



IN THE HIGH COURT OF MALAWI

MZUZU DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CASE NO. 32 OF 2017

BETWEEN:-

JAPHET NYONDO..... 1ST CLAIMANT

KELVIN MKANDAWIRE.....2ND CLAIMANT

-AND -

MANISH RAMPARIYA t/a PLANN FOOD PRODUCTSDEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. L. Mbulo, of counsel for the Claimants

Defendant, absent and unrepresented

Miss Tionge Chiulika, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. The present assessment follows a judgment by Hon Justice D.A. DeGabriele made on liability in which amongst her orders, permitted an inquiry on damages for inconvenience and costs of action to be assessed by this court.
2. Facts of the underlying matter are simple enough. The two Claimants and the Defendant were allocated neighbouring plots of land by Mzuzu City Council within Kaning'ina Residential Area. The 1st Claimant was a registered owner of Plot Number 426, the Defendant was a registered owner of Plot Number 427 while the 2nd Claimant was a registered owner of Plot Number 420. To the surprise of the Claimants, the Defendant started putting up an industrial building on the plot to be used for manufacturing of food and beverage. When the Claimants wrote the city council to stop the Defendant, the council procrastinated until the Defendant completed the project and began operating his manufacturing industry. The industry produced a lot of noise and waste to the discomfort of the Claimants. The latter went to court to complain and the court found for them.
3. There is, basically one issue in these proceedings; to assess the appropriate amount of damages payable by the Defendant to the Claimants herein.
4. According to **McGregor on Damages**, 16th Edition para. 1850-51, damages for inconvenience are generally awarded for the non-pecuniary loss of quietness among others. The principal heads of damage appear to be the injury to quietness i.e. the inconvenience considered primarily from a non-pecuniary viewpoint, and the injury to quietness and subjection to health hazards through unkempt industrial waste. In addition, there may be recovery of any resultant physical injury or discomfort, as where the inconvenience has a deleterious effect on the Claimant's health. (See **McGregor on Damages** (above).
5. I keep in mind that the assessment of damages is left to the court's discretion. The damages are awarded to compensate the Claimant in so

far as money can do it. See ***Benson Nakununkhe v. Paulo Chakhumbira and Attorney General*** Civil cause No. 357 of 1997 (Unreported). The extent of that compensation must be such that members of the society will be able to say that the victim has been well compensated. To do that it is desirable that as far as possible comparable injuries should be compensated by comparable awards.

6. In the present case, the two Claimants were greatly inconvenienced by the conduct of Defendant. They were subjected to noise and waste pollution in a setting they ought to have been enjoying quietness and clean environment. The Defendant knew pretty well that the vicinity was meant for residential purposes but he went ahead to undertake industrial activities. He should therefore suffer the consequences of his compromises.
7. However, in awarding the Claimants these damages, I have to consider a number of factors such as continuity of the inconvenience and the time during which the Claimants were disturbed. Counsel for the Claimant proposed MK20, 000,000.00 being damages for inconvenience. This is too much on the higher side considering the level of the inconvenience in question. The court had finally estopped the nuisance and the Claimants are now enjoying the clean and quiet environment in their plots. The nuisance did not take place for a very long time. The City Council too is to blame for its failure to intervene, quickly. The Claimants wrote the City Council shortly after the Defendant had embarked on the building project. The city council acquiesced until the Defendant had completed the building and started manufacturing food and beverage. Assuming the council had come in quickly, the Claimants would not have suffered the nuisance. Considering all these factors, I award the Claimants the sum of **MK3, 000,000.00.**
8. As a matter of good case and time management, I also had time to examine the court record and appreciate the level of effort put forth by counsel for the Claimant. This is, of course an old matter; a 2017 case, that ended with a

judgment on merit, and then this assessment of damages in 2021. The court record in my hands is sufficient for me to determine the level of party and party costs. During this time of Covid-19 pandemic, it is also in the interest of courts of law to try as much as possible to minimize court meetings by disposing cases quickly. On this, I award the Claimant **MK2, 000,000.00** being full and final party and party costs.

9. In total, the Claimants are awarded **MK5, 000,000.00**. The Defendant shall pay this whole sum within 7 days from today.

10. Made in chambers today the 13th of October, 2021.



Brian Sambo
Assistant Registrar