

Rankin Bwanali vs Roads Authority

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Cause Number 293 of 2019
Date of Judgment:	December 05, 2024
Bar:	For the Claimant: Mr. Noel Supedi For the Defendant: Mr. Bruno Matumbi

The Claimant is the leasehold owner of land known as Plot Number 63 at Phalombe Trading Centre where there is a commercial property (the property). The Defendant is a statutory body created under section 3(1) of the Roads Authority Act, Cap. 69:07 of the Laws of Malawi (the Act) and was responsible for the construction of Chitakale Phalombe-Jali Road. It is alleged that the Defendant was negligent for failing to take care of the safety of the Claimant's property and failing to supervise the construction works under section 25(1)(c) of the Act. That the Defendant engaged a contractor who used heavy machinery which caused the ground to shake, later causing cracks to the property. The Claimant claims damages for loss of value of the property; damages for loss of money and business and costs of this action.

The Defendant denies all the claims stating, among others, that the vibration caused by the machinery was not powerful enough to cause the said cracks. That the cracks could have been caused by many reasons including poor workmanship, low quality materials, weak foundation, age of the property and effects of weather.

The trial took place at the locus in quo where the Claimant testified on his own behalf and tendered the following exhibits: RB 1 – a copy of the lease for the property in issue and RB 2 – a valuation report of the property. His evidence was that around 2017 the Defendant was responsible for the construction of the Chitakale-Phalombe-Jali Road during which heavy machinery was used and the shaking caused cracks to his commercial property. He showed the Court the said cracks hence the claim for damages. He was not cross-examined.

The Claimant's second witness was Joyce Ngalawa. She corroborated the Claimant's story and added that her own commercial property, located opposite the Claimant's, also developed cracks due to the shaking caused by the Defendant agent's construction machinery. He showed the Court the cracks on her property.

The last witness for the Claimant was Samuel Nyambalo. He testified that he was renting part of the Claimant's property since 2015. He was running a pharmacy. That during the road construction, the building was shaking heavily such that some bottles could fall from the shelves. That the building later developed cracks.

The Defendant called their Project Engineer, Ntchindi Mkandawire, who supervised the works together with a full time consulting firm engaged by the Defendant. That about July 2018 at the completion of the works, the Claimant filed a claim against the Defendant alleging damage to his property. She

inspected the property and exhibited images of the cracks as NM 1. She also inspected other surrounding properties which were intact. That the Claimant was not compensated as his property was outside the road reserve. She stated that the construction vibrations were within acceptable levels of less than 5mm/s or 0.19685 inches per second and considering that the Claimant's property was located about 20 meters from the centre of the road, the strength of vibrations would dissipate before getting to the house. She opined that the cracks could have been caused by many other reasons such as substance and settling; poor initial design; absence of ring beam; degradation of building materials and natural elements such as wind. In cross-examination she stated that she joined the Defendant in 2015 and so supervised the second phase of the construction by Fargo Company Ltd and not the initial phase by M.A Kharaffi and Sons.

At close of trial, the Court received written submissions from Counsel, for which the Court is grateful. The standard of proof in civil matters is on a balance of probabilities and the burden of proof lies on he who asserts the affirmative, in this case the Claimant: see *Commercial Bank of Malawi v Mhango* [2002-2003] MLR 43 (SCA).

Negligence has been defined as the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The Defendants might have been liable for negligence, if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done: see *Blyth v Birmingham Waterworks Company* (1856) 11Ex Ch 781. The essential elements of actionable negligence are (a) a duty to take care owed to the Claimant by the Defendant, (b) a breach of that duty, and (c) damage suffered by the Claimant resulting from the breach of duty: see *Kasawire*

v Ziligone and Another [1997] 2 MLR 139.

The Court has analysed the evidence before it and forms the opinion that the Claimant has failed to prove his case on a balance of probabilities. There is no direct evidence linking the cracks to the road works. Considering that the distance from the centre of the road to the property is about 20 meters, which this Court physically assessed and the kind of cracks as seen by the Court, this Court is not convinced that the cracks could have been caused by the vibrations.

This Court finds the evidence of the Defendant's witness more credible than that of the Claimant. It is more probable than not that the construction vibrations were within acceptable levels and would dissipate before reaching the Claimant's property which was located about 20 meters from the centre of the road. More importantly, this Court agrees with the Defendant that the cracks could have been caused by many other reasons such as substance and settling; poor initial design; absence of ring beam; degradation of building materials and natural elements such as wind or indeed natural wear and tear.

In conclusion, therefore, the Claimant's claims are dismissed in their entirety. Each party shall bear their own costs.

Made in Open Court this 5th December, 2024.