

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2024/HP/0181

BETWEEN:

LUNGOWE MATAKALA

AND

BUILDERS VILLAGE LIMITED



PLAINTIFF

DEFENDANT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 13th DAY OF
NOVEMBER, 2025

For the Plaintiff : Ms Theresa Mwewa, Messrs Sil & Kay Advocates

For the Defendant : Mr Mulenga Mubanga, Messrs Chilupe and Permanent
Chambers

J U D G M E N T

CASES REFERRED TO:

1. *R v Silverlock 1894 Queensbench*
2. *Sithole v The State Lotteries Board 1975 ZR 106*
3. *Holman v Johnson Holman v Johnson 1975 1 Cowp 341*
4. *Chuba v The People 1976 ZR 136*
5. *Lyons Brooke Bond (Zambia) Limited v Zambia Tanzania Road Services Limited 1977 ZR 317*
6. *Christopher Lubasi Mundia v Sentor Motors 1982 ZR 66*
7. *Wilson Masauso Zulu v Avondale Housing Project 1982 ZR 172*
8. *Attorney General v Marcus Achiume 1983 ZR 1*
9. *William David Carlisle Wise v E.F Harvey Limited 1985 ZR 179*
10. *Zambia National Building Society v Ernest Mukwamataba Nayunda 1993 - 1994 ZR 29*
11. *Anderson K. Mazoka and others v Levy Mwanawasa 2005 ZR 38*
12. *Kunda v Konkola Copper Mines Plc Appeal No 48 of 2005*
13. *Duff Kopa Kopa v University Teaching Hospital SCZ No 8 of 2007*
14. *Zambia State Insurance Pension Trust v Zambia Extracts Oils and Colourants Limited and another 2013/HPC/295*
15. *Charles Kajimanga v Marmetus Chilemya Appeal No 50/2014*
16. *Finance Bank Zambia Limited and another v Simataa SCZ Appeal No 11 of 2017*

17. *Madison General Insurance Company Limited v Avril Cornhill and Michael Kakoma Appeal No 19 of 2017*
18. *Msanide Phiri v BHB Contractors Zambia Limited and two others CAZ Appeal No 136/2017*

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965, 1999 Edition*
3. *The Zambia Institute of Architects Act Chapter 442 of the Laws of Zambia*
4. *The National Council for Construction Act No 10 of 2020*

OTHER WORKS REFERRED TO:

1. *Black's Law Dictionary, 9th Edition by Bryan A. Garner, Thompson Reuters 2009*
2. *Contract Law in Zambia 2nd Edition, by Sangwani Patrick Ngambi and Chanda Chungu Juta, 2021*
3. *Halsbury's Laws of England, 4th Edition Re-Issue, Vol 9*
4. *Trietel on the Law of Contract, 12th Edition*

1. INTRODUCTION

1.1 Lungowe Matakala the Plaintiff herein, who is a Lecturer by profession and a client of Builders Village Limited, a company that is incorporated under the **Companies Act No 10 of 2017** and offers building and construction services, commenced this action on 5th February, 2024, by Writ of Summons, which was accompanied by a statement of claim and the other requisite documents against Builders Village Limited.

1.2 The reliefs sought are:

- i. *A declaration that Builders Village Limited breached the contract which Lungowe Matakala entered into with the said Builders Village Limited;*

- ii. *An Order that Builders Village Limited immediately repairs and restores Lungowe Matakala's roof and ceiling which is valued at approximately ZMW400,000.00 to the standard that was expected and agreed;*
- iii. *Damages for the costs of alternative accommodation at the time when Lungowe Matakala's residence was uninhabitable for a period from October 2019 to March 2020, October 2020 to March 2021, October 2021 to March 2022 and October 2023 to January, 2024;*
- iv. *Damages for breach of contract;*
- v. *Interest;*
- vi. *Costs; and*
- vii. *Any other relief that the Court may deem fit.*

2. STATEMENT OF CLAIM

- 2.1 Lungowe Matakala stated that she entered into a contract with Builders Village Limited in which it was agreed that Builders Village Limited would design and build a roof and ceiling for Lungowe Matakala's home in or around April, 2019, and that the total cost for the materials and labour for that was approximately ZMW400,000.00.
- 2.2 Her averment was that despite Builders Village Limited agreeing to provide quality service, in breach of contract, it failed to construct the roof and ceiling to the required professional standards in that the roof had been leaking since inception, and had continued to do so, despite Builders Village Limited returning on site and fixing it on several occasions.

- 2.3 It was also stated that the failure to construct a competent roof had led to extensive damage to Lungowe Matakala's ceiling in the kitchen, living room and dining room due to the direct exposure to sun and the rain. Her further averment was that the ceiling in the master bedroom and the children's play room had also been extensively damaged.
- 2.4 Lungowe Matakala contended that the continued leaking of the roof and ceiling had failed to protect her home despite the grievances that she had raised and the interaction between herself and Builders Village Limited.
- 2.5 Thus, Lungowe Matakala stated that every rainy season from around October to March, she had had to find alternative accommodation due to the uninhabitable state of the house which was caused by the roof.
- 2.6 She added that Builders Village Limited through Mr Sam Sichilalu who was responsible for the design of the roof, would go to the house in an attempt to fix the leak and the purported defect, but had failed to do so.
- 2.7 Lungowe Matakala contended that as a result, she had suffered loss and damage, including anxiety, stress, anguish and inconvenience.

3. DEFENCE

- 3.1 Builders Village Limited in defence, admitted having entered into a contract with Lungowe Matakala to the extent that it was contracted to design and build a roof and ceiling. It stated that it did so in or about May 2020 and May 2021 and that it installed the roof and ceiling.

- 3.2 Builders Village Limited however contended that Lungowe Matakala's averment that ZMW400, 000.00 was spent on the materials and labour, was within her peculiar knowledge.
- 3.3 Further in its' defence, Builders Village Limited stated that it had advised Lungowe Matakala that the flat roof that she sought to have built, required steel as opposed to timber in order for it to be durable. However, Lungowe Matakala had insisted and opted to purchase timber for installation of the roof, on the basis that she could not afford steel, and she already had timber that was available for use.
- 3.4 It was denied that Builders Village Limited failed to provide quality service in the construction of the roof and ceiling which led to the roof leaking from inception and Builders Village Limited returning to fix the roof on numerous occasions. The defence was that the professional standard that Lungowe Matakala alleged was within her peculiar knowledge.
- 3.5 It was also stated that Builders Village Limited advised Lungowe Matakala that there was a warranty period of twelve months to cater for one rainy season, within which it could repair any leaks that were associated with newly installed roofs, and that thereafter, any works that would be done, would constitute maintenance works which were chargeable.
- 3.6 The averment was that between May 2021 and May 2021, Builders Village Limited fixed the leak that related to the gutter after it rained, and before it installed the ceiling

adding that this was during the time that the house was not occupied by Lungowe Matakala, but by her caretaker.

- 3.7 It was stated that Lungowe Matakala contributed to the damage by insisting on the use of timber as opposed to steel for the construction of the flat roof, and that the damage was further exacerbated by the placement of a heavy solar geyser and solar panels on the said roof, which compromised the strength and durability.
- 3.8 The defence was also that, further leaks that were associated with Lungowe Matakala's roof fell outside the said twelve months period, and constituted maintenance works the first and last which were done in or about October, 2021 when Lungowe Matakala reported drips of water that were occurring from the ceiling following some torrential rains.
- 3.9 Then in or around December, 2021, Lungowe Matakala reported another leak to Builders Village Limited, and it was agreed that Lungowe Matakala would proceed to engage a third-party roof expert of her choice, to conduct the maintenance works and fix the roof on the condition that Builders Village Limited would bear the cost of engaging the said expert, which Builders Village Limited did.
- 3.10 The claim relating to the days that Lungowe Matakala spent in alternative accommodation was denied, with Builders Village Limited contending that Lungowe Matakala only spent two days in alternative accommodation in or about October 2021 at Fallsway Apartments in Lusaka, at a cost of

ZMW2, 300.00 which cost Builders Village Limited was made to bear.

3.11 It was denied that Lungowe Matakala had suffered loss and damage, including anxiety, stress, anguish and inconvenience. The defence was that Lungowe Matakala was not entitled to any relief.

4. REPLY

- 4.1 Lungowe Matakala in the amended reply, which was filed on 12th June, 2024, stated that while Builders Village Limited on 2nd November, 2022 did mention that a flat roof metal framework was ideal but pricey, at no point did it state that use of timber would cause damage.
- 4.2 She further averred that Builders Village Limited had undertaken to send her money to buy the materials that were needed to fix the roof.
- 4.3 It was also Lungowe Matakala's reply, that it is common practice in Zambia to use timber to build roofs, and roofs do not leak. She stated that when timber was used to build roofs as was the case in this matter, Builders Village Limited as a professional, should have ensured that Lungowe Matakala did not suffer any loss or damage.
- 4.4 Lungowe Matakala reiterated that Builders Village Limited's conduct fell below the standard of reasonable care, skill and diligence, and that it amounted to gross negligence.
- 4.5 Further reiteration was made, that Builders Village Limited's failure to construct a competent roof which led to extensive damage to Lungowe Matakala's ceiling in the kitchen, living

room and the dining room due to the rain, as well as damage to the ceiling in the master bedroom and the children's play room.

