



**Republic of Malawi**

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL CAUSE NUMBER 352 OF 2017**

**S. MANGAME**

**CLAIMANT**

**AND**

**LUJERI TEA ESTATES LIMITED**

**DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO**

Burton Mhango, Counsel for the Claimant

Arthur Nyirenda (on brief from Namanja), Counsel for the Defendant

Mankhambera, Official Court Interpreter

### **JUDGMENT**

1. This is the decision of this Court following a trial of this matter on the claimant's claim against the defendant for K3, 276, 099.30 being cost of damaged tea, damages for breach of contract, loss of profits and business and for defamation. The claimant also sought costs of this action. The defendant denied the claim.
2. The claimant is a smallholder tea grower and the defendant is a company that grows and processes tea on its estates. The defendant also buys tea from smallholder tea growers like the claimant.
3. The claimant indicated his statement of claim as follows:

- 1) The claimant was at the material times a smallholder farmer who grows tea for commercial purposes.
- 2) The defendant is a registered company under the laws of Malawi which grows and processes tea on its estates.
- 3) The defendant relies on small holder farmers' clubs and association to provide a significant and increasing percentage of the green leaf tea which is later processed by the defendant's estates.
- 4) The claimant repeats paragraph 3 hereof and avers that he belongs to one such smallholder association called Nchima Out Growers Group.
- 5) On or about 29<sup>th</sup> day of June 2016 by way of written agreement the claimant and defendant entered into a contract of sale of green leaf tea.
- 6) The said contract stipulated under clause 6 that the defendant shall buy from the claimant through the Nchima Out Growers Association the Greenleaf tea at the contract price of K97.30 per kilogram. The defendant further agreed to award each farmer a further K50 per each kg produced and sold to the defendant through the Out Growers Association.
- 7) It was also a term of the said contract under clause 10 that the contract would run through from the date which an individual smallholder farmer had signed to the month of June in the year 2017.
- 8) The claimant pleads that during one of the agricultural extensions and training sessions for the Nchima Small Holder Tea growers, which was organized by the defendant, on 28<sup>th</sup> April 2016 there was an allegation that some farmers were conniving with weighing clerks and were stealing green tea from nearby estates and also bribing clerks to get more money.
- 9) That the claimant herein was one of the smallholder farmers mentioned to have been involved in the alleged malpractice.
- 10) The allegations prompted the defendant's Approvals and Sanctions Committee to expel the claimant and other small holder farmers from the Nchima smallholder tea growers effective from 13<sup>th</sup> September 2016.
- 11) As a result of the expulsion, the claimant and other smallholder farmers were no longer allowed to sell their tea to the defendant through Nchima Group as per the contract.
- 12) The claimant pleads that he has never been charged with the allegation and has never been given opportunity to be heard before his expulsion.

- 13) The claimant avers that the act of the defendant to expel and refuse to buy the green tea leaves from the claimant was in breach of contract as the allegation of cheating were untrue and unfounded.
- 14) The claimant repeats paragraph 12 hereof and avers that the expulsion was done unilaterally by the defendant in breach of the agreement.
- 15) By reason of the matters aforesaid, the claimant was denied to sell his green leaf tea harvested in year 2017 to the defendant which resulted in damage of his 22241 kg of tea which he harvested in the year 2016 to 2017.
- 16) The claimant avers that had it not been for breach of the contract hereof the claimant would have earned the sum of K3,276,099.30 which he now claims.
- 17) Consequently, the claimant suffered loss and damage occasioning from the breach of contract.
- 18) The claimant further pleads that by memo addressed to several farmers including people including Out Growers Associations, the defendant published the following words "*cheating at tea weighing sheds*".
- 19) The claimant avers that the defendant mentioned the claimant in the said memo as one of the farmers who were cheating.
- 20) The claimant avers that such allegations were false.
- 21) By the said words the defendant meant and were understood to mean that the claimant is a cheater and not trustworthy; the claimant is a criminal; the defendant is a thief.
- 22) The claimant pleads that the said publication has greatly injured the claimant in his credit character and reputation and has been brought into public odium and contempt and has been defamed.
- 23) The claimant avers that the defendant conduct was in breach of the contract signed between the claimant and the defendant.

AND the claimant claims the sum of K3, 276, 099.30 being cost of damaged tea; damages for breach of contract; damages for loss of profit and loss of business; damages for defamation and cost of the action.

4. The defendant indicated its defence as follows:

- 1) The defendant refers to paragraph 1 of the statement of case and states that the defendant has no knowledge of the same and put the claimant to strict proof of the contents thereof.
- 2) The defendant refers to paragraphs 2 and 3 of the statement of case and admit the contents thereof.
- 3) The defendant refers to paragraph 4 of the statement of case and denies the contents thereof and puts the claimant to strict proof of the same.
- 4) The defendant refers to paragraphs 5, 6 and 7 of the statement of case and denies the contents thereof and puts the claimant to strict proof of the same. The defendant avers that no such contract exists between the claimant and the defendant as no contract was offered to the claimant for the 2016/2017 growing season and no contract was thus signed between the claimant and the defendant.
- 5) The defendant refers to paragraphs 8 and 9 of the statement of case and admits the contents thereof.
- 6) The defendant refers to paragraph 10 of the statement of case and admits the contents thereof save for the allegation that it was the defendant's approvals and sanctions committee that expelled the claimant. The approvals and sanctions committee is a grouping of farmers which is independent of the defendant which is a limited company. The actions of the committee cannot be said therefore to be actions of the defendant.
- 7) The defendant repeats paragraph 6 above and avers that the claimant herein has sued a wrong party.
- 8) The defendant therefore refers to paragraphs 11, 12, 13, 14, 15, 16 and 17 of the statement of case and denies the contents thereof and puts the claimant to strict proof of the same.
- 9) The defendant refers to paragraph 18, 19 and 20 of the statement of case and denies the contents thereof and puts the claimant to strict proof of the same. The defendant avers that if such words as alleged in paragraph 18 of the statement of claim were written or published, which is denied, the same came from the claimant's fellow farmers and were true.
- 10) The defendant repeats paragraph 9 above and further avers that the claimant was mentioned by his fellow farmers to the effect that he was one of the several other farmers involved in malpractices that amounted to cheating when weighing tea from his field. The claimant was expelled from the grouping of fellow farmers by his colleagues in the grouping.

