

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NO. 349 OF 1993**

**BETWEEN :**

**F. SAULOSI (FEMALE) ..... PLAINTIFF**

**AND**

**MALAWI HOUSING CORPORATION ..... DEFENDANT**

**CORAM : W.M. HANJAHANJA, J.**

Mhone of Counsel for the plaintiff

Chagwamnjira of Counsel for the defendant

Mr Kaundama, Official Interpreter

**JUDGMENT**

The plaintiff is a victim of mistakes made by her employers, the Malawi Pharmacies Limited (MPL), and the defendant, the Malawi Housing Corporation (MHC). To a certain extent she is also a victim of her own mistakes.

The story is that she was a tenant of MHC under a Lease agreement dated 13th May, 1981 signed by the plaintiff and MHC. It was exhibited in court. MHC denies she was their tenant. In defence MHC pleads:-

**The defendant denies that the plaintiff was a lessee of any of its houses and puts the plaintiff to the strict proof thereof.**

I found this defence very strange indeed. If not evasive certainly misleading. The defence is deficient of seriousness.

Then the defence goes on:-

**The defendant denies that the plaintiff paid rent regularly and avers that at the time**

**of eviction if any which is denied the plaintiff had arrears of house rent.**

Again:-

**The defendant denies ever trespassing to or evicting the plaintiff from the house or any house..**

I find this defence vexatious, frivolous and an abuse of the process of the court and deficient of seriousness. How can it be argued that there were arrears of rent if it is denied there was a lease agreement?

This part of the defence ought to have been struck off at the early stages of the proceedings. Time was wasted to prove the existence of the lease and justification for eviction.

Orders for further and better particulars, Orders to Admit facts orders for interrogatories should be considered before trial to narrow the issues down, to define issues and to diminish expense and delay at the trial.

In my judgment if I find for the plaintiff I order that no costs be awarded for time spent on proving the existence of the Lease Agreement.

Likewise no costs for defendant for time spent to prove justification for the eviction.

The trial of this case was presided over by the learned Judge, Hon D. Mwaungulu. He heard the evidence from the beginning to the end. What remained was for him to write and deliver the judgment. He could not. He left the country for studies overseas.

The file was sent to me to prepare a judgment. I have perused carefully both the pleadings and the evidence. The only handicap I am faced with is I did not see the demeanour of the witness to be able to comment on the credibility of their evidence.

It is recorded in the file that the plaintiff was working for the MPL as an Accounts Clerk. She occupied and I understand she still occupies house No. KS 880 under a lease between her and MHC. The house is at Kanjedza in Blantyre. She produced a copy of the lease as her evidence.

Instructions were given to her employers to deduct every month money from her salary and pay rent to MHC. The request was made because she had walking problems. By that I assume she was a disabled person. MPL accepted the request and obliged accordingly. The deductions started in April 1992.

A problem, however, emerged later. MHC locked up her house because their claimed she was in arrears. Every month a statement was issued and delivered to her by MHC advising her the state of her house account.

The house was closed, in October, 1992. She immediately complained to MHC maintaining that she paid her rent through MPL regularly. On that day her child was locked out and was crying. Spectators were laughing at the child. People looked at the plaintiff as if she were a thief. At the time her property had been removed into her neighbour's house. She moved together with her children and a nun somewhere to her sister's house.

She denied that she was ever in arrears. She felt embarrassed and outraged to imagine that people thought of her as a thief because she lived in a MHC without paying rent.

Consequently upon this embarrassment here statement of claim pleads:-

**5. on or about the said 23rd day of October 1992, the defendants' agents falsely and maliciously spoke and published of and concerning the plaintiff the following chichewa words: "amenewa tawatsekera nyumba chifukwa chosalipira lenti." The English translation of the said word is as follows:- "we closed the house as the lessee does not pay rent. The words were published at the said premises to and in the hearing of Mrs Makwinja and others who were the neighbours of the plaintiff**

6. The said words in their natural and ordinary meaning meant and were understood to mean:-

**(a) the plaintiff has been guilty of dishonesty and dishonourable conduct**

**(b) that she was a dishonest person who stayed at the said premises on false pretences**

**(c) that she was incapable of honouring her own promises and therefore unfit to live in and associate with people in that locality**

**7. By reason of the premises the plaintiff has been much injured in her credit and reputation and has been brought into hatred ridiculed and contempt. AND the plaintiff claims damages for mental stress and inconvenience defamation, trespass to land and general damages.**

A neighbour Mrs Salome Makwinja was present when the house was closed. This her evidence. She is a house worker. She is unemployed. She was a neighbour to the plaintiff. MHC official told her were closing the house because the plaintiff had not paid rent.