- 4.6 The claims relating to the twelve months' warranty was said to be within Builders Village Limited's peculiar knowledge, with Lungowe Matakala stating that it was being said for the first time by Builders Village Limited, after it failed to attempt to fix the roof in 2023.
- 4.7 The assertions that Builders Village Limited fixed the roof were denied, with Lungowe Matakala maintaining that the roof had not been fixed, and it had continued leaking to date.
- 4.8 Lungowe Matakala denied having contributed to the damage to the roof, stating that the roof started leaking prior to the solar geyser being mounted.
- 4.9 Her contention was that there are many homes that have roofs that are made with timber, and have solar geysers and solar panels mounted on them, but they do not leak, and that Builders Village Limited had agreed to this.
- 4.10 Lungowe Matakala stated that the contract that the parties executed did not have a warranty period for twelve months.
- 4.11 Her averment was that Builders Village Limited was first informed of the leak in the roof in October, 2020, which was the first rainy season after the roof was constructed. She added that after that, Builders Village Limited had been on site every rainy season, in some years more than once, in an attempt to fix the leaks.

- 4.12 Lungowe Matakala contended that not once was she ever charged for those visits or for the works that were done. Therefore, she denied that the said works were maintenance works.
- 4.13 It was stated that Lungowe Matakala engaged a third-party roof expert after Builders Village Limited admitted that it had failed to fix the leak, and that this was at Builders Village Limited's expense. However, even the third party could not properly fix the roof.
- 4.14 Lungowe Matakala averred that she had suffered loss and damage including residential costs during the periods when her home was uninhabitable due to the gross negligence and reckless conduct by Builders Village Limited.
- 4.15 It was also reiterated that the roof and the ceiling had continued to leak, and had failed to protect Lungowe Matakala's home, despite several grievances being raised and interaction being had by Lungowe Matakala with Builders Village Limited.
- 4.16 Lungowe Matakala stated that every rainy season around October to March the next year, she had to find alternative accommodation due to the uninhabitable state of her house which had been caused by the roof.
- 4.17 It was repeated that Mr Sam Sichilalu of Builders Village Limited had to go back to the site in order to attempt to fix the roof either in person or by proxy, but had failed to remedy the defect to date.

5. EVIDENCE LED AT TRIAL

5.1 At trial, Lungowe Matakala testified as the only witness for her case, while Builders Village Limited called one witness.

PW1-LUNGOWE MATAKALA

5.2 Lungowe Matakala produced her witness statement as her evidence. She testified in that witness statement, that she engaged Builders Village Limited to undertake four construction tasks and installations at her residence, being plumbing, electrical wiring, roofing and the ceiling in March, 2020.

5.3 Her evidence was that with respect to the roof, Builders Village Limited was to design and build a hidden roof. Lungowe Matakala added that she had emphasized to Builders Village Limited, that she wanted a particularly hidden flat roof that would not leak, and that she had approached them as she had assumed that they were professionals who could build a hidden roof that would not leak.

5.4 It was testified that Dr Sam Sichilalu had affirmed that Builders Village Limited was capable of building a roof that would not leak, and that it was on that premise, that Lungowe Matakala proceeded to contract Builders Village Limited.

5.5 Still on Builders Village Limited, Lungowe Matakala testified that Dr Sam Sichilalu and Dr Brenda Bukowa of Builders Village Limited were employees of both the University of Zambia and Builders Village Limited. Therefore, as fellow

UNZA Dons, Lungowe Matakala had interacted with them easily and casually, and they entered into an oral contract.

- 5.6 Lungowe Matakala's testimony was that the oral contract did not contain a warranty period.
- 5.7 Her evidence was further that at the time of designing the roof, Builders Village Limited had advised that a butterfly roof be constructed instead of a flat roof, because of the size of the house, which measured 14m by 16m. Lungowe Matakala testified that she had accepted the proposal as Builders Village Limited were the experts.
- 5.8 In still testifying, Lungowe Matakala stated that Builders Village Limited gave her the option between the steel framework and the timber framework, and that she opted for the timber framework because it was cheaper. As pleaded in the statement of claim, Lungowe Matakala stated that at no point did Builders Village Limited state that use of a timber framework would cause leakage or any damage to the roof.
- 5.9 It was her testimony that Builders Village Limited designed and built the timber butterfly roof using the timber framework between March and May 2020. Her evidence was that the roof had a gutter that ran in the middle of the house.
- 5.10 Lungowe Matakala also stated that Builders Village Limited informed her to wait for one rainy season before installing the ceiling, stating that there might be a few leaks, which was apparently normal with a new roof. Thus, as advised, Lungowe Matakala waited, and in October, 2020 there were leaks, which Builders Village Limited attended to.
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- 5.11 She went on to testify that in 2021, Builders Village Limited designed and built the ceiling in all the rooms that were dry. Then in the rainy season of that year, there were major leakages, stating that the dining room and the living room were affected. Lungowe Matakala stated that she informed Builders Village Limited, but it did not fix the damage.
- 5.12 Further on the leakage, her evidence was that in April, 2022 there were some light rains and once again, the roof leaked, and she immediately informed Dr Sam Sichilalu and expressed her concerns regarding the ceiling, stating that the rains were light, yet there were leakages. Lungowe Matakala added that she had asked what would happen when there were heavy rains, and that if they did not attend to the calamity, the ceiling would fall.
- 5.13 It was testified that Dr Sam Sichilalu assured Lungowe Matakala that Builders Village Limited would attend to the leaking roof. Therefore, Lungowe Matakala made several phone calls to Builders Village Limited asking them to go and attend to the roof before the next rainy season and Dr Sam Sichilalu informed her that they would so, but they never did so.
- 5.14 Lungowe Matakala testified that she had reminded Dr Sam Sichilalu on the urgent need to repair the roof when they met at the UNZALARU workshop in Livingstone in early October, 2022. It was her evidence, that he promised to attend to the roof on his return from Chipata.

- 5.15 Then on 22nd October, 2022, she had called Dr Sam Sichilalu who informed her that he would be on his way from Chipata the next day, but he could not stop over in Chongwe as he had not seen his family since they had met in Livingstone. Therefore, he could not attend to her, and he had assured her that he would go there on Monday 31st October, 2022.
- 5.16 Lungowe Matakala's continued testimony was with regard to further efforts that she made to contact Dr Sam Sichilalu, and she testified that after he did not go there on Monday 31st October, 2022, and the next day Tuesday 1st November, 2022, it rained heavily, and the ceiling in the dining room fell with reference being made to the video, she had informed Builders Village Limited about the calamity.
- 5.17 Her further testimony was that Dr Sam Sichilalu on Wednesday 2nd November, 2022, lamented that for flat roofs, metal frameworks were ideal, but pricey, and he purchased materials to repair the roof and he sent a team to go and work on the roof.
- 5.18 However, on 10th November, 2022, there was heavy rain which poured into the living room, and Lungowe Matakala had to move out the sofas from the sitting room. She stated that her five year old daughter who had woken up and followed her, slipped and fell in pool of water and she hurt her leg, elbow and buttocks. Thus, Lungowe Matakala put her daughter on the dining room table which she had earlier moved into the sitting room.

- 5.19 Lungowe Matakala explained that on 10th November, 2022, the sitting room was leaking more than the dining room and after she heard a loud crash, and her daughter scream, she went and found part of the ceiling on the floor in front of where her daughter was sitting.
- 5.20 The testimony that Lungowe Matakala further gave, was that her daughter was so devastated by the experience, and she could not sleep. She added that her daughter got up around 03:00 hours to go and stare at the ceiling which had fallen. Then later in the morning, Lungowe Matakala's daughter had cried, stating that the house was not safe.
- 5.21 Lungowe Matakala's evidence was that she had called Builders Village Limited and informed them that she was moving out of the house, as it was a danger to her and the children. She testified that on 11th November, 2022, she went to Fallsway Apartments in Mass Media and Builders Village Limited quickly moved in to fix the roof and paid for accommodation at Fallsway Apartments for the night.
- 5.22 It was stated that the next day, when Lungowe Matakala called the workers at the house, she was informed that it had rained and the house had leaked. However, Dr Bukowa insisted that the house was safe, and she refused to pay for another night's accommodation at Fallsway Apartment.
- 5.23 Lungowe Matakala testified that she however refused to return to the house as it was still leaking, and it was prone to more parts of the ceiling falling.

- 5.24 It was Lungowe Matakala's evidence that the Site Visit Report -Roof Defence Inspection Report dated 30th October, 2023 which was compiled after Adroit Engineering Construction Limited did the assessment, revealed that the roof was poorly designed, and that Builders' Village Limited did not construct a proper and capable roof which was suitable for her home.
- 5.25 She testified that as seen from the report which was at pages 1-17 of her bundle of documents, the recommendation was that a new roof altogether be constructed.
- 5.26 However, the roof had not been constructed, and the home was not suitable for habitation, particularly during the rainy season when Lungowe Matakala was forced to find alternative accommodation.
- 5.27 In concluding her testimony, Lungowe Matakala stated that the failure by Builders Village Limited to construct a proper roof had caused damage to the ceiling in the kitchen, living room, dining room as well as the master bedroom and the children's play room.
- 5.28 She added that the wooden furniture, computers and the kitchen electric scale had been ruined by the rain water that had leaked into the house.

CROSS EXAMINATION OF LUNGOWE MATAKALA

- 5.29 In cross examination, Lungowe Matakala testified when she was referred to paragraphs 26 and 27 of her witness statement, that she engaged a third party to repair the roof when it became apparent that Builders Village Limited could

not do so. Her evidence was that she engaged an expert roofer of her choice, and that no forced her to choose him.