The claimant admitted involvement and later apologized for the malpractice.

- 11) The defendant therefore denies the contents of paragraphs 21 and 22 of the statement of case and puts the claimant to strict proof of the same.
  - 12) The defendant refers to paragraph 23 of the statement claim and denies the contents thereof and puts the claimant to strict proof thereof. The defendant avers that there was no contract signed between the claimant and the defendant.
  - 13) The defendant denies the claimants' claims for any damages or the sum of K3,276,099.3 or any sum at all and puts the claimant to strict proof thereof.
  - 14) Save as herein specifically admitted, the defendant denies each and every allegation of fact contained in the statement of case herein as though the same were herein set out and traversed seriatim.
5. The issues for determination before this Court are therefore whether there was a written contract between the claimant and the defendant, whether the defendant breached the written contract between itself and the claimant by wrongfully expelling the claimant from selling tea to it, whether that breach led to the loss by the claimant and whether the claimant was defamed by the defendant in the circumstances where the claimant was alleged to have cheated at tea weighing sheds.
  6. As submitted by both parties, in a civil matter like the instant one, the claimant must prove his case against the defendant on a balance of probabilities if he is to succeed on his claims. See *Nkuluzado v Malawi Housing Corporation* [1999] MLR 302 and *Miller v Minister of Pensions* [1947] All ER 372.
  7. To prove his case, the claimant testified. The defendant also brought its own witnesses to prove its version of the events as well.
  8. The claimant's evidence in chief, as contained in his witness statement, was that he is a smallholder tea farmer. Further, that he belongs to one smallholder association called Nchima Out-growers group which grows tea for commercial purposes.
  9. He asserted that on or around 29<sup>th</sup> June, 2016 he entered into a written agreement of sale of green leaf tea with the defendant. And that it was part of the contract that the defendant would buy green tea leaf through Nchima Out-Growers Association at the contract price of K107 per kg. Further, that the

defendant also agreed to award each farmer an additional K50.00 per kilogram produced and sold to the defendant through the Out-Growers Association. He also indicated that the said contract was to run for a year from the date he signed to the month of June, 2017. He produced and exhibited copy of the signed agreement which was marked SM1. This Court notes that SM1 shows that it is a contract for a farmer named M. Chipawo and that the claimant only signed on it as a Chairman of the Farmer's Block.

10. The claimant then stated that on or around 28<sup>th</sup> April, 2016, the defendant made an allegation that the claimant was conniving with weighing clerks and that he was stealing green tea from nearby estates and also bribing clerks in order to get more money. And that the said allegations prompted the defendant's Sanctions and Approvals Committee of the defendant to expel him from Nchima Smallholder Tea Growers effective from 13<sup>th</sup> September, 2016. Further, that as a result of the expulsion, he was not allowed to sell tea to the defendant through Nchima smallholder tea growers as per contract.
11. The claimant asserted that he was never charged with the allegations and he was never given opportunity to be heard before expulsion.
12. He then asserted that due to the defendant's conduct above he was denied to sell green tea leaf harvested in that year of 2017 to the defendant as a result a total of 2 241 kg of green tea leaf was damaged.
13. He indicated that, based on the 2016 sales, if he had been allowed to sell his tea, he would have sold it at the price of K107 per kilogram. He tendered exhibit marked SM2, some sales receipts from 2016.
14. He said that as if that is not enough, the defendant went further to write and publish a memo addressing to tea farmers and associations titled "cheating at tea weighing sheds" and he was mentioned in that particular memo as one of the farmers who were cheating. He exhibited the memo marked SM3. SM3 comprises two memos. The first memo is dated 31<sup>st</sup> August, 2016. It is from the Certification Coordinator Mr. F. Salamu. It is addressed to the Out-Growers Manager, through ATOM and copied to the GM, RQAAM, ADMIN. and Block Chairpersons (Mphanje and Thyolo). It reads as follows:

Dear Sir,

CHEATING AT TEA WEIGHING SHEDS

On 28<sup>th</sup> April 2016 there was a training session for Nchima smallholder tea growers on 'Auditing Procedures and Sustainable Agriculture' which was held at Nchima Staff Club. During the training session, the Secretary for Thyolo block, Mr. P. Pendame, revealed that some of the farmers in Thyolo and Mphanje block were dubiously getting more money than what they were expected to receive if compared to the sizes of their farms during monthly payments. Most of the farmers present in the training agreed to Mr. Pendame's claim. The matter was discussed at length and the following issues were discovered:

1. Some farmers were conniving with the weighing clerk to inflate the weight (kg) of green leaf so that they should get more money during payment and then share the proceeds.
2. Some farmers were stealing green tea from the nearby Mafisi estate (which is under Naming'omba Tea Estate) and selling it to Nchima after mixing with the little tea they harvested.
3. Some farmers were paying cash to the clerk through the loaders an amount of money equivalent to half the cost of the weight of tea which was being added to their harvested tea.

The leaders were advised to call for an urgent meeting within two weeks to resolve the issue as farmers were not comfortable to reveal the names of those involved in this malpractice during this training, but surprisingly the leaders did not call for the meeting even after several reminders. But however we as Nchima Estate conducted investigations and the results showed that indeed the weighing clerk and some of the farmers were involved in the malpractice. The following names were exposed:

Name	Block	Position
....	.....	.....
S. Mangame	Thyolo/Lipumula	Block Chairman

Upon noticing that block leaders were also involved, we (as Nchima Estate) called for a meeting on 2<sup>nd</sup> August 2016 where the Approvals and Sanctions Committee was advised by the Acting Tea Operations Manager to come up with disciplinary action/penalties before announcing the names. The names were not announced for fear of conflict of interest as members of the main committee and Sanctions and Approvals Committee were also involved in the cheating. The Approvals and Sanctions Committee has not done anything up to this date.

Considering the fact that this non-conformity is critical in nature, I have written this letter to you Sir for direction and advice.

