



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO.2333 OF 2008**

**PETER CHILOMBO & OTHERS.....PLAINTIFF**

**-AND-**

**WORLD VISION INTERNATIONAL.....DEFENDANT**

**CORAM: HON. JUSTICE M L KAMWAMBE**

Tembo of counsel for the Plaintiffs

Majamanda of counsel for the Defendant

Amos....Official Interpreter

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**JUDGMENT**

**Kamwambe J**

In or about the year 2003 the Defendant agreed with the Plaintiffs to form a scheme where the Plaintiffs would cultivate sweet potatoes and cassava and that the Defendants would provide ready market for the crops. The Defendant failed to provide a ready market for the crops after the Plaintiffs had heavily invested in the cultivation of the crops, as a result, they incurred losses. For this reason the Plaintiffs are claiming damages for breach of contract.

On the other hand, the Defendant states that the name of the farmers' association under the Mpanda Area Development Program is the Mpanda Smallholder Farmers Association. The

Association was formed to ensure that farmers are organized for easy access to credit facilities, easy transfer of skills and technology to farmers, empower the farmers to manage their own affairs and easy market identification and to enhance economic empowerment. The Association represented the interests of different farmers involved in seed multiplication, motorised and treadle pump irrigation and livestock rearing. The program through the Association loaned out treadle pumps to the farmers who grew different crops and were encouraged to grow cassava and sweet potatoes as drought tolerant crops to meet household food security. Excess product was to be sold. The Program introduced the Farmers' Association concept so that the farmers could run their own affairs thereby promoting sustainability and empowerment in decision making. As all this was happening, no agreement was signed by the program with any farmer or group of farmers regarding the produce sales and identification of the market for the various produce.

It is not controverted that the Defendant had placed amongst the members of the Association project instructors, namely, Moses Moyo, Pasco Mtambalika and their boss Mrs Kasamale. It is further not controverted that in 2004, the Defendant bought all the sweet potatoes from farmers but failed to buy the cassava. Plaintiffs state that Defendants promised to buy the cassava in the next season. At the same time Defendant urged Plaintiffs to increase production of sweet potatoes for the next season, which they did. Come harvesting season in 2005, the Defendant did not buy the produce from Plaintiffs. So too in 2006 harvest season when the arrangement came to an end. In a period of three years the Defendant only bought the sweet potatoes once.

Both parties agree that there was no written contract. It is also agreed that Plaintiffs attended a one week training at Lunzu Agriculture conference room. The seeds were given free by field

supervisors to plaintiffs in the first year. There were people from the Defendant's work place called counsellors who advised Plaintiffs that BAE from German, referring to white men who visited Plaintiffs' farms occasionally, would buy the produce. When PW1(Peter Chilombo) was told in cross -examination that Mr Moyo, Defendant's employee, refuses that he ever told you that the Defendant shall buy the produce, the witness answered that it was at a meeting that he said so although he has no document. In re-examination, PW 1 said that:

*"This market is a problem. We did not know any market that would buy those things. When they told us it was too late we could not plant elsewhere as the crop had been damaged."*

PW 1 grew maize before he joined the Association.

PW2, Herbert Mbewe, grew peas, maize and groundnuts before joining the Association. Just like other co-Plaintiffs, he said that the defendant stopped him from growing usual crops so that he gets rich from seed multiplication, in that he would get more money. He insists that there was agreement with the Defendant, hence, Defendant set the purchase price of MK3, 000.00 a ton for sweet potatoes and MK4, 000.00 a ton for cassava. PW 1 also mentioned this. He further said that this motivated him seeing that he would reduce his poverty.

According to DW 1 an employee of the Defendant, the Defendant was instrumental in the Plaintiffs planting of seeds. Defendant facilitated training for the Plaintiffs. It was in the interest of the Defendant that the seeds were planted. That the Defendant was involved in whatever was happening and that it was a commercial transaction. He said that there was no market yet they were motivated and encouraged by Defendant to plant. Upon being asked if Plaintiffs would have wasted their time if Defendant was not involved, he answered that they would not. He admitted that it was not logical to plant seedlings when there was no market.



He did not find out if Plaintiffs were educated or not since they were not assessed, but agreed that they were mere villagers. DW 1 was not one of the field staff.

