

Mchawa v National Bank of Malawi

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M. Mtegha
Cause Number:	Civil Cause Number 250 of 1989
Date of Judgment:	June 06, 1991
Bar:	Mr. Ng'ombe, Counsel for the Plaintiff Mr. Mandala, Counsel for the Defendant

The Plaintiff brought an action against the Defendant for damages arising from alleged negligence and breach of contract. The dispute originated from a long-standing agency relationship where the Defendant bank, on behalf of the Plaintiff, applied for and remitted foreign exchange for his son's education in Kenya. While most transactions were successfully executed, a specific application for KSh11 000-00 went awry. The Plaintiff instructed the Defendant on 15 April 1988 to remit KSh6 000-00, but the Defendant only sent KSh1 835-00 without explanation. The remaining KSh5 000-00 was not remitted until 5 May 1988, by which time the deadline for paying examination fees had passed, and the Plaintiff's son was expelled from his college in Nairobi.

The Court had to decide four principal issues: whether the Defendant was negligent and in breach of contract; whether the expulsion of the son was a result of this negligence; whether the claimed damages were too remote; and whether the Plaintiff had mitigated his loss. The Court found that there was a breach of contract through negligence, as the Defendant admitted its omission and delay in remitting the funds. The Court also held that the son's expulsion was a direct result of the delayed payment, dismissing the hearsay argument as the Defendant had accepted the reason for the expulsion throughout the trial. The Court then considered the remoteness of damage, concluding that while the bank should have known a breach would cause the son's expulsion, the damages claimed by the Plaintiff were not a pecuniary benefit he would have derived from the contract's performance and were therefore not recoverable. Furthermore, the Court found the Plaintiff had failed to mitigate his loss when he rejected the Defendant's offer to send his son back to Kenya to complete his studies. The Court concluded that the only recoverable damages were the KSh5 000-00 that were remitted to the college after the son had already returned to Malawi and were still with the Centre. The action was therefore successful in part. The Plaintiff was awarded KSh5 000-00 and three-quarters of the costs of the action.