She took the plaintiff's children to her house. They were then crying. She offered them food. They refused to take it.

The plaintiff's house was close to a bus stage. Mrs Makwinja heard voices from people at the stage. They commented that people who did not pay rent should be exposed that way. She was the only neighbour present when the house was locked because all her female neighbours go to work.

She denied under cross-examination that MHC referred to the plaintiff as a thief. The people who came to find out why the house was locked said the plaintiff was a thief.

However, the predicament the plaintiff was faced with was resolved at a meeting held between MHC official and MPL officials. She attended the meeting. It was established at the meeting that payments were made regularly to MHC on behalf of the plaintiff but that only K20.50 appeared on her ledger account as outstanding from May 1992. The balance remained unpaid at the time of the closure.

In the course of the payments MPL issued cheques for payment for a house occupied by a different tenant. This tenant occupied house number KS/801. The plaintiff's house number is KS/880. This was an error as will be seen later. MHC did not spot the error although the error appeared clearly on the MPL Remittance Advice Note. MHC accepted blame for crediting the payment into KS/801 account without checking that it was not meant for house number KS/801 but house number KS/880. A reconciliation of the payment was made.

I will illustrate:-

(A) (I) MPL's Remittance Advice 26.11.90  
EX 1 DD6

Being house rent for  
Miss F. Saulosi K35.90  
Plot No. KS/880

Receipt No. 105781 17.12.90

(ii) MPL's Remittance Advice 30.9.91 K42.00 -ditto-

Being house rent for  
Miss F. Saulosi KS/880

Receipt No. 139794 12.11.91

(iii) MPL's Remittance Advice 29.4.91 K35.90 -ditto-

Being house rent for  
Miss F. Saulosi KS/880

Receipt No. 111945 20.5.91

(iv) Remittance Advice 29.1.91 K35.90 -ditto-

Being house rent for  
Miss F. Saulosi KS/880

Receipt No. 107845 29.1.91

(v) MPL's Remittance Advice 30.4.92 EX D7

Being rent for  
Miss F. Saulosi **KS/801**

Receipt No. 64945 K42.00 4.6.92

(vi) MPL's Remittance Advice 31.3.92 -ditto-

Being rent for  
Miss F. Saulosi **KS/801** K42.00

Receipt No. 61301 22.4.92

(vii) MPL's Remittance Advice 27.2.92 K42.00 -ditto-  
Being payment for  
Miss F. Saulosi **KS/801**  
Receipt No. 145295 23.3.92 -ditto-

(viii) MPL's Remittance Advice 28.1.92 K42.00 -ditto-  
Being rent for  
Miss Saulosi **KS/801**  
Receipt No. 145247 23.3.92

(ix) MPL's Remittance Advice 31.12.91 K42.00 -ditto-  
Being rent for  
Miss F. Saulosi **KS/801**  
Receipt No. 142176 16.1.92

(B) (I) MHC's Official Receipt No. 64945 4.6.92 K42.00 EX  
DD2  
Tenant Miss F. Saulosi  
House Plot No. **KS/801**  
Cheque No. 108580 30.4.92

(ii) MHC's Official Receipt No. 65932 22.6.92 K42.00 -ditto-  
Tenant Miss F. Saulosi  
Plot No KS/880  
Cheque No. 708580 30.4.92

(iii)	MHC's Official Receipt No 74127	15.9.92	K42.00	-ditto-
	Tenant Miss F. Saulosi			
	KS/880 - Cheque No 747796	31.8.92		
(iv)	MHC's Official Receipt No. 67500	15.7.92	K42.00	EX P2
	Tenant Miss Saulosi			
	KS/880 - Cheque No. 708692	30.6.92		
(v)	MHC's Official Receipt No. 64945	4.6.92	K42.00	-ditto-
	Tenant Miss F. Saulosi			
	KS/801 - Cheque No. 708580	30.4.92		
(vi)	MHC's Official Receipt No. 74127	15.9.92	K42.00	-ditto-
	Tenant Miss F. Saulosi			
	KS/880 - Cheque 747796	31.8.92		-ditto-