DW 1 said, in re-examination, that there was no market but there was an open market and farmers' sub-committees were supposed to look for markets. He agreed that Plaintiffs had not entered into contract with any other organisation such as NASFAM, ADRA and Bvumbwe Research Station. When the court sought clarification, the witness admitted that Plaintiffs were not economically empowered because they did not make a sale since we did not train buyers but producers.

Banda CJ said in **Abeles v Viola** (1992) 15 MLR 1, that in order to decide whether the parties have reached an agreement, it is usual to inquire whether there has been a definite offer by one party and a definite acceptance by the other party. There must be some evidence from which a court can infer an acceptance. He went further to say that acceptance can take many different forms. It may be expressed in words either in writing or orally or it can also be inferred through the conduct of the parties. But conduct will only amount to acceptance of an offer when it is clear that the offeree did act with the intention of accepting the offer.

In **Chidanti-Malunga v Fintec Consultants and Another**, Commercial Case No. 6 of 2008, Mtambo J described a contract as follows:

*"For there to be a valid contract one of the essentials is that there must be an agreement. The agreement is made up of offer and acceptance. An offer is an expression of willingness by one person the offeror to enter into a relationship with another person the offeree with an intention that the relationship shall be binding on the offeror as soon as the offer is accepted by the*

*offeree. An acceptance is a final and unqualified assent to all the terms of an offer. It must not treat the negotiations as still underway otherwise it fails as valid acceptance."*

An agreement can be oral, written or by conduct. The Defendant came onto the scene as experts and advised the Plaintiffs to stop whatever they were cultivating and start to grow sweet potatoes and cassava so as to be financially empowered as villagers. Having been motivated and encouraged to grow these crops, Plaintiffs accepted to go along with the Defendant. One or two short trainings were conducted. The first one was a week's training. The first harvest season was in about March –April 2004 and Defendant only bought sweet potatoes. All along supervisors/counsellors were interacting with Plaintiffs in the fields. This has not been refuted. In the next two seasons nothing was bought by Plaintiffs. Some supervisors assured the Plaintiffs that their cassava will be bought by Defendant in next season, yet this did not materialise. Whenever the Germans went to fields of the association, supervisors or field workers for the Defendant informed the Plaintiffs that the Germans are going to buy their produce. It would appear that even during training, trainers assured them that Defendant was going to buy their produce. There was no explicit information that Defendant was not responsible for buying the produce from Plaintiffs. Instead the impression given was that Defendant was going to buy their produce or that they were going to find them buyers.

Defendants were responsible for training and supervision of the farmers belonging to the association and supervisors were on the ground with the Plaintiffs/farmers. They knew that Plaintiffs' produce had not been bought by themselves or any other buyer and they must have seen that Plaintiffs had not sold their produce which was stranded in the fields waiting for a purchaser. As instructors and experts, why did they not advise Plaintiffs what to do in the circumstances? There is no evidence that they ever suggested to Plaintiffs to fetch other buyers. They watched Plaintiffs

suffer watering the aging crops so that Defendant buys later, and this never happened. Further, the defendant saw it fit to set a price for the produce which price Plaintiffs eagerly waited for to be implemented at purchase, but it never happened. To show that the Plaintiffs accepted the offer of the Defendant, they stopped their ordinary cultivation and invested in this irrigated farming of chosen crops.

The short of it is that the totality of the evidence points to the fact that there was an oral contract made by word and by conduct. The Defendant cannot turn around and say that there was no contract. In fact, whatever training that was there, it was ill conceived as there were no buyers for the crop, hence, Plaintiffs were left in the doldrum as they had no expertise to fetch buyers of crops they were not used to. Defendant had a duty to lead Plaintiffs to buyers if they could not buy themselves. As DW 1 put it rightly, the purpose of the program was to economically empower the Plaintiffs, but they became worse than they started. Their hopes were dashed and were left frustrated. Their only recourse for the lost three years was to rush to court. This is not surprising. They were reduced into deeper poverty and now they have failed to pay their workers. After three years there was nothing to take home as the crops dried and were damaged as Defendant's workers just looked on providing no assistance. In the circumstances, I find Defendant liable for breach of contract.

**PRONOUNCED in Open Court this 24<sup>th</sup> April, 2018 at Chichiri, Blantyre.**

  
M L Kamwambe  
**JUDGE**