- 5.30 It was further her testimony, that the expert roofer inspected the roof, and made recommendations and informed her what she needed to buy.
- 5.31 Lungowe Matakala agreed that the services of the third party were borne by Builders Village Limited.
- 5.32 Her evidence, when she was referred to paragraph 29 of the Site Visit Report which was at pages 1-17 of her bundle of documents, and paragraph 29 of her witness statement was that she relied on the Site Visit Report as it was reliable.
- 5.33 Lungowe Matakala testified that Peter Kanema an expert signed the report. She however did not know Peter Kanema's qualifications.
- 5.34 Her evidence was that before she sued, she did not bring the expert report to the attention of Builders Village Limited as she did not think it fit to do so. She could not answer if Builders Village Limited having been her contractor should have appraised the document.
- 5.35 In respect of her claims as pleaded, Lungowe Matakala's evidence was that she was living in Chikonkoto village when the house in issue was being constructed.
- 5.36 She agreed that in paragraph 7 of the statement of claim, she had pleaded that she would pay for accommodation every rainy season. Her testimony was that she would stay at Fallsway Apartments at a cost of ZMW2, 300.00 per night.

- 5.37 Lungowe Matakala's evidence was that she paid for the second night as Builders Village Limited only paid for the first night, and they refused to pay for the second night.
- 5.38 Further in cross examination, Lungowe Matakala stated that she spent five nights at Legette in Chalala at ZMW500.00 per night which came to K2, 500.00, and that this was without the cost for fuel.
- 5.39 On other places that she stayed, her evidence was that it was in Chalala and State Lodge with her aunt and cousin. Lungowe Matakala agreed that she did not bring it to Builders Village Limited's attention the other nights that she spent at alternative accommodation, as they had refused to pay. She agreed that she had no receipts to show how much she spent nights at the alternative accommodation, but she denied that it was because she did not sleep there.
- 5.40 Lungowe Matakala testified that she was not aware of the twelve months' retention period for the roof. She stated that the roof was installed and the ceiling was put after a year. Lungowe Matakala agreed that she was aware that on a roof being installed, one had to wait for a year before putting the ceiling.

RE-EXAMINATION OF LUNGOWE MATAKALA

- 5.41 In re-examination, Lungowe Matakala clarified that she did not have the receipts for the accommodation as she did not keep receipts, because she thought that she would not need them.
- 5.42 That marked the close of the case for Lungowe Matakala.

DW1- SAM MICHELO SICHILALU

- 5.43 Sam Michelo Sichilalu who testified on behalf of Builders Village Limited produced his witness statement as his evidence. He testified in that witness statement, that between May 2020 and May 2021, Lungowe Matakala contracted Builders Village Limited to change the roof from ordinary roof to a flat one, to install a ceiling and to conduct other modernization works at her home in Chongwe.
- 5.44 He testified that no plans relating to the house were availed to Builders Village Limited at the time. Thus, his team went to the house where they took measurements which were 14 x14 metres.
- 5.45 It was his testimony that Builders Village Limited thereafter, issued two quotations to Lungowe Matakala one for steel trusses and another for wood trusses, which were at pages 1-2 of Builders Village Limited's bundle of documents.
- 5.46 Still in his evidence, Sam Michelo Sichilalu testified that Builders Village Limited advised Lungowe Matakala against using wood trusses over the steel trusses, stating that wood is not durable, as it tends to bend over with time, pushing out the nails or bending the iron sheets which results in leakages.
- 5.47 He went on to state that Lungowe Matakala despite being advised rejected use of the steel trusses and instructed that timber trusses be used as she had timber available.
- 5.48 That was how, based on the instructions, Builders Village Limited constructed a flat roof in or about May 2020.

- 5.49 Sam Michelo Sichilalu testified that as per the policy for Builders Village Limited, Lungowe Matakala was informed about the twelve months' warranty that Builders Village Limited gave which covered one rainy season, and within which period any leaks associated with the newly built roof, which would be fixed at no cost. However, any further works thereafter, would be considered as maintenance, and would be conducted at a fee.
- 5.50 It was his testimony that between May 2020 and May 2021 within the warranty period, Builders Village Limited attended to a minor leak that related to the gutter by applying sealant to the gutter joint, and the issue was resolved. Sam Michelo Sichilalu testified that this was before Lungowe Matakala moved into the house, and that at the time, it was occupied by a caretaker.
- 5.51 Then shortly thereafter, in or around April, 2021, Builders Village Limited provided a further quote for works on the ceiling, which was at pages 3-4 of Builders Village Limited's bundle of documents, and it did a complete installation of the ceiling in or about May, 2021.
- 5.52 He testified that in or around October, 2021, outside the warranty period, following more rains, Lungowe Matakala reported that water was drizzling from the ceiling and Builders Village Limited carried out the maintenance works to address the issue.
- 5.53 It was stated that Lungowe Matakala demanded that Builders Village Limited pays for her lodging at Fallsway

Apartments at a rate of ZMW2, 300.00 per night and she spent two nights there at Builders Village Limited's cost.

5.54 Sam Michelo Sichilalu in his continued testimony, stated that towards the end of the year 2021, it came to his attention, that Lungowe Matakala had installed solar panels and heavy solar geyser despite being advised about the non-durability of the timber trusses.

5.55 He testified that thereafter, Lungowe Matakala informed Builders Village Limited of another leak in the ceiling and demanded further maintenance works.

5.56 Evidence was also given, that it was agreed between Lungowe Matakala and Builders Village Limited that Lungowe Matakala would seek the services of an independent flat roof expert of her choice, who would conduct the maintenance works which cost would be borne by Builders Village Limited.

5.57 He stated that Lungowe Matakala proceeded to engage the expert and Builders Village Limited met the costs in full on 25th January, 2023. Sam Michelo Sichilalu's testimony was that it was agreed that there would be no more claims by Lungowe Matakala against Builders Village Limited in relation to the roof.

5.58 Thus, he denied that Builders Village Limited was indebted to Lungowe Matakala as claimed.

CROSS EXAMINATION OF SAM MICHELO SICHILALU

5.59 When cross examined, Sam Michelo Sichilalu testified that he holds a PHD in Engineering which he obtained from the

University of Pretoria in South Africa. He agreed that there was no Architect at Builders Village Limited.

- 5.60 It was also his testimony, that there were Civil Engineers and Foremen who carried out the installation works, and that there was also support services whom they called as helpers.
- 5.61 Sam Michelo Sichilalu agreed that the helpers were not qualified but were experienced handy men. He explained that the Foremen were qualified, having craft certificates.
- 5.62 It was also his evidence, that Builders Village Limited was not registered with the Zambia Institute of Architects, but he could not state which provision of the Act did not allow them to register.
- 5.63 The evidence that was given, was that Builders Village Limited was registered with the National Council for Construction (NCC) as it regulates construction. Further testimony was given, that Builders Village Limited was also registered with the Engineering Institute of Zambia.
- 5.64 Sam Michelo Sichilalu explained to the Court that he was not aware that Builders Village Limited had to register with the Zambia Institute of Architects.
- 5.65 He was however aware of the Judgment that was passed against Builders Village Limited, but he denied that each director of Builders Village Limited was fined the sum of Eight Thousand Kwacha (ZMW8, 000.00) in the Judgment, stating that only two directors were fined.
- 5.66 On why the fine was imposed, Sam Michelo Sichilalu testified that it was because Builders Village Limited did not

have a licence for architecture, and it had offered the service of architecture.

- 5.67 He agreed that in 2020, Lungowe Matakala's roof was repaired at Builders Village Limited's cost. It was agreed that after that, Lungowe Matakala stated that the roof was still leaking.
- 5.68 Sam Michelo Sichilalu admitted that it was agreed thereafter that Lungowe Matakala would engage a third party expert to repair the roof, and that Builders Village Limited would pay the expert.
- 5.69 When referred to paragraph 27 of Lungowe Matakala's bundle of documents, Sam Michelo Sichilalu agreed that Builders Village Limited and the third party failed to repair the roof.
- 5.70 Sam Michelo Sichilalu on being referred to last paragraph of the report, which was at page 17 of Lungowe Matakala's bundle of documents, testified that it did not state that the problem was due to the bad design. His evidence was that the gutter that they used was designed by the manufacturer, and it was not customized, but they just bought it and fixed it.
- 5.71 His testimony was that the gutter was not the best design option, and it led to the eventual collapse of the roof.
- 5.72 Sam Michelo Sichilalu denied that Builders Village Limited recommended a flat roof in the first instance as it was affordable and durable in the long run. His position was that

they had advised Lungowe Matakala to do a flat roof with steel trusses and not wooden trusses.

5.73 Whilst stating that a butterfly roof is also a flat roof, Sam Michelo Sichilalu testified that there is no butterfly roof, but that there are hipped, flat and skillion roofs in Zambia.

5.74 He was referred to the last paragraph of the report at page 16 of Lungowe Matakala's bundle of documents, and he testified that it stated that there should be change from a hidden butterfly roof to another such as a hipped or a flat roof.

5.75 His evidence, when he was referred to paragraph 8 of Lungowe Matakala's witness statement, was that it stated that Builders Village Limited recommended a butterfly roof instead of a flat roof, and that she had accepted as they were experts.

5.76 Sam Michelo Sichilalu testified that according to the report, it did not recommend a butterfly roof to remedy the damage which was caused. He stated that only a skillion roof did not have a gutter while the others had.

