

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3646 OF 2001**

BETWEEN:

MRS E M NYIRENDAPLAINTIFF

AND

PRIDE AFRICA.....DEFENDANT

**CORAM : TEMBO, ASSISTANT REGISTRAR
Ziyendam'manja, for the Plaintiff**

ORDER

This is this court's order on assessment of damages pursuant to a default judgment entered in favour of the plaintiff dated 27th August, 2003. The judgment was entered in favour of the plaintiff on her claim for damages for trespass to and conversion of her goods as well as for loss of use thereof. The plaintiff also claims costs of this action.

The notice of hearing of this assessment was duly served on the defendants who never appeared at the hearing. That left the plaintiff's evidence totally uncontrovereted.

The plaintiff herein had been a beneficiary of the 1st defendant's loan scheme on several occasions. She had success fully paid back the said loan. And on the occasion in issue the plaintiff had been given a loan to the tune of K30,000.00 in July, 2001. She was to

pay back this loan in 20 weekly installments after investing the loan sum in a small business enterprise. The plaintiff regularly paid her installments to the 1st defendant for the whole of August, 2001. In September, 2001 she only managed to make one installment payment due to bad business. Then on 23rd September, 2001 she went away to mark examinations at the Malawi National Examinations Board.

In her absence the 1st defendant's agents who are the other defendants herein came to the plaintiff's house and took her various household items. The plaintiff tendered in evidence a schedule of items that had been taken away from her by the defendants. The item and cost are enumerated as follows:

Item	Quantity	Cost	Value
TV Screen Black & White	1	MK9,468.00	9,468.00
TV Screen Black & Cover			
Coloured glass	1	MK500.00	500.00
Dining Table	1	MK1050.00	1050.00
Display Cabinet	1	M12750.00	12750.00
Dinning Chairs	4	MK450.00	1800.00
Coffee Table	1	MK850.00	850.00
Sofa Set Maroon	1 set	MK250.00	250.00
Wall Clock	1	MK650.00	650.00
Pedal Stand Fam 16"	1	MK3900.00	3900.00
BMX Bicycle Hero 16"	1	MK4995.00	4995.00
Ladies Shoes	2 prs.	MK550.00	1100.00
Double Bed Blanket	1	MK4500.00	4500.00
Shovels	2	MK850.00	1700.00
New Mattress 3"x ¾	1	MK5850.00	5850.00
Umbrella	2	MK250.00	500.00
Ladies Black bag	1	MK550.00	550.00
Suitcase	1	MK900.00	900.00
Bed Sheets & Pillow Cases	4	MK550.00	2200.00
Table Spoon big size	2 dozen	MK100.00	200.00
Table spoon small	2 dozen	MK50.00	100.00

Zitenje Assorted colours	2	MK250.00	500.00
Digital Wrist Watch	1	MK100.00	100.00
Small calculator	3	MK185.00	555.00
Plastic Bathing tab (large)	1	MK2200.00	2200.00
Nsaluza m'mipando	2 sets	MK2500.99	5000.00
Tea Cups (smoky)	1 set	MK260.00	260.00
Tea Cups (Cream)	1 set	MK280.00	280.00
Glass Tumblers	3 sets	MK300.00	900.00
Glass Plates	2	MK250.00	500.00
Clay Plates (Imported)	2	MK270.00	540.00
Metal Plates (1x6)	1 set	MK660.00	660.00
Sugar Bowl	1	MK150.00	150.00
Canon Camera	1	MK8500.00	8500.00
Cofee Mugs	3	MK80.00	240.00
Briefcase	1	MK550.00	550.00
Men's Trousers	8 pairs	MK350.00	2800.00
Double D1 Suit (Brown)	1	MK9500.00	9500.00
Men's shirt	11	MK295.00	3245.00
Plain Jackets	1	MK900.00	900.00
Checks Jacket	1	MK950.00	950.00
T/Shirt	1	MK250.00	250.00
Scumber (Cream)	1	MK650.00	650.00
Scumber (Black)	1	MK670.00	670.00
Socks men's	4 pairs	MK85.00	340.00
Jersy Men's	1	MK390.00	390.00
Belt Brown	1	MK190.00	190.00
Hanger with assorted neck ties	1 set	MK495.00	495.00
Ladies Sweater (Yellow)	1	MK1500.00	1500.00
Ladies Sweater (White)	1	MK1900.00	1900.00
Ladies Assorted Blousers		MK2995.00	2995.00
Ladies Assorted Shirts		MK3500.00	3500.00
Ladies Assorted Dresses		MK5950.00	5950.00
Ladies Assorted Bras		MK950.00	950.00

Grand Totals

MK111,923.00

The total value of the items is K111,923.00.

This court ordered the plaintiff to file submissions on the quantum of damages which were filed. This court is indebted to counsel for the plaintiff for her submissions and has taken them into consideration herein.

This court notes that indeed the tort of conversion of and trespass to goods overlap. And that the appropriate remedy where goods are interfered with to such an extent that they are never returned to the owner the appropriate remedy is in damages for conversion as opposed to trespass to the said goods.

The authors of **Mc Gregor on Damages** 14th Edition observe at paragraph 1097 that the tort of trespass to goods straddles the boundaries of loss by misappropriation and of loss by damage or destruction. And further that in the case of loss of goods by misappropriation the measure of damages in trespass is in general the same as in conversion.

This court also notes that the normal measure of damages for conversion is the market value of the goods converted at time of the defendants wrong. See **Hall v. Barclay** [1937] 3 All ER 620. This is the prima facie measure of damages. The best rule that fully compensates the plaintiff is to award damages for conversion of the goods based on the value of the goods at the date of assessment so as to cater for any increase in the value of the goods between the date of the wrong and the date of assessment. See **Sachs v. Milkos** [1948] 2 K.B. 23. This court notes that the current market values of the plaintiff's goods have not been brought in evidence. The values of the items are those pegged at the time of the wrong herein.

In the circumstances this court shall award the plaintiff damages on the values she presented before this court. The plaintiff's evidence on these values appeared to be credible.

In the absence of contrary evidence the sum of K120,423.00 is awarded to the plaintiff as damages for conversion of the goods herein.

As to the issue of loss of use of goods. This court notes that the loss of use was with respect to domestic goods as opposed to commercial goods. The plaintiff has been deprived of the said use since the date of the wrong viz September, 2001 to date.

This court has to assess damages for loss of use with regard to each particular case. In the instant case this court awards the plaintiff the sum of K60,000.00 as damages for loss of use of her assorted household items that has occasioned serious inconvenience to her life.

Costs of this action are awarded to the plaintiff.

Made in Chambers at Blantyre this January, 2004.

M A Tembo

ASSISTANT REGISTRAR