Yours Sincerely,

F. Salamu  
Certification Coordinator

15. The second memo is dated 13<sup>th</sup> September 2016. It is from the Acting Tea Operations Manager and addressed to several people including the claimant herein. It is copied to the General Manager, Accountant, Out-growers Manager, RQAAM, Administrator, Factory Manager, Certification Coordinator, Divisional Manager (Nabomba Division), Block Chairpersons (Thyolo, Mphanje and Matchuana Blocks), Chairman (Sukambizi Association Trust). The memo reads as follows:

EXPULSION FROM NCHIMA TEA OUT GROWERS GROUP

Reference is made to the letter dated 31<sup>st</sup> August 2016 addressed to the Out-growers Manager bearing the topic 'Cheating at Tea Weighing Sheds' in which a list of your names was submitted on allegations that you were involved in cheating.

On 13<sup>th</sup> September 2016 block executive committees and Approvals and Sanctions Committee Members were summoned to a meeting which took place at Mphanje weighing shed where you were suspended from Nchima Tea Out-growers group.

I therefore, would like to inform you that you have been expelled from Nchima Tea Out-growers Group which is a sub-group of Sukambizi Association Trust with effect from the date of your suspension which is 13<sup>th</sup> September 2016.

As such, you are no longer allowed to sell your green tea leaf to Nchima Tea Estate or conduct any activity in the name of Nchima smallholder tea growers.

M. Masanje  
Acting Tea Operations Manager

16. He asserted that the allegations against him in exhibit SM3 were baseless and false. He claimed that the publication of the memos greatly injured his credit, character and reputation and that he was brought into public odium. And that he consequently suffered loss and damage occasioning from the matter aforesaid.
17. In the circumstances, he claims a sum of K3,276,099.30 being the value of damaged tea; damages for breach of contract; damages for loss of profit; damages for defamation and costs of the action.



18. During cross-examination, he stated as follows. He stated that all smallholder tea growers are under Sukambizi Association Trust which has a relationship with tea estates to sell green tea. He indicated that he worked under the Sukambizi Association Trust which deals in green tea.
19. He then stated that there was a Sanctions and Approvals Committee under Nchima Tea Estate. He added that Mr. Salamu of Nchima Tea Estates oversaw the appointment of the Sanctions and Approvals Committee. He however said that Nchima Tea Estate does not have a committee of farmers as it is a Tea Estate. He then indicated that Sukambizi Association Trust does not oversee the appointment of the Sanctions and Approvals Committee.
20. He then asserted that he did not know anything on the issue of clerks conniving with tea growers to make more money. He indicated that he however heard about this allegation. And that a fellow tea farmer made this allegation.
21. He then explained that the Sanctions and Approvals Committee screened new farmers who wanted to join the Sukambizi Association Trust and also dealt with disputes between farmers and the Estates.
22. He then indicated that the allegation of cheating by farmers herein happened in April 2016 and that he got expelled in September 2016. He indicated that during those two dates he only met once and not thrice with the Smallholder Tea Association.
23. He then stated that his contract with the defendant did expire in June 2016 and he signed a new contract which run from June 2016 to 2017. He however said Mr. Salamu did not give him his 2016 to 2017 contract. He added that he was a chairman of a block of farmers and would sign on contracts of other farmers and his own as such. He elaborated that his contract had been sent to the Association for signing but was never given to him.
24. When referred to exhibit SM1, he indicated that he got that exhibit SM1 from Mr. Chipawo who was the owner of that contract and that he got it as his evidence that he signed as block chairperson but that his contract was never given back to him.
25. He then indicated that he had evidence that he lost tea weighing 2 241 kg which he never harvested in this case. He asserted that his evidence was the tea sales pay slips from 2016. He conceded that this is not about 2017 damaged tea and that he had no evidence of damaged tea before this Court.

26. He then asserted that the allegation of cheating was made against seven farmers including himself and that all seven were expelled due to the allegation. He indicated that there were subsequent meetings to their expulsion and that now the other six farmers sell tea to Nchima Tea Estate except for him. He added that the expulsion was lifted on 12<sup>th</sup> May 2017 and not February 2017. He then asserted that he never went back to sell tea at Nchima Estate but went to sale at other Estates because he was left out by the defendant. He then asserted that between September 2016 and May 2017 he was not harvesting his tea.
27. He then explained that he was never called back by Nchima Tea Estate or the defendant and that he never followed up with them either. He said this was not because he had no contract. He indicated that he was left out and thought he was not wanted since others were invited back and not him.
28. He then indicated that he got the K107/kg contract price from his contract and from Mr. Chipawo's contract. He agreed that in SM1 the contract price was K97.30/kg but asserted that the same was increased to K107/kg according to a pay slip he exhibited for March 2016.
29. He then indicated that the actual amount of tea he lost was not 2 241kg but 22 241 kg at a total price of K2 379 787 and there was an error in his evidence in his witness statement that indicated a loss of 2 241kg of tea. He asserted that he had evidence of damaged tea and that the correct kilograms of tea are reflected in the 2016 tea sales pay slips. He confirmed that paragraph 11 of his witness statement was not true, namely, that due to the defendant's conduct herein he was denied to sell green tea leaf harvested in that year of 2017 to the defendant and that as a result a total of 2 241 kg of green tea leaf was damaged.
30. During re-examination, he stated that all contracts with the defendant herein were signed in June each year and would be effective in July of any such given year. He added that he signed a contract in June 2016 with the defendant hence he was selling tea to the defendant after June 2016. He reiterated that as Farmer's Block Chairperson he signed all contracts as such including exhibit SM1 for 2016/2017. He reiterated that his contract was to run from June 2016 to June 2017. He reiterated that Mr. Salamu did not give him his 2016/2017 contract because he knew that he would sue on the basis of the same.