5.77 That marked the close of the case for Builders Village Limited.

6. DECISION OF THIS COURT

6.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

6.2 It is common cause that Lungowe Matakala entered into an oral contract with Builders Village Limited, in which it was agreed that Builders Village Limited would design and build

a roof and construct a ceiling for Lungowe Matakala's house in Chongwe around April, 2019.

- 6.3 The facts which are also not in dispute, are that Builders Village Limited did construct a flat roof for Lungowe Matakala's house using wooden trusses in or around May, 2020, and thereafter in 2021, Builders Village Limited installed a ceiling in the roof.
- 6.4 Also, not in contention, is that the roof started leaking in the rainy season in October, 2020, and Builders Village Limited repaired the said roof.
- 6.5 The facts which are further not in dispute, are that Lungowe Matakala continued to lodge complaints with Builders Village Limited in subsequent rainy seasons after that about the roof leaking, and that Lungowe Matakala contends that she spent two nights at Fallsway Apartments in Mass Media, as the roof leaked.
- 6.6 It is also not in contention, that as Lungowe Matakala continued reporting to Builders Village Limited that the roof had continued leaking, it was agreed that Lungowe Matakala engages a third-party roof expert to repair the roof at Builders Village Limited's cost, which was done.
- 6.7 It is common cause that even after the third-party expert repaired the roof, Lungowe Matakala still reported to Builders Village Limited that the roof had continued leaking.
- 6.8 The facts which are further not in dispute are that the third-party roof expert did a report on the roof.

ISSUES IN DISPUTE

- 6.9 It is in contention, whether Builders Village Limited breached the contract that it entered into with Lungowe Matakala for the design and construction of the roof, as well as for the installation of the ceiling, and that it should be ordered to immediately repair and restore the roof and ceiling for Lungowe Matakala's house to the expected standard as agreed.
- 6.10 The facts which are further in issue, are whether Builders Village Limited should pay Lungowe Matakala damages for breach of contract.
- 6.11 It is also in contention, whether Builders Village Limited should pay Lungowe Matakala the sum of ZMW 12, 000.00 being the costs of the alternative accommodation due to the uninhabitable condition of her house.

ANALYSIS

- 6.12 Lungowe Matakala in her evidence, testified that she engaged Builders Village Limited to undertake four construction tasks and installations at her residence, being plumbing, electrical wiring, roofing and the ceiling in March, 2020.
- 6.13 With respect to the roof, it was her testimony, that Builders Village Limited was to design and build a hidden roof. Lungowe Matakala added that she had emphasized to Builders Village Limited that she wanted a particularly hidden flat roof, that would not leak, and that she had
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approached them as she was assumed that they were professionals who could build a hidden roof that would not leak.

- 6.14 Lungowe Matakala told the Court that Dr Sam Sichilalu had affirmed that Builders Village Limited was capable of building a roof that would not leak, and that it was on that premise, that Lungowe Matakala proceeded to contract Builders Village Limited.
- 6.15 She further testified that Dr Sam Sichilalu and Dr Brenda Bukowa of Builders Village Limited were employees of both the University of Zambia and Builders Village Limited. Therefore, as fellow UNZA Dons, Lungowe Matakala had interacted with them easily and casually, and they entered into an oral contract, which did not contain a warranty period.
- 6.16 Lungowe Matakala testified that at the time of designing the roof, Builders Village Limited had advised that a butterfly roof be constructed instead of a flat roof, because of the size of the house, which measured 14m by 16m. Her evidence was that she accepted the proposal as Builders Village Limited were the experts.
- 6.17 It was stated that Builders Village Limited gave Lungowe Matakala the option between a steel framework and a timber framework, and that she opted for the timber framework because it was cheaper.

- 6.18 Lungowe Matakala's evidence was that at no point did Builders Village Limited state that use of the timber framework would cause leakage or any damage to the roof.
- 6.19 She explained that Builders Village Limited designed and built the timber butterfly roof, using the timber framework between March and May 2020. It was her testimony that the roof had a gutter that ran in the middle of the house.
- 6.20 Lungowe Matakala further told the Court that Builders Village Limited informed her to wait for one rainy season before installing the ceiling, stating that there might be a few leaks, which was apparently normal with a new roof. Thus, as advised, Lungowe Matakala waited, and in October, 2020 there were leaks, which Builders Village Limited attended to.
- 6.21 Her evidence was that in 2021, Builders Village Limited designed and built the ceiling in all the rooms of the house which were dry. Then in the rainy season of that year, there were major leakages, stating that the dining room and the living room were affected. Lungowe Matakala testified that she had informed Builders Village Limited, but it did not fix the damage.
- 6.22 Then in April, 2022, there were some light rains and once again the roof leaked, and Lungowe Matakala immediately informed Dr Sam Sichilalu and expressed her concerns regarding the ceiling, stating that the rains were light, yet there were leakages. She further testified that she had asked what would happen when there were heavy rains, and that if they did not attend to the calamity, the ceiling would fall.

- 6.23 However, Dr Sam Sichilalu had assured Lungowe Matakala that Builders Village Limited would attend to the leaking roof. Thus, Lungowe Matakala made several phone calls to Builders Village Limited asking them to go and attend to the roof before the next rainy season, and Dr Sam Sichilalu informed her that they would do so, but they never did.
- 6.24 Lungowe Matakala also testified about how she had reminded Dr Sam Sichilalu on the urgent need to repair the roof when they met at the UNZALARU workshop in Livingstone in early October, 2022, and that he had promised to attend to the roof on his return from Chipata.
- 6.25 However, on 22nd October, 2022, when she had called Dr Sam Sichilalu, he had informed her that he would be on his way from Chipata the next day, but he could not stop over in Chongwe, as he had not seen his family since they had met in Livingstone. She stated that he had assured her that he would go there on Monday 31st October, 2022.
- 6.26 Then when he did not go there on Monday 31st October, 2022, and the next day, Tuesday 1st November, 2022, it rained heavily and the ceiling in the dining room fell with reference being made to the video, Lungowe Matakala had informed Builders Village Limited about the calamity.
- 6.27 It was her evidence that Dr Sam Sichilalu on Wednesday 2nd November, 2022, lamented that for flat roofs, metal frameworks were ideal but pricey, but he purchased materials to repair the roof and he sent a team to go and work on the roof.

- 6.28 However, on 10th November, 2022, there was heavy rain which poured into the living room and Lungowe Matakala had to move out the sofas from the sitting room, and that the sitting room was leaking more than the dining room. Lungowe Matakala testified that she heard a loud crash and her daughter scream, and she went and found part of the ceiling on the floor in front of where her daughter was sitting.
- 6.29 The evidence that Lungowe Matakala further gave, was that her daughter was so devastated by the experience.
- 6.30 Thus, Lungowe Matakala called Builders Village Limited and informed them that she was moving out of the house as it was a danger to her and the children.
- 6.31 She testified that on 11th November, 2022, she went to Fallsway Apartments in Mass Media, and Builders Village Limited quickly moved in to fix the roof and paid for accommodation at Fallsway Apartments for the night.
- 6.32 It was stated that the next day, when Lungowe Matakala called the workers at the house, she was informed that it had rained and the house had leaked. However, Dr Bukowa insisted that the house was safe, and she refused to pay for another night's accommodation at Fallsway Apartments.
- 6.33 Lungowe Matakala stated that she however refused to return to the house as it was still leaking, and it was prone to more parts of the ceiling falling.
- 6.34 Her evidence was that the Site Visit Report -Roof Defence Inspection Report dated 30th October, 2023 was compiled after Adroit Engineering Construction Limited did the
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assessment, which revealed that the roof was poorly designed, and that Builders Village Limited did not construct a proper and capable roof which was suitable for her home.

6.35 She testified that the recommendation in the report, was that a new roof altogether be constructed.

6.36 However, the roof had not been constructed, and the home was not suitable for habitation, particularly during the rainy season when Lungowe Matakala was forced to find alternative accommodation.

6.37 Lungowe Matakala stated that the failure by Builders Village Limited to construct a proper roof had caused damage to the ceiling in the kitchen, living room, dining room as well as the master bedroom and the children's play room.

6.38 She added that the wooden furniture, computers and the kitchen electric scale had been ruined by the rain water that had leaked into the house.

6.39 On the other hand, Sam Michelo Sichilalu of Builders Village Limited's evidence was that between May 2020 and May 2021, Lungowe Matakala contracted Builders Village Limited to change the roof from an ordinary roof to a flat one, to install a ceiling and to conduct other modernization works at her home in Chongwe.

6.40 He testified that no plans relating to the house were availed to Builders Village Limited at the time. Thus, his team went to the house where they took measurements which were 14 x14 metres.