#### SUMMARY

( C) Payment to correct Account No. KS/880

(I)	MPL	A	(I)	KS/880	K35.90
(ii)	MPL	A	(ii)	KS/880	K35.90
(iii)	MPL	A	(iii)	KS/880	K35.90
(iv)	MPL	A	(iv)	KS/880	K35.90
(v)	MPL	B	(ii)	KS/880	K42.00
(vi)	MPL	B	(iv)	KS/880	K42.00
(vii)	MHC	B	(vi)	KS/880	K42.00

(D) Payment to wrong Account KS/801

- (I) A MPL (v) KS/801 K42.00
- (ii) A MPL (vi) KS/801 K42.00
- (iii) MPL A (vii) KS/801 K42.00
- (iv) MPL A (viii) KS/801 K42.00
- (v) MPL A (ix) KS/801 K42.00
- (vi) MHC B (I) KS/801 K42.00
- (vii) MHC B (v) KS/801 K42.00

This summary shows the number of cheques MPL remitted payment for rent for a wrong account which is house number KS/801. In turn MHC credited those payments wrongly to house number KS/801. The plaintiff suffered as a result of these mistakes. The manner MPL and MHC handled the plaintiff's rent account to say the list was grossly unprofessional.

These mistakes could have been avoided and detected in time before the plaintiff's house was closed.

Only what was due was K20.50 at the time of closure as conceded by all parties at the meeting.

I have to find out and satisfy myself whether or not the arrears constituted sufficient reason for MHC to treat the contract as having come to an end. I have to satisfy myself that under the lease agreement a sufficient breach had arisen to justify MHC to implement clause 14 (2) of the Lease Agreement:-

**If the said rent or any part thereof whether formally demanded or not, shall be unpaid for fourteen (14) days the day on which it is payable the Corporation may at any time thereafter enter on the demised property and retake possession thereof without prejudice of it (sic) remedies for rent then accrued or breach of a covenant.**

Arising therefrom there must be evidence that the entry by MHC did or did not commit a tort in trespass.



I must also be satisfied that when MHC officials made a statement that the plaintiff was in arrears of rent payments, they were telling lies in order to make a finding in defamation.

MHC in its defence pleads:-

**4. The defendant denies ever trespassing to or evicting the plaintiff from the house and further states that even if it did the said defendant were simply carrying out their duties under the Tenancy Agreement and their conduct cannot be trespass.**

**5. The defendant denies that its agents did maliciously spread or publish the said chichewa words and puts the plaintiff to the strict proof thereof and even if the words were said are not defamatory as they presented the true state of circumstances about the plaintiff.**

The accounts clerk at MPL Mr Gunde confirmed that deductions started from April 1992. He made deductions of K42.00 each month to October 1993. The house was closed in October. He then went to MHC to find out why.

He admitted that he issued Remittance Advice Note to a wrong plot No. 801 for 880. Plot No. KS/880 was the plaintiff's house as mentioned earlier. He pushed the blame on MHC for not rectifying the error in posting the amount into the wrong account.

Mr Longwe is a senior accountant with MHC. This was his evidence. What happened was that when the plaintiff discovered that her house had been closed due to accumulation of rent she went to MHC to complain and find out why. She maintained there were no arrears. Rent was remitted to MHC regularly. For him to confirm, Mr Longwe called for the ledger to study the history of her account. He said it was discovered some rent payment was made to a wrong account for house No KS/801. It was not a misallocation as such because the accounts office was misled by the Remittance Advice notes from MPL which although in the plaintiff's name, endorsed a wrong house NO. KS/801.

The policy of MHC is that rent is due on the first day of the calendar month. Rent is payable in advance. She had not paid K20.96 since May 1993.

According to MHC policy, Mr Longwe said, the house which falls in arrears above one month or two is subjected to eviction.

The meeting found that the plaintiff by the time of eviction was K20.96 in arrears.

What made Mr Longwe to order to - reopen the house, was on a humanitarian ground, because of the physical state of the plaintiff. He felt it would be unfair and inhuman not to open the house.

The amounts credited wrongly to account for house number KS/801 was K210.00. In May the plaintiff account was debited with the amount of K230.96. After correcting the error there was since May an outstanding balance of K20.96 remaining unpaid by October when the house was closed. It was house No. KS/880 which was in arrears, the plaintiff's.

He blamed MPL for the mistakes.

I find that the undisputed facts are that an overdue amount of K20.96 remained outstanding from May to October 1993. That period is well in excess of a period allowed by MHC within which to clear off an outstanding arrears of rent. I find therefore MHC applied Clause 14 (2) properly and lawfully.

