



THE HIGH COURT
(COMMERCIAL DIVISION)
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IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 95 of 2015

(Before Honourable Justice Dr. Mtambo)

BETWEEN

ADMARC LTD.....CLAIMANT

AND

BONIFACE KADZAMIRA PHIRI.....DEFENDANT

CORAM: D.H. SANKHULANI, ESQ., ASSISTANT REGISTRAR

Barbara Upile Malinda-Mbeta, Of Counsel for the Claimant

Defendant, Absent

Mr. B. Ntonya, Court Clerk

.....
Sankhulani, AR

RULING ON ASSESSMENT OF VALUE OF UNDELIVERED COMMODITY

Introduction

This ruling follows hearing of proceedings for assessment of the value of undelivered maize that was held in pursuance of an amended settlement agreement that was reached at by the parties herein at mediation.

Background Information

By a contract for the supply of maize, the Defendant had agreed to supply, and the Claimant had agreed to purchase, maize of an agreed tonnage worth K246,000,000.00.

Pursuant to the said contract, the Claimant paid the said agreed purchase price in advance, for the supply and delivery of the maize. The Defendant, however, only delivered part of the agreed tonnage, leaving an outstanding balance of maize worth K20,091,927.00. Despite being requested so to do, the Defendant has failed or refused to supply the said remaining maize.

In view of the foregoing, the Plaintiff commenced the present action, claiming a refund of the said sum of K20,091,927.00, interest thereon and costs of the action.

The present action was commenced by way of a writ of summons. The Defendant duly filed defence, upon which the matter became due for mandatory mediation. The amended settlement agreement herein was reached at during a mediation session.

After lapse of a considerable period of time from the said amended settlement agreement, the Claimant commenced the present assessment proceedings. By these proceedings, the Claimant seeks an assessment of the value of the maize that has yet to be delivered by the Defendant, so that the same may be paid to it. That, according to the Claimant, is sought as an alternative to the delivery of the maize that remains undelivered. Hearing of the assessment proceedings was held in the Defendant's absence, as there was due proof of service of the notice of assessment on him. The matter was then adjourned for an order on assessment. Hence the present ruling.

Issues for Determination herein

- Whether payment of an assessed value is tenable herein.
- Whether an assessment ought to be proceeded with herein.

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Whether Payment of an Assessed Value is Tenable Herein

In determining this question, the starting point ought to be the aforesaid amended mediation settlement agreement dated 29th May, 2016. The relevant part of the said agreement reads as follows:

"NOW THIS AGREEMENT witnesseth as follows:

1. THAT the Defendant will supply 75% of the remaining tonnage of maize (155.58 Metric Tons on or before 30 September 2015.
2. THAT the Defendant will deliver the maize at the nearest permanent ADMARC Markets.
3. THAT the Defendant will supply the balance of 25% of the remaining tonnage (51.86 Metric Tonnes) by 30 August 2016.
4. THAT the Defendant shall pay the Plaintiff costs of K300,000.00 by the end of August 2015.

Dated this 29th day of May 2016

(signed)

Barbara U. Malinda-Mbeta

Legal Practitioner for the Plaintiff

(signed)

Robert Nthewa

Legal Practitioner for the Defendant

(signed)

JUDGE (sic)".

It is clear from the above-reproduced part of the aforesaid amended mediation settlement agreement that the agreement only provided for delivery of the remaining maize. It did not provide for an alternative of paying an assessed value of the maize. I so opine and find.

Since the amended mediation settlement agreement herein did not provide for an alternative of paying an assessed value of the maize, I finally find that payment of an assessed value of the maize in issue herein is not tenable.

Whether an Assessment Ought to be Proceeded with Herein

In view of the foregoing finding that payment of an assessed value of the maize in issue herein is not tenable, I find that an assessment of the maize remaining undelivered herein ought not to be proceeded with.

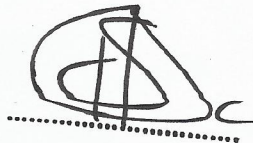
Final Order

In view of the foregoing finding that an assessment of the maize remaining undelivered herein ought not to be proceeded with, I hereby set aside hearing of the assessment proceedings that was held herein on 12th April, 2018.

The Claimant is at liberty to explore ways of having the amended mediation settlement agreement herein provide for payment of an assessed value of the maize remaining undelivered as an alternative. Once that is done, the Claimant shall be at liberty to take out a fresh notice of assessment.

The Claimant shall bear its own costs of the just-set-aside hearing of assessment proceedings.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 16th day of April 2018.



D.H. SANKHULANI

ASSISTANT REGISTRAR



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