- 6.41 It was further his evidence, that Builders Village Limited thereafter, issued two quotations to Lungowe Matakala one for steel trusses and another for wood trusses.
- 6.42 Sam Michelo Sichilalu also testified that Builders Village Limited advised Lungowe Matakala against using wood trusses over the steel trusses, stating that wood is not durable as it tends to bend over with time, pushing out the nails or bending the iron sheets which results in leakages.
- 6.43 He went on to state that Lungowe Matakala despite being advised, rejected use of the steel trusses and instructed that timber trusses be used as she had timber available.
- 6.44 That was how, based on the instructions, Builders Village Limited constructed a flat roof in or about May 2020.
- 6.45 Sam Michelo Sichilalu told the Court, that as per the policy for Builders Village Limited, Lungowe Matakala was informed about the twelve months warranty that Builders Village Limited gave, which covered one rainy season and within which period, any leaks associated with the newly built roof, which would be fixed at no cost.
- 6.46 He testified that any further works thereafter would be considered as maintenance, and would be conducted at a fee.
- 6.47 Sam Michelo Sichilalu also stated that between May 2020 and May 2021 within the warranty period, Builders Village Limited attended to a minor leak that related to the gutter by applying sealant to the gutter joint, and the issue was resolved.
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- 6.48 His evidence was that this was before Lungowe Matakala moved into the house, and that at the time, it was occupied by a caretaker.
- 6.49 Then shortly thereafter in or around April, 2021, Builders Village Limited provided a further quote for works on the ceiling, and it did a complete installation of the ceiling in or about May, 2021.
- 6.50 It was Sam Michelo Sichilalu's testimony that in or around October, 2021, outside the warranty period, following more rains, Lungowe Matakala reported that water was drizzling from the ceiling, and Builders Village Limited carried out the maintenance works to address the issue.
- 6.51 His evidence was that Lungowe Matakala demanded that Builders Village Limited pays for her lodging at Fallsway Apartments at a rate of ZMW2, 300.00 per night, and she spent two nights there at Builders Village Limited's cost.
- 6.52 Sam Michelo Sichilalu stated that towards the end of the year 2021, it came to his attention that Lungowe Matakala had installed solar panels and heavy solar heaters despite being advised about the non-durability of the timber trusses.
- 6.53 Then thereafter, Lungowe Matakala informed Builders Village Limited about another leak in the ceiling and demanded further maintenance works.
- 6.54 Sam Michelo Sichilalu testified that it was agreed between Lungowe Matakala and Builders Village Limited that Lungowe Matakala would seek the services of an independent flat roof expert of her choice, who would
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conduct the maintenance works, which cost would be borne by Builders Village Limited.

6.55 He stated that Lungowe Matakala proceeded to engage the expert and Builders Village Limited met the costs in full on 25th January, 2023. Sam Michelo Sichilalu stated that it was agreed that there would be no more claims by Lungowe Matakala against Builders Village Limited in relation to the roof.

CLAIM FOR THE IMMEDIATE REPAIR AND RESTORATION OF LUNGOWE MATAKALA'S ROOF AND CEILING TO THE STANDARD EXPECTED AND AGREED IN THE CONTRACT AND DAMAGES FOR BREACH OF CONTRACT

6.56 In the submissions, Lungowe Matakala referred to the learned authors ***Sangwani Patrick Ngambi and Chanda Chungu*** in the book, ***Contract Law in Zambia 2nd Edition at pages 309-310*** stating that they state as follows at those pages:

“The normal way in which a contract is discharged is that both parties perform their obligations under it. If only one party performs his obligations, then he alone is discharged and he acquires the right of action against the other. As a general rule, the parties must perform precisely all the terms of the contract, express and implied in order to discharge their obligations.”

6.57 Based on the above, the submission was that Builders Village Limited breached the contract by failing to construct a roof in accordance with the law and construction guidelines given that the roof was uninhabitable from inception during the rainy seasons.

6.58 Relying on the book **Contract Law in Zambia** again, the submission was that the authors with regard to breach of contract at page 334 state that:

“Breach of contract occurs if a party without lawful excuse fails or refuses to comply with their obligations or perform what is due from them under a contract or perform their obligations in a defective manner. It may also occur where one party to a contract fails to comply with the terms of the contract.”

6.59 On the categories of breach that are stated by the learned authors at that page, which entitle an innocent part to treat the contract as breached, and entitles them to damages, the submission was that these are outlined as where a party:

- i. Unlawfully fails or refuses to perform his obligations under the contract;
- ii. Provides defective performance;
- iii. Disables himself from performing his promise or part under the contract.

6.60 **Trietel on the Law of Contract, 12th Edition in paragraph 17-049 at page 823** was further referred to as having been relied on by the Court of Appeal in the case of

Msanide Phiri v BHB Contractors Zambia Limited and two others ⁽¹⁸⁾ which explained the effect of breach of contract as:

“A party without lawful excuse fails or neglects to perform what is due from him under the contract... The breach may entitle the injured party to claim damages, the agreed sum, specific performance or an injunction.”

- 6.61 The submission was that Builders Village Limited having bound itself to construct a roof to habitable standards, it should be ordered to comply with the terms of the contract. Further, that by failing to comply with the terms of the contract, Builders Village Limited failed to perform the contract as expected.
- 6.62 Reliance was placed on the case of ***Duff Kopa Kopa v University Teaching Hospital*** ⁽¹³⁾ stating that it held that the test is the standard of the ordinary skilled man exercising and professing to have that special skill. It was also submitted that the said case held that a man need not profess the highest expert skill, and that is well established law, that it is sufficient if he exercises the ordinary skill of a competent man exercising that particular art.
- 6.63 In line with the above, it was submitted that Builders Village Limited having professed to be an expert on construction, architecture, construction and matters relating to building of structures, the standard of care that was expected from it was high in light of the skills that it had.

- 6.64 Thus, its' failure to exercise the required standard in accordance with the contract was breach of contract.
- 6.65 Reference was made to the Roof Defence Report which was at pages 1-17 of Lungowe Matakala's bundle of documents which was conducted by Engineering Construction Limited stating that it showed that the roof was poorly designed and it was not a proper and capable roof for Lungowe Matakala's house.
- 6.66 It was also stated that recommendation was made in the report that the roof be altogether constructed due to the condition in which it was.
- 6.67 The submission was that the recommendation buttressed that Builders Village Limited provided substandard performance, and it was therefore in breach of contract.
- 6.68 In that regard, it was stated that it was not in dispute that Builders Village Limited was contracted to design and construct the roof and to install the ceiling by Lungowe Matakala, and that it assured Lungowe Matakala that the roof would not leak.
- 6.69 Thus, Builders Village Limited designed and built a butterfly roof, but which would leak and it worsened over every rainy season.
- 6.70 Also submitted, was that Builders Village Limited held itself out as an expert and professional, and that Sam Michelo Sichilalu in cross examination, agreed that Builders Village Limited was aware that there was a Judgment against it in a different suit where the directors of Builders Village

Limited were fined for being non-compliant with the law by failing to register with the Zambia Institute of Architects and he had agreed.

- 6.71 Therefore, Builders Village Limited lacked the competence and skill that is required to undertake certain construction works, such as designing roofs, which led to the defective performance.
- 6.72 Submission was also made, that the persons from Builders Village Limited who carried out the works were not certified professionals or experts who had very little or insufficient educational background which Sam Michelo Sichilalu admitted under cross examination.
- 6.73 Thus, there was breach of contract and Lungowe Matakala was entitled to damages for breach of contract.
- 6.74 Reliance was placed on the case of ***Zambia National Building v Society Ernest Mukwamataba Nayunda*** ⁽¹⁰⁾ as having held the following:

“The essence of damages has always been that the injured party should be put, as far as monetary compensation can go, in about the same position he would have been in had he not been injured.”

- 6.75 In response, Builders Village Limited submitted that Lungowe Matakala had relied on the third party that she engaged after Builders Village Limited allegedly failed to repair the roof. However, that third party failed to repair the roof and Lungowe Matakala had been quick to apportion the

blame on Builders Village Limited despite the existence of the intervening party.

- 6.76 It was contended that Lungowe Matakala's assertion that Builders Village Limited's incapacity to repair the roof was her own opinion which had not been supported by any objective independent expert opinion.
- 6.77 Therefore, in the absence of such independent evidence, Lungowe Matakala could not attribute the leaking roof to Builders Village Limited, as she may have contributed to the worsening of the problem as she engaged a third party to repair the said roof.
- 6.78 On the expert report that Lungowe Matakala had relied on, the submission was that the author of that report was not called as a witness before this Court, to establish his qualifications and explain the basis upon which he reached at the findings that were in the report.
- 6.79 Note was made, that the qualifications of the author of the report were silent, and in the absence of such evidence, the report was merely a statement of opinion by an unidentified person, and it had failed to meet the threshold of being admissible and reliable evidence, and it should be treated with caution, if not discarded altogether.
- 6.80 It was also submitted that relying on the Expert Report would provide an unbalanced and unfair evaluation of the matter, as the report was merely one sided. Further submission was made, that Builders Village Limited was not made aware of the report prior to the trial, and it had not

been accorded an opportunity to question its' content, methodology, assumptions or conclusions.

6.81 Thus, the report may have been prepared to suit Lungowe Matakala's case.

6.82 It was also submitted that this Court is not bound by the expert report, with contention being made, that the expert opinion in the report was meant to merely assist the Court in arriving at a just decision.

6.83 The submission was that this Court is entitled to scrutinise the reasoning, methodology and assumptions that underlined the expert report, and weigh them against the rest of the evidence. However, it was stated that the report standing alone, unsupported and untested, was likely to be relied on by this Court.

6.84 The words of *Lord Russel of Kilowen CJ* in the case of **R v Silverlock** ⁽¹⁾ were relied on, which were as follows:

“We now come to the second objection, as to proof of the handwriting which affords a good illustration of that class of evidence called evidence of opinion. It is true that the witness who is called upon to give evidence founded on a comparison of handwriting must be peritus; he must be skilled in doing so but we cannot say that he must have become peritus in the way of his business or in any definite way. The question is, is he peritus? Is he skilled? Has he an adequate knowledge? Looking at the matter practically, is a

witness is not skilled the Judge will tell the Jury to disregard his evidence.”