31. He then reiterated that the cheating allegation started in April 2016 and he signed his contract in June 2016.
32. He then stated that the Approvals and Sanctions Committee is under the farmers. And that Mr. Salamu chairs this committee. He elaborated that Mr. Salamu is a Certification Coordinator for Nchima Tea Estate which belongs to the defendant.
33. He then stated that since contracts were signed in June, 2016, by the time of his expulsion in September 2016 he had a contract with the defendant and was selling tea to defendant as per tea sales pay slips for August, 2016 and September 2016 he exhibited.
34. He asserted that only one meeting took place where he got suspended. He added that he was told that the Sanctions and Approvals Committee did not investigate but that the defendant made the findings and would expel the claimant. He indicated that the Operations Manager of Nchima Tea Estate chaired the meeting. He indicated further that the defendant's officers simply came and told him and the others that they were suspended.
35. He elaborated that at the single meeting there were seven accused farmers, Mr. Salamu, Mr. Masanje and the Farmer's Block's Committee.
36. He then reiterated that his 2015 contract, exhibited by the defendant, expired in June 2016 on which he signed as a farmer and as Block Chairperson. He indicated that he signed for the new contracts similarly but that his new contract for period after June 2016 is missing.
37. He then asserted that the price of K107/kg is for the 2016/2017 season per the sales pay slip he exhibited and appearing at page 34 of the trial bundle.
38. He then reiterated that the correct amount of tea he lost is 22 241 kg. He said that this was for 2015/2016 season and he estimated the same for the 2016/2017 season.
39. He explained that the sum of K3 276 099.30 is arrived at factoring in the K107/kg price and the tea weighing 22 241 kg and adding K50 bonus payable per kg of tea. He indicated that he stopped selling tea to the defendant after his expulsion on 3 September, 2016.
40. He reiterated that he was not called back by the defendant hence he did not follow up on the matter. He indicated that he does not know why he was targeted. He reiterated that his co accused farmers were called back on 12<sup>th</sup> May, 2017 but his name was not there. He added that letters had been sent to

those recalled farmers indicating their reinstatement. He also said he did not have an alternative market and that having an alternative market is not a reason why he did not follow up on the matter with the defendant herein. That marked the end of the claimant's evidence.

41. The defendant's witness was Mr. Foster Salamu and his evidence in chief as per his witness statement was as follows. He stated that he is the Certification Coordinator at the defendant. He indicated that his duties include quality assurance in tea processes and training tea farmers in these processes and making sure that all tea farmers bringing tea to the company have valid contracts with the company.
42. He indicated that the defendant, Lujeri Tea Estates Ltd, is a limited liability company which grows, buys and processes tea. And that some of the tea is bought by the defendant from small holder farmers around the company's estates.
43. He explained that these smallholder farmers operate in groups (Blocks) which in turn operate under a Trust, but each smallholder farmer is individually offered and signs a contract with the defendant to sell his/her tea to the company each growing season. He explained further that in each growing season a farmer will know where he will be selling his/her tea and the defendant also knows how many farmers will be selling their tea to it.
44. He then stated that signing of contracts with tea farmers to sell their tea to the defendant is done by 1st July every year. He however noted that due to other factors this exercise may extend up to August of each year. He then asserted that the contracts commence on 1st July of a given year and expire end of June the next year. And that the list of farmers to be offered contracts is sent to the defendant by Block leaders under Sukambizi Association Trust after scrutiny by the Approvals and Sanctions committee.
45. He then indicated that the claimant belonged to Thyolo Block which is under Nchima Out Growers group, a grouping of smallholder tea farmers in Thyolo operating under Sukambizi Association Trust. He asserted that Sukambizi Association Trust is a separate legal personality, with its own management and a General Manager.
46. He then pointed out that the claimant herein was offered a contract in the 2015/2016 growing season. And that this contract expired 30<sup>th</sup> June, 2016. He added that this contract was signed by the claimant and he exhibited it and

marked it FS. He then asserted that other than this contract, there was no other contract between the claimant and the defendant at all the material times herein. He elaborated that no contract existed between the claimant and the defendant because no contract was offered to the claimant for the 2016/2017 growing season and no contract was thus signed between the claimant and the defendant.

47. He then asserted that in April, 2016, some farmers during a training session raised concerns that there were some of their fellow farmers that were conniving with weighing clerks and engaged in cheating at the defendant's weighing sheds with a view that the clerks record more kilograms of tea so that the farmers concerned would get more money and share the same with the clerks. He indicated that this was considered by Sukambizi Association Trust and the defendant as a very serious allegation. And that the allegation thus prompted investigations by Sukambizi Association Trust, through the Approvals and Sanctions Committee.
48. He then explained that during the said investigations the claimant was mentioned by his fellow farmers to the effect that he was one of the several other farmers, seven in total, involved in malpractices that amounted to cheating when weighing tea from the tea fields.
49. He indicated that following this revelation, and after a lengthy investigation, in September 2016 the claimant was first suspended and later expelled from the Nchima Out Growers Association by his colleagues in the grouping. He explained that the claimant was expelled by the Approvals and Sanctions Committee, which is a committee of farmers under the Sukambizi Association Trust and is independent of the defendant. He reiterated that the defendant is a limited company.
50. He then elaborated that the Sanctions and Approvals Committee initially suspended the claimant and six other farmers on 13<sup>th</sup> September, 2016 and later on 20<sup>th</sup> September, 2016 they were all expelled from their groups by the same Committee. He indicated that these decisions were communicated by the Trust to the defendant. He added that the defendant only implemented the decision made by the Approvals and Sanctions Committee which was acting on behalf of the Sukambizi Association Trust. He also stated that the defendant could not continue dealing with a farmer who did not belong to an association.

51. He then asserted that after the expulsion, the claimant and the others admitted involvement in the malpractice and apologized for the malpractice in meetings held on 14<sup>th</sup> October, 2016 and 23<sup>rd</sup> February, 2017. And that the farmers were all forgiven by the Approvals and Sanctions Committee and the Trust and the expulsion/ban was lifted.
52. He then stated that since the suspension/ban in September, 2016, the claimant joined another association and has been selling his tea to Eastern produce Malawi Ltd.
53. He reiterated that it is the Approvals and Sanctions Committee of Sukambizi Association Trust that expelled the claimant from their grouping and not the defendant. And he asserted that the claimant herein has thus sued a wrong party.
54. He then stated that it was administratively important that the decision of the Approvals and Sanctions Committee to suspend/expel the claimant herein and others be communicated to all stakeholders. He stated further that if there was any publication which was defamatory concerning the claimant, the same was done by the claimant's fellow farmers and not the defendant. He added that the claimant wholly contributed to his expulsion from the grouping.
55. During cross-examination, he stated as follows. That he is a Certification Coordinator of the defendant but based at Nchima Tea Estate. He confirmed that the defendant owns Nchima Tea Estate. He reiterated that the defendant only buys tea from farmers that it has a contracts with but on some condition. He then conceded that the defendant also buys tea from farmers whose contracts with the defendant have expired. He then indicated that the contract between the claimant and the defendant expired on 30<sup>th</sup> June, 2016 but that the defendant bought tea from the claimant in September, 2016 and that by then there was no contract between the claimant and the defendant.
56. When he was referred to exhibit SM3 and in particular the first memo dated 31<sup>st</sup> August, 2016, he stated that by the time of the investigations the claimant had no contract with the defendant. He reiterated that the expulsion of the claimant was done by Sukambizi Trust and not by the defendant.
57. When he was referred to the second memo in exhibit SM3, he stated that Mr. Masanje and himself are from the defendant. He then insisted that the farmers investigated the allegations against the claimant and expelled him on 13<sup>th</sup> September, 2016.

