT REGISTRAR**