6.85 Further reliance was placed on the case of **Chuba v The People** ⁽⁴⁾ where it was held that:

“The evidence of a handwriting expert is an opinion only and the matter is one on which the court has to make a finding. In addition to his opinion the expert should place before the court all the materials used by him in arriving at his opinion so that the court may weigh their relative significance.

The principle is that the opinion of a handwriting expert must not be substituted for the judgment of the court. It can only be a guide, albeit a very strong guide, to the court in arriving at its own conclusion on the evidence before it.”

6.86 The submission was therefore that the over reliance on a single untested document, without any supporting evidence or proper expert verification severely undermined the credibility and probative value of Lungowe Matakala’s case, and that the Court should treat it as mere untested opinion which it is not bound to accept.

6.87 As regards the submission relating to Builders Village Limited being contracted to design and construct the roof, but that Builders Village Limited was not registered with the Zambia Institute of Architects, and as a result, two of its’ directors were fined ZMW8, 000.00 for the failure of such

registration, the submission was that Lungowe Matakala in submitting suggested that Builders Village Limited professed to be experts in architecture, and ought to have been registered with the Zambia Institute of Architects (ZIA).

6.88 It was also submitted that such argument was misplaced, irrelevant to the pleadings, and was of no probative value to the matter that is presently before Court.

6.89 To support that argument, it was stated that Lungowe Matakala in her pleadings, had alleged a failure to properly repair the leaking roof following a construction project. Further submission was made, that at no point had Lungowe Matakala allege that Builders Village Limited was engaged to provide architectural services, and the pleadings did not allege failure by Builders Village Limited to register with the Zambia Institute of Architects.

6.90 Relying on the case of ***Attorney General v Marcus Achiume*** ⁽⁸⁾ it was submitted that a party is bound their pleadings.

6.91 It was also submitted that it was factually incorrect for Lungowe Matakala to allege that Builders Village Limited presented itself as an architectural firm or as professionals who were authorized to offer architectural services. The assertion was that Builders Village Limited had never been an established firm of architects, but rather it was engaged by Lungowe Matakala to design and construct a roof, a service that fell within the scope of general building and construction, and which was not regulated architectural services, as defined in the Zambia Institute of Architects Act.

- 6.92 Addition was made, that the relationship between Lungowe Matakala and Builders Village Limited was that of builder or construction contractor, and no evidence had been presented before Court to suggest otherwise.
- 6.93 It was further submitted that even if Builders Village Limited was required to be registered with the Zambia Institute of Architects, which was not admitted, the issue of regulatory reliance would be one between Builders Village Limited and the relevant regulatory authority, and not one that directly affected the legal obligations between the parties under the contract or altered the merits of Lungowe Matakala's claims.
- 6.94 The submission was that regulatory infractions such as failure to obtain registration did not automatically render Builders Village Limited's obligations under the contract void or unenforceable, unless the subject matter of the contract was itself illegal or expressly prohibited by law, which had not been established in this case.
- 6.95 In still submitting, Builders Village Limited stated that Lungowe Matakala willingly and voluntarily engaged Builders Village Limited without raising any objections to its' qualifications, standing or registration status at the material time. Therefore, Lungowe Matakala could not now repudiate Builders Village Limited's involvement based on regulatory technicalities which were not directly related to performance or the quality of the works that were done.
- 6.96 Builders Village Limited further submitted even if there existed regulatory penalties or fines which were imposed on

its' directors, those matters were administrative sanctions, with no direct legal bearing on Lungowe Matakala's private contractual claim which should be adjudicated upon on the basis of contractual performance, the available evidence and the applicable standards of proof, as opposed to speculative arguments about the regulatory compliance that neither formed part of the pleadings nor had demonstrated any connection to the alleged defective works.

6.97 Lungowe Matakala in the submissions in reply, referred to the holding in the case of **William David Carlisle Wise v E.F Harvey Limited** ⁽⁹⁾ where the Supreme Court held that:

“Pleadings serve the useful purpose of defining the issues of fact and of law to be decided; they give each party distinct notice of the case intended to be set up by the other; and they provide a brief summary of each party's case from which the nature of the claim and defence may be easily apprehended;”

6.98 Also relied on, was the case of **Anderson K. Mazoka and others v Levy Mwanawasa** ⁽¹¹⁾ where it was held that:

“The function of pleadings, is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. Once the pleadings have been closed, the parties are bound by their pleadings and the court has to take them as such.”

6.99 Other cases that were relied on were ***Christopher Lubasi Mundia v Sentor Motors*** ⁽⁶⁾ and ***Lyons Brooke Bond (Zambia) Limited v Zambia Tanzania Road Services Limited*** ⁽⁵⁾.

6.100 The submission was that this Court should disregard the submission that had been made by Builders Village Limited as it purportedly raised new issues which were not captured by its' pleadings or the evidence at trial.

6.101 Consequently, the submissions served no functional utility to both parties and the Court in the determination of this matter.

6.102 It was also submitted in reply, that Builders Village Limited had contended that there was no evidence on record to show that it did substandard work. However, Lungowe Matakala by her pleadings and her evidence at trial, had shown that the roof leaked and as result damage had been caused. Further, she had to vacate the house in order for Builders Village Limited to repair the roof.

6.103 Lungowe Matakala in continued reply stated that the expert report showed that the roof was poorly constructed, and in cross examination, Builders Village Limited's witness Sam Michelo Sichilalu, admitted that Builders Village Limited conducted repairs to the roof of her house, as it was leaking, and that even after the repairs were done, the house was still leaking.

6.104 The submission was that the admission was proof that the work that Builders Village Limited did on Lungowe

Matakala's house was substandard, and in breach of the agreement of the contract. Thus, Lungowe Matakala's house was uninhabitable.

6.105 On objection to the expert report, the case of **Charles Kajimanga v Marmetus Chilemya** ⁽¹⁵⁾ was relied on, stating that the Supreme Court in that matter, stated that in civil matters, parties are provided with opportunity to object to any documents that are intended to be brought before Court by the opposing party.

6.106 It was stated that the Court in that matter, stated that objections must be made timely to allow the other party to respond, and if possible to make the relevant application.

DECISION

6.107 In this matter, the reliefs as sought by Lungowe Matakala are endorsed in the Writ of Summons and elaborated in the statement of claim.

6.108 The reliefs as claimed, are for a declaration that Builders Village Limited breached the contract, and for an Order to immediately repair and restore Lungowe Matakala's roof and ceiling.

6.109 The averments as made in the statement of claim, contend that Builders Village Limited agreed to build and design a roof and ceiling for Lungowe Matakala's house, and that in doing so, Builders Village Limited agreed to provide quality service.

- 6.110 However, the roof on being constructed, leaked causing damage to the kitchen, the living room, the dining room, the master bedroom and the children's play room.
- 6.111 In defence, Builders Village Limited whilst agreeing that it was contracted to construct the roof and ceiling, with regard to the roof stated that it had advised Lungowe Matakala to use steel trusses as opposed to timber trusses for the flat roof that she wanted to have constructed, as timber is less durable.
- 6.112 However, Lungowe Matakala insisted on using the timber trusses.
- 6.113 From the defence that Builders Village Limited filed, it can be seen that it pleaded that between May 2021 and May 2021 after it constructed the roof, it fixed a leak that related to the gutter after it rained, and before the ceiling was installed. It added that at the time, Lungowe Matakala was not residing on the premises, but rather, her caretaker was.
- 6.114 It was also Builders Village Limited's defence, that after that, Lungowe Matakala put a heavy-duty solar geyser and solar panels which compromised the strength and durability of the roof.
- 6.115 The averment in the defence was that Lungowe Matakala reported leaking of the roof in October, 2021 and in December, 2021, which was outside the warranty period of twelve months. It was also stated that when the roof leaked in December, 2021 it was agreed that Lungowe Matakala engages a third party expert to repair the roof, as the roof

was still leaking after Builders Village Limited repaired the roof. The defence was that this was done.

6.116 In her testimony, Lungowe Matakala stated that Builders Village Limited designed and built the timber butterfly roof, using the timber framework between March and May 2020. She added that the roof had a gutter that ran in the middle of the house.

6.117 Her evidence was that in October, 2020, there were leaks, which Builders Village Limited attended to. Then in 2021, Builders Village Limited designed and built the ceiling in all the rooms that were dry.

6.118 She further stated that in April, 2022, there were some light rains, and once again the roof leaked. Lungowe Matakala testified that she immediately informed Dr Sam Sichilalu and expressed her concerns regarding the ceiling, stating that the rains were light, yet there were leakages. She further testified that she had asked what would happen when there were heavy rains, and that if they did not attend to the calamity, the ceiling would fall.

6.119 However, Dr Sam Sichilalu had assured Lungowe Matakala that Builders Village Limited would attend to the leaking roof. Thus, Lungowe Matakala made several phone calls to Builders Village Limited, asking them to go and attend to the roof before the next rainy season, and Dr Sam Sichilalu informed her that they would do so, but they never did.