58. He indicated that reference to investigations by Nchima Estate could mean investigation by the defendant, as alluded to in the first memo in exhibit SM3. He however insisted that the expulsion of the claimant was done by the farmers and not the defendant.
59. He then stated that he was not part of the Sanctions and Approvals Committee herein but that farmers were members of that Committee. He however said he could not remember the names of those members. He explained that the decision of the Committee of the farmers was that the claimant should not sell tea to the defendant.
60. He then said he could explain what was meant by the statement in the first memo in SM3 that 'we as Nchima Estate conducted investigations.' He stated that the issue came to him and others at the defendant from the farmers and that the farmers did investigations. He then explained that him and others for the defendant had to investigate only who are the names of the cheating farmers but not to investigate that the cheating really happened. He also denied that the claimant was not heard in the process. He said that the defendant does not hear farmers. He indicated that it is the Sanctions and Approvals Committee that heard the claimant. He indicated that when the issue of cheating arose he and others from the defendant asked for names of the cheating farmers.
61. He reiterated that a farmer raised the issue of cheating and that he and others for the defendant together with farmers investigated on the names who were cheating. But that they never investigated whether cheating happened. He added that the defendant's job was to ensure that justice was done. He also indicated that the claimant and his fellow farmers refused a hearing and hence the case delayed and that the matter was refereed to Sukambizi Trust after the claimant resisted a hearing.
62. He then stated that the farmers can confirm whether the claimant was heard and that he was not aware whether the claimant was heard in this matter. He added that hearings are done by the farmers and not the defendant. He then asserted that the defendant does not take part in hearings and that farmers give names and do expulsion of farmers.
63. When he was referred to the second memo on SM3 on expulsion he stated that it came from the defendant. He then indicated that the author of that memo was given authority by Sukambizi Trust to write that memo. He asserted that

there is a typo on the date of 13<sup>th</sup> September, 2016 being the same date of suspension and expulsion. He insisted that he had amended the original memo. He agreed that this memo is not his but insisted that he works with the author of the memo and knew what happened then. He indicated that he had the memo with corrected dates. He then indicated that the date of the expulsion memo should be 20<sup>th</sup> September, 2016. He stated that the claimant was expelled on 13<sup>th</sup> September, 2016 and that the memo on expulsion advises about the expulsion.

64. He then stated that the defendant has to assist farmers to ensure due process. He added that the claimant resisted a hearing and hence the matter herein could not be resolved for months.
65. He then asserted that the claimant stopped selling tea to the defendant because he got a new market at Eastern Produce Ltd but that his co accused farmers came back to sell at the defendant.
66. He then stated that the expulsion of the claimant meant that the defendant could no longer buy tea from the claimant. He added that after expulsion the claimant sold his tea at Eastern Produce Ltd. He however said he had no evidence to support his allegation that the claimant joined another association and sold tea to Eastern Produce Ltd after expulsion.
67. He then explained that the one who authorizes a farmer to sell tea to the defendant is the farmers' association and not the defendant. He added that the contract is a procedure set by those who buy tea from the defendant who require that the defendant only buy tea from farmers that have contracts with the defendant.
68. He then indicated that the first memo on exhibit SM3 is to the Out Growers Manager then Mr Changaza from Sukambizi Association Trust.
69. With regard to exhibit SM1, the contract for Mr. Chpawo, he stated that the signatories there were Mr. Maotchedwe who was Chair of Sukambizi Association Trust. He added that Mr. C. Phiri was Divisional Manager for the defendant and would assist with advising farmers. He noted that the claimant was a Block Secretary. However, claimant appears as Block Chairperson.
70. He then stated that the Approvals and Sanctions Committee comprises farmers appointed by farmers. He added that the Committee keeps its own records and he could not get their documents and so cannot tell whether they did investigate the claimant or anything.



71. He then reiterated that the claimant should have sued Sukambizi Association Trust since it is the one who expelled the claimant, and not the defendant.
72. During re-examination, he stated as follows. That the defendant does not expel farmers but that farmers allow farmers into their Association and then hand them over to the defendant to be assessed per the requirements given by the defendant to the farmers' Association. He added that expulsion is done by the farmers themselves and that the claimant was expelled by the farmers' Association.
73. He then explained that the role of the defendant is to buy tea and that there are requirements from buyers of the defendant including that every tea farmer has to follow requirements. He added that the defendant has a certification with its tea buyers and must ensure that certain requirements are met so that it maintains that certification with its tea buyers.
74. He reiterated that it is not true that the defendant never heard the claimant. He indicated that the claimant was a Block leader. He added that the claimant did not want the Sanctions and Approvals Committee to hear him and he resisted until the defendant helped but to no avail and the defendant sent the matter to Sukambizi Association Trust. He added that this took from April, 2016 to September, 2016. He reiterated that the Approvals and Sanctions Committee was to hear the claimant.
75. He then stated that the Approvals and Sanctions Committee's duty is to take up issues with the accused farmers and decide on the accusation. He indicated that the Approvals and Sanctions Committee reports to the Block Committee which in turn reports to Sukambizi Association Trust. He added that if the issue cannot be resolved, farmers seek advice from the defendant which advices on how farmers can proceed.
76. He then explained that an unapproved farmer cannot sale tea to the defendant without a contract but that those who were on contract before can still sale tea after expiry of the contract since the farmer is already certified.
77. He then elaborated that the claimant sold tea until August 2016 until his issues here in ended since the claimant would have been expelled or not. He added that the defendant allowed the claimant to be selling the tea until his issue with the Sukambizi Association Trust was resolved.
78. He then stated that the memo on the expulsion of the claimant is dated 20<sup>th</sup> September, 2016 and advises the claimant of his expulsion as advised from

Sukambizi Association Trust. He reiterated that Sukambizi Association Trust expelled the claimant. He added that the claimant apologized and was allowed to come back but the claimant decided not to. That marked the end of his evidence.

