

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 530 OF 1985

BETWEEN:

DIELE ESTATES LIMITED PLAINTIFF

- and -

A.D. MANONDO DEFENDANT

Coram: UNYOLO, J.

Kaliwo, Counsel for the Plaintiff
Defendant, absent, unrepresented
Manda, Court Reporter
Namvenya, Official Interpreter

J U D G M E N T

The plaintiff claims from the defendant the sum of K6,500 being money had and received by the defendant to the use of the plaintiff. It is pleaded that by a verbal agreement the defendant agreed to buy a second-hand maize mill, costing K6,500, for the plaintiff and that in consequence the plaintiff for its part paid the said sum of K6,500 to the defendant. It is further pleaded that despite numerous requests from the plaintiff the defendant has not delivered the said maize mill. The plaintiff states that in the premises the consideration for which the payment herein was made has wholly failed and consequently claims the said sum of K6,500 from the defendant. In his defence the defendant denies having entered into an agreement as alleged by the plaintiff or having for that matter had any dealings with the plaintiff. He denies the plaintiff is entitled to the K6,500 or at all.

This case was first set down for hearing on the 20th October, 1987. On that day Counsel for the defendant informed the Court that the defendant was out to the Republic of South Africa. Counsel disclosed that the defendant was very much aware the case had been set down for hearing but decided nonetheless to leave, without informing Counsel for that matter. I then adjourned the case for three weeks and when the Court resumed on the 12th November I first heard an application on the part of the defendant's Counsel in which he sought the leave of the Court to cease acting for the defendant. Again

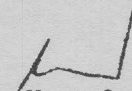
the defendant was not before the Court and after hearing Counsel I granted him leave as prayed. Thereafter I proceeded to hear this case as no good reason had been advanced for the defendant's absence. Indeed it was clear that the defendant had deliberately decided to keep low with a view to defeating the course of justice in this case.

Having heard the evidence of the plaintiff's witnesses I am satisfied and I find that the defendant did agree to buy a maize mill for the plaintiff and that the plaintiff gave the defendant the sum of K6,500 for this purpose. PW1 tendered in evidence on this aspect a paid cheque drawn by the plaintiff in favour of the defendant. I am further satisfied and I find that the defendant has neither bought and delivered the maize mill nor paid back the K6,500 to the plaintiff. Finally, I am satisfied that the plaintiff is entitled to this sum.

In the result I find that the plaintiff has proved its claim against the defendant and I enter judgment for the plaintiff for the sum of K6,500 with costs.

PRONOUNCED in open Court this 16th day of November, 1987, at Blantyre.




L.E. Unyolo
JUDGE