- 6.120 Then when they met at the UNZALARU workshop in Livingstone in early October, 2022, Dr Sam Sichilalu had promised to attend to the roof on his return from Chipata.
- 6.121 However, on 22nd October, 2022, when she had called Dr Sam Sichilalu, he had informed her that he would be on his way from Chipata the next day, but he could not stop over in Chongwe as he had not seen his family since they had met in Livingstone. She stated that he had assured her that he would go there on Monday 31st October, 2022.
- 6.122 Lungowe Matakala testified that he did not go there on Monday 31st October, 2022, and the next day, Tuesday 1st November, 2022, it rained heavily and the ceiling in the dining room fell.
- 6.123 Lungowe Matakala's evidence was that Dr Sam Sichilalu on Wednesday 2nd November, 2022, lamented that for flat roofs, metal frameworks were ideal, but pricey, but he purchased materials for repair of the roof, and he sent a team to go and work on the roof.
- 6.124 Then on 10th November, 2022, there was heavy rain which poured into the living room and Lungowe Matakala had to move out the sofas from the sitting room, and that the sitting room was leaking more than the dinning room.
- 6.125 She explained that she had called Builders Village Limited and informed them that she was moving out of the house as it was a danger to her and the children.
- 6.126 Thus, on 11th November, 2022, she went to Fallsway Apartments in Mass Media, and Builders Village Limited

quickly moved in to fix the roof, and paid for the accommodation at Fallsway Apartments for the night.

6.127 It was stated that the next day, when Lungowe Matakala called the workers at the house, she was informed that it had rained and the house had leaked. However, Dr Bukowa insisted that the house was safe, and she refused to pay for another night's accommodation at Fallsway Apartments.

6.128 Lungowe Matakala testified that she however refused to return to the house as it was still leaking, and it was prone to more parts of the ceiling falling.

6.129 Her evidence was that the Site Visit Report -Roof Defence Inspection Report dated 30th October, 2023 was compiled after Adroit Engineering Construction Limited did the assessment, revealed that the roof was poorly designed, and that Builders Village Limited did not construct a proper and capable roof, which was suitable for her home.

6.130 What can be seen from this, is that the roof was leaking after it was constructed by Builders Village Limited. Builders Village itself, attributed the first leak to the roof before the ceiling was installed to the gutter that was installed on the roof.

6.131 Builders Village Limited at no point in its' defence pleaded that the timber trusses that Lungowe Matakala had elected to use in the construction of the flat roof led to the leakage of the roof.

6.132 What Builders Village Limited did do in its' defence, was to state that after it repaired the leak that was caused by the

gutter, it became aware that Lungowe Matakala had installed a heavy-duty geyser and solar panels on the roof which compromised the durability of the roof.

6.133 It however, did not lead any evidence to show how the timber trusses that were used to construct the roof, bended or pushed out the nails thereby causing the leakage to the roof, as testified by Sam Michelo Sichilalu in his defence.

6.134 He merely stated so without providing evidence as to how this caused the roof to leak.

6.135 Further no evidence was led by Dr Sam Sichilalu to demonstrate how the installation of the geyser and the solar panels contributed to the roof leaking or that the works that the third party did in repairing the roof as agreed contributed to the said leakage.

6.136 Objection in the submissions, was raised to the Expert Report which is at pages 1-17 of Lungowe Matakala's bundle of documents, on the basis that the author of the report was not called as a witness to substantiate its contents and neither were their qualifications stated in the said report to determine whether they were indeed an expert.

6.137 Thus, Builders Village Limited was deprived of the opportunity to test the veracity of the report.

6.138 Lungowe Matakala in response contended that Builders Village Limited did not object to the report and therefore it had waived any right to object to the said report.

6.139 **Order 38 Rule 36 of the Rules of the Supreme Court of England, 1965, 1999 Edition**, states the following with regard to expert witnesses:

“(1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence -

(a) has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) and has complied with any direction given on the application, or

(b) has complied with automatic directions taking effect under Order 25, rule 8 (1)(b).

(2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these Rules of a direction given under this part of this Order.”

6.140 The effect of this Rules is seen in the editorial or explanatory notes in **Order 38/36/2 of the said Rules of the Supreme Court of England**, which state that:

“The effect is to preclude every party from adducing any expert evidence at the trial or hearing of any cause or matter except (1) with the

leave of the Court or (2) where all the parties agree or (3) where the evidence is given by affidavit or (4) where the party seeking to adduce such evidence has first applied to the Court to determine whether or not, and if so to what extent, he must disclose the substance of his expert evidence to any other party before the trial and he has complied with such direction or (5) where he has complied with the automatic directions under O.25, r.8 (1)(b). It is of prime importance that every party, whether plaintiff or defendant or third party, intending to use expert evidence of any character at the trial of civil proceedings, apply to the Court for a direction under rr.37, and 41, as the case may be, for otherwise he will simply be prevented from adducing such expert evidence at the trial, unless he secures the consent of all the other parties or applies to adduce such evidence by affidavit. The sanction for failure to apply for the direction of the Court to adduce expert evidence at the trial is the effective exclusion of the expert evidence of that party.”

6.141 A perusal of the evidence that is on record, reveals that Lungowe Matakala did not obtain the consent of Builders Village Limited to adduce the expert evidence. Therefore, she had to comply with the law that regulates the adducing of expert evidence or opinion.

6.142 There is nothing on the record that shows that Lungwoe Matakala applied for directions of the Court to adduce the expert testimony.

6.143 **Rule 43 of Order 38 of the Rules of the Supreme Court of England** is as follows in provision:

“Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with a direction given under rule 37, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.”

6.144 Noteworthy is that **Order 5 Rule 21 of the High Court Rules Chapter 27 of the Laws of Zambia** provides that:

“21. In every case, and at every stage thereof, any objection to the reception of evidence by a party affected thereby shall be made at the time the evidence is offered:

Provided that the Court may, in its discretion, on appeal, entertain any objection to evidence received in a subordinate court, though not objected to at the time it was offered.”

6.145 Therefore, Builders Village Limited at trial, when Lungowe Matakala sought to rely on the expert report which is at pages 1-17 of her bundle of documents had the liberty to object to the said expert report on the basis that the author had not authenticated it. They did not do so.

6.146 While Lungowe Matakala argued, relying on the case of ***Charles Kajimanga v Marmetus Chilemya*** ⁽¹⁵⁾ that no objection was raised by Builders Village Limited on the expert report, that does not make the report admissible as evidence before the Court, as it is expert testimony which has not been authenticated.

6.147 The explanatory notes in ***Order 38/39/4 of the Rules of the Supreme Court of England*** state as follows:

“An expert witness is called primarily for his opinion evidence, and therefore when an order is made under O.37 for the substance of any expert evidence to be disclosed, that means that the report of the expert must provide both the substance of the factual description of the machine and (or the circumstances of the accident) his expert opinion in relation to that accident, which is the very justification for calling him.”

6.148 As to the duties and responsibilities of expert witnesses, the editorial notes in ***Order 38/4/3 of the said Rules of the Supreme Court of England*** state that:

“The duties and responsibilities of expert witnesses in civil cases were stated by Cresswell J. in “The Ikarian Reefer” [1993] 2 Lloyd’s Rep. 69 at 81 as including:

Expert evidence presented to the Court should be, and should be seen to be, the independent

product of the expert uninfluenced as to form or content by the exigencies of litigation.

An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise.

An expert witness in the High Court should never assume the role of an advocate.

An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.

.....

In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.”

6.149 In the case of ***Sithole v The State Lotteries Board*** ⁽¹⁾ the Supreme Court stated as follows:

“The court is entitled to accept an expert's interpretation of evidence where that interpretation is based on special training and skill, but it is not entitled to accept as factually

existing something which the expert says he can see but which the court itself is unable to see”.

- 6.150 This case also stressed the need for knowledge beyond what normally applies.
- 6.151 Accordingly, the expert report which is at pages 1-17 of Lungowe Matakala's bundle of documents not having met the requirements for it to be admissible, this Court cannot rely on its' contents.
- 6.152 It will further be seen that Lungowe Matakala in her submissions, raised issue with Builders Village Limited not having been registered with Zambia Institute of Architects and that its' directors were fined for such failure.
- 6.153 As such, this should be a basis for me to find liability on the part of Builders Village Limited, as it represented to Lungowe Matakala that it was competent to design and construct the roof and ceiling to the required professional standard.
- 6.154 As rightly submitted by Builders Village Limited, Lungowe Matakala did not by her pleadings contend that Builders Village Limited represented that it was qualified to offer architectural services. Lungowe Matakala stated that Builders Village Limited was contracted to design and construct a roof and install the ceiling which was up to the required standards.
- 6.155 There is no pleading that Builders Village Limited in contravention of the law, designed the roof.

6.156 In the case of **Christopher Lubasi Mundia v Sentor Motors Limited** ⁽⁶⁾ the Court stated the following as regards pleadings:

“The function of pleadings is very well known, it is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. Once the pleadings have been closed, the parties thereto are bound by their pleadings and the Court has to take them as such.”

6.157 In terms of whether the failure to register with the Zambia Institute of Architects rendered the contract illegal, a registered architect is defined in **Section 2 of the Zambia Institute of Architects Act, Chapter 442 of the Laws of Zambia** as:

““registered architect” means a person registered under section twenty-eight and engages in the planning or supervision of, and erection or alteration of a building exceeding one hundred and twenty square metres.”

6.158 I have perused the said **Zambia Institute of Architects Act** and I am unable to find a provision that relates to the consequences of one failing to register under the Act. The Act regulates the registration of Architects, and provides for the discipline of registered Architects.