79. This Court will now consider the issues for determination in this matter in view of the evidence and the submissions of the parties on the relevant law and the said evidence. The first issue for determination is whether there was a written contract between the claimant and the defendant.
80. The claimant submitted as follows on that aspect. He submitted that his evidence was that he signed the contract but a copy was not given to him. He added that he adduced a copy of Mr. Chipawo's contract signed on 26<sup>th</sup> June 2016. And that this contract has his name on it as chairman of the block. He noted that he told this Court that his contract was in similar terms and was signed on the same date like that of Mr. Chipawo but that when the contract was given to the manager at the defendant company for their defendant signing his copy was not return to him.
81. The claimant noted that he also produced evidence to show that after June, 2016 the defendant was actually buying tea from him. And that this is shown by exhibit SM2 which are sales receipts. He noted that his sales receipts for August and December, 2016 show that actually the defendant was buying tea from him. Furthermore, he indicated that he also stated that the fact that his expulsion took place in September, 2016 clearly shows that by that time he was still part of the defendant tea sellers and that this could have not have happened if there was no contract.
82. He then pointed out that the defendant's witness admitted in evidence that the defendant would not buy tea from a farmer unless there was a contract. He indicated that this was the case even though the defendant suggested that sometimes the defendant can still allow farmers to sell tea to the defendant while the detailed contracts are yet to be signed.
83. He then submitted that, from the totally of the evidence above, a contract existed. Further, that on balance of probabilities he has demonstrated that a contract existed and that is the reason the defendant was buying the tea from him beyond June, 2016.
84. The claimant observed that the defendant's own evidence was to the effect that contracts run from July of one year to June of the next year. He observed

further that, if there has been no contract from July, 2016 the defendant would not have been buying tea from him by August and September, 2016.

85. He then submitted there was sufficient evidence to suggest that the claimant was offered a contract which he signed, only that the actual copy was not given back to him. He submitted further that even if the signed copy did not exist the contract was offered and accepted by the conduct of the parties. And that the contract should be implied from the conduct of the parties.

86. The claimant asserted that the law is clear on the existence of the contract to the effect that in determining whether a contract exists or not, the intention of parties has to be adduced from the totality of evidence. He referred to *Concrete Products Ltd v Universal Shipping Company Ltd* [1992] 15 MLR 118 (HC), in which Banda R, CJ stated that:

Where a contract does not depend solely on written documents, the issue of the character of the contract is one of fact. Where a definite offer has been made and accepted and the offer and acceptance contained all material terms agreed by the parties, an agreement has been concluded and subsequent negotiations cannot affect the terms thereof, except with the consent of both parties (*Bellamy v Debenham* (1890) 45 Ch D 481 referred to). The parties may begin to act on the terms of the agreement before the contract is made. The intention of the parties is to be deduced from the totality of evidence before the court.

87. He then submitted that in *Mkandawire v Wawanya* [1992] 15 MLR 270 (HC) it was stated that:

The defendant by his conduct in accepting the deposit had waived the 14-day acceptance period (*Cashill v Carbolic Smoke Ball Co* [1963] 1 QB 256 applied). A valid contract of sale had come into existence at the time of acceptance of the deposit.

88. The claimant next submitted that an offer may be accepted by conduct. For example, an offer to buy goods can be accepted by supplying them. See *Harvey v Johnson* (1848) 6 C.B 305.

89. He also observed that under the Sale of Goods Act a contract of sale includes an agreement to sell as well as a sale. He noted that according to section 3(4) of the Sale of Goods Act an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

90. The claimant also noted that a party to a written agreement will be bound by its terms whether or not he has read them and whether or not he is ignorant of their precise legal effect. See *Howatson v Webb* (1908) 1 Ch. 1.
91. Further, he noted that it is a well settled rule at law that parties to an agreement are to be confined within the four corners of the documents in which they have chosen to enshrine their agreement. And that neither party may adduce evidence to show that his or her intention has been mis-stated in the document or that some essential feature of the transaction has been omitted.
92. In the premises, the claimant submitted that there was a contract between the parties and that the defendant was under an obligation to perform its part of the contract by buying the green tea from the claimant at the agreed price.
93. He submitted further that the terms of contract can be inferred from the contract of Mr. Chipawo exhibited as SM1 which the claimant said was similar to his contract. He observed that this contract was exactly the same as the one exhibited as exhibit FS1 for 2015. He asserted that under that contract the defendant was to buy tea at the price of K97/ kg. And that there is also evidence that in the course of the year the price of tea rose to K107 per kilogram. He submitted that he was clearly able to demonstrate and prove this fact. He observed that on the other hand, the defendant did not offer any contrary view on the terms of the contract and the prices per kg.
94. The claimant further observed that he stated in his evidence that the defendant was to offer each farmer K50 bonus for each kilogram of green tea sold to the defendant. And that the defendant did not contest this assertion.
95. He therefore submitted that the contract existed between him and the defendant.
96. On the other hand, the defendant submitted as follows. It submitted that in the case of *Nkhoma t/a Nyala Investments v National Bank of Malawi* [2005] MLR 341 (HC) it was stated that it is trite law that for there to be a valid contract, parties thereto ought to ensure that there is an offer, acceptance and consideration relative to the business transaction in which they seek to be engaged.
97. The defendant also noted that in the case of *Aspdin v Austin* (1844) 5 QB 671 (QBD) at page 684, Lord Denman said:

When parties have entered into written engagements with expressed stipulations, it is manifestly not desirable to extend them by any implications; the presumption is

that, having expressed some, they have expressed all the conditions by which they intend to be bound by that instrument.