I, therefore, come to the conclusion that MHC under the circumstances, used the powers of eviction and closure legitimately. They acted, however harshly to close a house for an arrears of K20.96 considering also that the tenant was alleged to be a disabled person. Nevertheless they cannot be faulted for taking the action. It was done in compliance with the terms of the lease agreement.

The plaintiff complains that the MHC's agents made defamatory statement of her in closing the house. Mrs Makwinja heard them say MHC closed up the house because, "amenewa tawatsekera nyumba chifukwa chosalipira renti." Meaning we have locked up the plaintiff's house for non-payment of rent.

These words **per se** are not defamatory. They become defamatory, in my judgment if they are untrue and made maliciously.

In order to make them defamatory, an **innuendo** must be pleaded and proved. Such an innuendo should be proved by extrinsic facts.

According to Mrs Makwinja MHC's agents told her that the house was being closed because the plaintiff was not paying rent. This is all they said. They did not say that the plaintiff was a thief.

People came to check the house and asked her why the house was closed. It was her evidence that it was the people who said to her that the plaintiff was a thief.

I do not think what Mrs Makwinja heard from the MHC's agents is defamatory. They were telling the truth about the reasons for closing the house. It was because there was an outstanding rent arrears of K20.96 since May up to October when the house was closed up. I find there was no malice in what the agents said. It would have been otherwise if there were no outstanding arrears of rent.

If anybody was guilty of making a defamatory statement it must be the other people who said to Mrs Makwinja that the plaintiff was a thief. These were not MHC agents. MHC cannot be liable for these peoples torts. There was no judiciary relationship proved.

It is a petty, that these agents were not called by either the defendant or plaintiff to testify on what they said to Mrs Makwinja. None of these agents were called to give evidence. Even if this is what the agents said to Mrs Makwinja, it would be unsafe to accept Mrs Makwinja's evidence on the absence of the agents evidence confirming or denying the defamatory allegation especially, if made, they were made in the absence of the plaintiff.

I do not think the words complained of in the context used are capable of meaning that the defendants were guilty of defamation. They are not capable of the meaning the plaintiff attribute to them. Lord Devlin: **Lewis v Daily Telegraph Ltd 1963** 2 All E.R. 151.

**My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same as the lawyer as for the layman is as a matter of pure construction, undoubtedly true. But is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyers rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and, unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.**

**In the law of defamation these wider sorts of implications are called innuendoes.**

**A derogatory implication may be so near the surface that it is hardly hidden at all or**

**it may be more difficult to detect. If it is said of a man that he is a fornicator the statement cannot be enlarged by an innuendo. If it is said of him that he was seen going into a brothel, the same meaning would probably be conveyed to nine men out of ten. But the lawyer might say in the later case a derogatory meaning was not a necessary one because a man might go to a brothel for an innocent purpose... To say of a man that he was a fornicator meant and was understood to mean that he was not fit to associate with his wife and family and was a man who ought to be shunned by all decent persons and so forth.**

There is no evidence that the plaintiff lost friends as a result of the defamatory statement complained of. She did not become a person who was shunned by decent persons and so forth. In fact the opposite was true. Mrs Makwinja took the plaintiff's child and nun to her house and offered them food.

I hold therefore, the action in defamation has not been proved. It is dismissed. The entire action consequently is dismissed.

The question of costs has been exercising in my mind. It is not the fault of the plaintiff that a controversy between her and MHC surfaced. It was due to poor workmanship and unprofessionalism of MPL and MHC that made her suffer. But that does not mean she too, is free from blame.

MHC issued monthly statements showing the state of her account at MHC. These statements were addressed and dispatched to her.

The majority of the statements show the plot number as KS/880. She received a statement whose plot number was wrongly endorsed KS/801. When this number appeared against her name she ought to have been put on notice that an error had been made. She would have immediately informed MPL and MHC to investigate. She did not. Not surprising. The majority of tenants do not bother to read all and every details recorded in a statement. They rush to read what the balance column provides. Once they get the information they are looking for they will read no more.

Nevertheless, it would be unfair to condemn her to pay costs for failing in her case. She is a victim of a mistake made across the board all the way through by MPL, MHC and herself.

I order that each party shall pay its costs.

**MADE IN OPEN COURT** on the 27th day of August 1999, at Blantyre.

**W.M. HANJAHANJA**  
**JUDGE**