6.159 *The National Council for Construction Act No 10 of 2020 in Section 2* defines a contractor as:

“contractor” means an individual, firm, company or body of persons, who undertakes to execute and complete construction works;”

6.160 The Section further defines construction as:

“construction” means the process of erecting, extending, repairing, maintaining, retrofitting, renewing, renovating, rehabilitating, altering, converting, restoring, refurbishing, upgrading, dismantling or demolishing of all types of buildings and engineering infrastructure, and includes temporary and any preparatory works required to undertake the works;”

6.161 It will be observed that under **Section 10 of the said Act** provides that:

“10. (1) A person shall not carry on business in the construction industry, without registering as a contractor under this Act.

(2) A person shall not be considered to be carrying on business within the meaning of this Part by reason only of the performance of that person’s functions as an employee.

(3) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand

penalty units or to imprisonment for a term not exceeding five years, or to both.

6.162 **Section 14 (1) of the said Act** provides that:

“14. (1) The Council shall establish grades and classes in respect of registered contractors and maintain a record of the number of registered contractors in each grade and class.”

6.163 It has been seen that a registered Architect is defined by the Zambia Institute of Architects, as one who engages in the planning or supervision of, and erection or alteration of a building exceeding one hundred and twenty square metres.

6.164 A lay definition of planning, is the process of setting goals, defining actions to achieve those goals and the organizing of resources and efforts needed to carry out those goals.

6.165 Construction on the other hand, is defined by the ***National Council for Construction Act No 10 of 2020*** as meaning the process of erecting, extending, repairing, maintaining, retrofitting, renewing, renovating, rehabilitating, altering, converting, restoring, refurbishing, upgrading, dismantling or demolishing of all types of buildings and engineering infrastructure, and includes temporary and any preparatory works required to undertake the works.

6.166 There is no pleading as to the failure by Builders Village Limited to register with the Zambia Institute of Architects.

6.167 While that it is the case, it is trite that Courts will not enforce illegal agreements.

6.168 *Halsbury's Laws of England, 4th Edition Re-Issue, Vol 9* in paragraph 386 in that regard states that:

“There are several classes of contracts which though perfect as to form, agreement and consideration are not given full effect because they offend of the law. Some contracts may be illegal in the sense that they involve the commission of a legal wrong, whether by statute or the common law, or because they offend against fundamental principles of order or morality. Less objectionable contracts may simply be void by common law or statute.”

6.169 In the case of *Holman v Johnson* ⁽³⁾ the Court stated that:

“The principle of public policy is this; ex dolo malo non oritur action. No Court will lend its' aid to a man who founds his cause of action upon an immoral or illegal act. If, from the Plaintiff's own stating or otherwise, the cause of action appears to arise ex turpi causa, or the transgression of a positive law of this country, there the Court says he has no right to be assisted. It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So, if the plaintiff and the defendant were to change sides, and the defendant was to bring the action against the plaintiff, the latter would have the advantage of it; for where

both are equally in fault, potior est conditio deferentis.”

6.170 The Supreme Court in the case of ***Zambia State Insurance Pension Trust v Zambia Extracts Oils and Colourants Limited and another*** ⁽¹⁴⁾ further noted that:

“Where a contract which the plaintiff seeks to enforce is expressly or by implication forbidden by the statute or common law, no Court will lend its’ assistance to give it effect.....but where the consideration and the matter to be performed are both legal, we are not aware that a plaintiff has ever been precluded from recovering by an infringement of the law, not contemplated by the contract in the performance of something to be done on his part.”

6.171 The evidence on record shows that Builders Village Limited agreed to design and construct a roof and ceiling for Lungowe Matakala. As to how that amounted to an illegal contract has not been demonstrated and that aspect as made in the submissions fails.

6.172 It has also been shown from the evidence that after the roof was designed and constructed by Builders Village Limited, it started leaking with Builders Village Limited stating that the initial leak was associated with the gutter that it placed on the said roof.

- 6.173 The record shows that there were further leaks in the roof which led to the ceiling of Lungowe Matakala's house collapsing.
- 6.174 I have found that the expert report can only be admissible in this matter if it is authenticated by the author, it being an expert report.
- 6.175 Builders Village Limited however having been contracted by Lungowe Matakala to design and construct the roof that leaked, and which in turn caused the ceiling of her house to collapse, and resulted in damage in the kitchen, dining room, sitting room, master bedroom and the children's play room, it was in breach of contract.
- 6.176 This is on the basis that Builders Village Limited did not in its' defence lay any evidence before this Court to show that the leaking roof was contributed by use of the timber trusses that Lungowe Matakala paid for to be used to construct the said roof.
- 6.177 Further, this is on the basis that Builders Village Limited did not in its' defence lead any evidence to show that installation of the solar geyser and the solar panels contributed to the leak in the roof or that the third-party that was agreed by the parties to repair the roof in any way contributed to the said leakage of the roof.
- 6.178 The only evidence that is before Court, is that the gutter that Builders Village Limited installed as part of roof leaked and it caused damage and Sam Michelo Sichilalu in cross examination agreed it led to eventual collapse of the roof.

6.179 Therefore, Lungowe Matakala succeeds on her claim for the repair and restoration of the roof, as it is trite that in contract, an innocent party is to be placed in the position that they would have been, had the contract been performed.

6.180 The damages due as the costs of repair and restoration of the roof and ceiling shall be assessed by the Registrar, and at which proceedings Lungowe Matakala, shall be at liberty to call the author of the expert report to substantiate the cost of such repair and replacement of the roof.

CLAIM FOR REIMBURSEMENT OF THE SUM OF ZMW12,000.00 AS COSTS SPENT ON ALTERNATIVE ACCOMODATION

6.181 With respect to this claim, Lungowe Matakala submitted that the evidence on record showed that the roof that was constructed led to Lungowe Matakala's house being uninhabitable especially in the rainy season.

6.182 It was stated that Builders Village Limited was aware of this.

6.183 Reliance was placed on the case of ***Finance Bank Zambia Limited and another v Simataa*** ⁽¹⁶⁾ stating that the Supreme Court in that matter held that:

“It is important to recollect the principle that where there is a right there is a remedy....and breach of contract by one party necessarily entails an infringement of a contractual right by the other party.”

6.184 Submission was made, that Lungowe Matakala and her two children had to leave the house when it leaked due to the

rain and she had to find alternative accommodation at Fallsway Apartments where she paid the cost of accommodation for one night and Builders Village Limited paid for the other night.

6.185 Thereafter, Lungowe Matakala went to Legette Guest House in Chalala at her own expense for a certain period and she only returned home after the rain subsided.

6.186 It was also submitted that Lungowe Matakala complained about the continued leaking of the roof and Builders Village Limited agreed that she engaged a third party to remedy the defect at its' expense. Thus, Builders Village Limited did so, but however, that also proved futile as leaking of the roof continued.

6.187 Builders Village Limited in response, submitted that Lungowe Matakala had contended that she spent several nights in alternative accommodation.

6.188 However, she had not adduced any evidence to support her claims. The cases of ***Kunda v Konkola Copper Mines Plc*** ⁽¹²⁾ and ***Wilson Masauso Zulu v Avondale Housing Project*** ⁽⁷⁾ were relied on among other authorities, as having held that he who alleges must prove.

6.189 The claim by Lungowe Matakala is for costs for alternative accommodation, for the period October, 2019 to March 2020, October 2020 to March 2021, October 2021 to March 2022 and October 2023 to January 2024.

7.1223 The claim for costs for alternative accommodation is a claim for special damages. I say so because ***Black's Law***

Dictionary by Bryan A. Garner, 9th Edition, Thomas Reuters, 2009 at page 448 defines *special damages* as:

“Damages that are alleged to have been sustained in the circumstances of a particular wrong. • To be awardable, special damages must be specifically claimed and proved.”

7.1224 Further, the Supreme Court in the case of ***Madison General Insurance Company Limited v Avril Cornhill and Michael Kakoma*** ⁽¹⁷⁾ stated the following as regards proof of special damages:

“A claim for special damages such as loss of use must be proved through cogent evidence. This has been the consistent position of the law as restated in cases such as Zulu v. Avondale Housing Project. In Mhango v. Ngulube, we stated the position thus:

“It is, of course, for any party claiming a special loss to prove that loss and to do so with evidence which makes it possible for the court to determine the value of the loss with a fair amount of certainty.”

Later in the same judgment we observed and stated as follows:

“The result is that the evidence presented to the court was unsatisfactory and, in our opinion, the learned trial judge would have been entitled either to refuse to make any award or to award a much smaller sum, if not

a token amount in order to remind litigants that it is not part of the judge's duty to establish for them what their loss is."

6.190 Therefore, in this matter Lungowe Matakala bears the burden of proving that she did in fact stay in the alternative accommodation during the periods as alleged. The evidence on record shows that from the time Lungowe Matakala took occupation of the house, it has been leaking during the rainy season.

6.191 Accordingly, as the damages for the repair and restoration of the roof are being assessed, the cost spent on the alternative accommodation shall equally be assessed and if not proved, the Registrar shall award a token award as costs for alternative accommodation.

7. CONCLUSION

7.1 Lungowe Matakala has succeeded on her claim for breach of contract and for the repair and restoration of the roof and ceiling which damages shall be assessed.

7.2 Her claim for the costs of alternative accommodation shall be assessed, and if not sufficiently proved, a token amount shall be awarded.

7.3 The amounts found due shall carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment, and thereafter at the Bank of Zambia lending rate until payment. Lungowe Matakala having been successful, she is awarded costs which shall be taxed in default of agreement.

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7.4 Leave to appeal is granted.

DATED AT LUSAKA THE 13th DAY OF NOVEMBER, 2025

kaunda
**S KAUNDA NEWA
HIGH COURT JUDGE**