98. The defendant then observed that at paragraphs 5 and 6 of the statement of case, the claimant claims that there was a written agreement between himself and the defendant signed on or about 29<sup>th</sup> June, 2016 which stipulated under clause 6 that the defendant shall buy from the claimant through the Nchima Out Growers Association the green leaf tea at a contract price of K97.30 per kg. And that the defendant further agreed to award each farmer a further K50 per each kg produced and sold to the defendant through the Out Growers Association.
99. The defendant observed further that, in an attempt to prove the above claims, the claimant at paragraphs 6.3 and 6.6 of his witness statement states that on or around 29<sup>th</sup> June, 2016 he entered into a written agreement of sale of green leaf tea with the defendant. And that the said contract was to run from the date he signed to the month of June, 2017. And that the claimant produced a copy of the signed agreement marked as SM1.
100. The defendant then submitted that the claimant's claim and the evidence clearly do not match in the present case. It submitted further that during cross examination, it was actually discovered that in fact, the contract exhibited by the claimant and marked SM1 did not belong to the claimant but another farmer named Mr. Chipawo. It observed that it is clear from paragraph 6.6 that the claimant wanted the court to believe that SM1 is a copy of the claimant's contract when it was not.
101. The defendant observed that, later during cross examination, the claimant started to change statements by saying that a copy of the contract was not given to him by the defendant after it was sent to the defendant for signature. It noted that this is the first time the claimant is making this assertion since the commencement of the case. And that, in fact, this is a confirmation that the claimant did not have a signed contract with the defendant, an assertion that has been made by the defendant all along. The defendant asserted that the claimant actually confirmed when it was put to him that there was no written contract between him and the defendant that has been presented in Court.
102. The defendant noted that the claimant then further alleged that his contract was just similar to the one exhibited as SM1 and was signed on the same dates. The defendant asserted that, even if it were true, which is denied by the defendant, that the claimant signed a contract and sent it for signature

of the defendant, there can be no written contract where only one party has signed the document. It posited that this is because the contract law requirements of offer and acceptance have not been fulfilled in the absence of the signature and consent of the other party. It posited further that the existence of any written contract can only be proven by exhibiting the alleged written document and not by word of mouth or a contract/document belonging to someone else as is the case in the present case. It added that this should be the case more so because the parties are to be confined and bound by the terms of that signed document. The defendant then submitted that claimant has clearly failed to prove the existence of any written contract as claimed and pleaded in his statement of case.

103. The defendant then submitted that, further, at paragraphs 6.4 and 6.5 of the claimant's witness statement there is an attempt by the claimant to prove contents of the alleged written contract relating to price at which the claimant agreed to sell his tea to the defendant. It asserted that as the claimant has failed to prove and produce the written agreement, and therefore putting into question the existence of that document, it is futile for the claimant to even attempt to prove contents of the said written agreement.

104. It asserted further that, even if it is accepted that the claimant's contract is similar to SM1 as he alleges, there is no mention of the alleged price of K107 per kg or award of K50 per kg in that contract. It observed that no explanation has been offered by the claimant as to why there is that difference in the price per kg in his pleadings at K97.30 and in his evidence at K107. The defendant asserted that exhibit SM1 only talks of K97.30 per kg as the price per Kg. It noted further that SM1 does not mention anywhere of the alleged bonus of K50 per kg and that this begs the question "was there a separate contract for the bonus offer?". Further, the defendant submitted that there are so many discrepancies in the claim and the evidence as presented by the claimant that no court would believe the claimant that there is a written contract in all this mess. The defendant submitted that the claimant has thus failed to prove the contents of the alleged written contract. And that this is because there was no such written contract in the first place.

105. The defendant then asserted that the claimant never pleaded an implied contract. And that it will not therefore argue whether a contract can be inferred in the circumstances of this case, because that is not what the claimant has claimed in his statement of case or his evidence. The defendant submitted that, however, even if the claimant did, the defendant would have contended that

no implied written contract for one year can be implied in the circumstances. It asserted that an implied contract, if any, may only be implied each time the claimant took his tea for sale to the defendant and the same was accepted by the defendant and paid for it. And that this happened two times in August, 2016 and two times in September, 2016 as shown by the sales receipts. The defendant insisted that no contract can be implied beyond that.

106. The defendant reiterated that what is most importance is that no implied contract was pleaded by the claimant and this Court cannot determine an issue that was not pleaded. It asserted that what was pleaded was a written contract and on the evidence before this Court, there is no such written contract. Further, that the contents of such written contract are also not available before this Court. It asserted that the claimant has thus failed to prove any term or content of the alleged written contract.

107. This Court observes that indeed the claimant's claim is premised on the alleged existence of a written contract between the claimant and the defendant allegedly signed on or about 29<sup>th</sup> June, 2016 which allegedly stipulated under clause 6 that the defendant shall buy from the claimant through the Nchima Out Growers Association the green leaf tea at a contract price of K97.30 per kg. As correctly submitted by the defendant, the existence of such a contract has been not proven in these proceedings. Instead, the claimant produced a contract between the defendant and a third party, being Mr. Chipawo.

108. As correctly submitted by the defendant, there cannot be a written contract between the claimant and the defendant unless both of them signed on the said contract. The fact that the claimant allegedly signed the contract and the same was taken for signing by the defendant and was never handed back to the claimant cannot lead to an inference that a written contract existed between the claimant and the defendant. For the contract to come into existence both parties should have signed the same. As indicated in the case of *Aspdin v Austin* (1844) 5 QB 671 (QBD), the written contract would contain binding terms between the parties herein. Further, as decided in the case of *Nkhoma t/a Nyala Investments v National Bank of Malawi* [2005] MLR 341 (HC), the written contract would have signified that there was indeed an offer, acceptance and consideration for the defendant to buy tea from the claimant spanning the one year period alleged by the claimant. Unfortunately, there is no such written contract between the claimant and the defendant.

109. The claimant therefore alleged something which he failed to prove at trial. As rightly asserted by the defendant, it cannot be inferred in the

circumstances that there existed a written contract between the claimant and the defendant. The statement of case alleged that there existed a written contract and none was proved. The fact that the claimant signed as a Block Leader on the other contracts of third parties such as that of Mr. Chipawo does not entail that the claimant had a written contract with the defendant. The fact that the claimant was allowed to sell tea beyond June, 2015 when the previous contract expired does not entail that he had a written contract to sell tea to the defendant for the whole year following the expiry of his contract.

110. The signing of the claimant on the third party contracts and the sale of tea by the claimant to the defendant beyond June, 2016 was aptly explained by the defendant as something that was allowed since the claimant was certified as fit to sale tea but that this was only allowed in the interim until the claimant's issue of cheating at the tea weighing sheds which had dragged on from April, 2016 to August, 2016 due to the claimant's resistance to a hearing was sorted out. As it turned out, the claimant was ousted from selling tea before his contract was signed by the defendant. At all times there was no written contract between the claimant and the defendant beyond June, 2016.

111. This Court therefore finds that there was no written contract between the claimant and the defendant herein for the one year running from July, 2016 to June, 2017 contrary to the submission by the claimant.

112. This Court noted the claimant's submission that even if the signed copy of the alleged written contract herein did not exist, the contract was offered and accepted by conduct of parties. And that the contract should be implied from the conduct of the parties. On the contrary, this Court agrees with the defendant that there is no evidence suggesting that there was acceptance of a contract for one year by the conduct of the parties herein. The evidence points to the fact that the parties only transacted for a whole year upon signing a written contract and not otherwise. The evidence further points to the fact that the buying of tea by the defendant from the claimant in the months after expiry of the last yearly contract ending June, 2016 was an interim measure. In any event, as rightly noted by the defendant, the claimant's claim was that there was a written contract and it is not open to him to now prove a different case at trial than that which he stated in his statement of case, namely, that there was an implied contract between himself and the defendant for the one year July, 2016 to June, 2017.

113. The next issue for consideration is whether the defendant breached the written contract between itself and the claimant by wrongfully expelling the



claimant from selling tea to it. The claimant submitted that in the circumstances of this case, the defendant unilaterally expelled the claimant from the Nchima Out Growers group through its Sanctions and Approvals Committee without hearing the claimant contrary to the written contract and that the defendant breached the said contract.

114. On the other hand, the defendant submitted that since there was no written contract there cannot be a breach of the same.

115. This Court agrees with the defendant that since there was no written contract herein between the claimant and the defendant it is untenable to find that there was breach of such a non-existent written contract of a year's duration as claimed by the claimant. This Court is inclined to agree with the defendant that the only arrangement that existed was for the claimant to present tea for sale and the only contract existed at that point on the buying of such tea as presented by the claimant and no more.

116. Did the claimant therefore suffer loss from breach of the written contract in the circumstances?

117. In the circumstances, and as correctly submitted by the defendant, since there was no written contract for the July, 2016 to June, 2017 tea season between the defendant and the claimant and none could therefore be breached, there cannot be a claim for loss by the claimant against the defendant for breach of the alleged written year-long contract. If the claimant's case had been framed differently in the statement of case perhaps different considerations would have arisen. Therefore, in the foregoing circumstances, this Court finds that the claimant has not proved that he suffered loss from the alleged breach of a written year-long contract by the defendant since no such written year-long contract in fact existed.

118. The other connected issue was that of proof of the volume of tea actually lost and not sold by the claimant. The claimant sought to prove that he lost green tea amounting to 22 241 kg by bringing some receipts showing how much tea he had sold for part of the previous tea selling season. The claimant accepted that he had no evidence of how much tea he had actually failed to sell as a result of the alleged breach of the written contract between himself and the defendant. He indicated that he therefore made an estimate of loss based on the previous season tea sales. For example, in the month of January, 2016, he sold total of 2 643 kg of tea at the price of K80/kg. This information is found on the receipt on page 32 of the trail bundle. In the month of February, 2016 he sold 3 269 kg of tea at the price of K97/kg per receipt

on page 33 of the bundle. In March, 2016 he sold 5 762kg of tea at K107/kg per receipt on page 34 of the bundle. In August, 2016 he sold of 1426kg of tea at K107/kg per receipt on page 35 of the trial bundle. In September, 2016 he sold 793kg of tea at the price of K107/kg. During the hearing the claimant was asked about the evidence that he would have lost 22 241 kg. He referred the court to the bundle of receipts and said that the number 22 241kg was an estimate based on the sale from previous season as per the sales receipts. The claimant alluded to a number of authorities on proof that did not directly address his contention, namely, *Serra v Sabot Hauliers and another* [1993] 16(2) MLR 805 (HC) and *Constantine Line v Imperial Smelting Corporation* [1943] AC 154.

119. The claimant then submitted that without harvesting and selling the tea he had no other evidence to bring to court. He insisted that he could not be faulted for failure to bring to court evidence of volumes of tea lost because he did not harvest it.

120. The defendant submitted that it is very critical that the claimant should produce his evidence of damaged tea and not just guess the number of kilograms without more and expect this Court and everyone else to believe that. It asserted that photos of the damaged tea can be produced or photos of the unharvested tea bushes which can be verified by the defendant or the Court could have been easily produced. It was therefore the submission of the defendant that there is no evidence of damaged tea attributable to the defendant in this case.

121. On the number of kilograms of alleged damaged or unharvested tea, the defendant noted that the claimant claims that these figures are based on what he harvested in 2016 and attached sales receipts marked as SM2 as evidence. The defendant observed that exhibit SM2 does not prove that in 2016 the claimant harvested 2 241kg or 22 241kg, as the case may be, of tea. The defendant asserted that the number of kilograms of tea sold in 2015/16 season by the claimant could have been proved if all the 2015/2016 season sales receipts were exhibited. The defendant further observed that if the six exhibited sales receipts represent all the claimant's sales for 2015/16 season, the total volume of tea as per those receipts is 7 098 kg, being, 2 receipts for January in the sums of 782kg and 669kg; 2 receipts for February in the sums of 877kg and 904kg; 2 receipts for March in the sums of 1978kg and 1888kg. The defendant called upon this Court to look at the receipts for March, 2016 closely and compare to the receipts of the previous months of January and

February, 2016. And asserted that this Court will note that the receipts for March have much higher kilograms than the previous months. Further that this Court will note that in the previous months the number of kilograms were all below one thousand but in March the kilograms are over double as much. The defendant then asserted that it is not difficult to see that a “1” was added to the figures of March and that if the same is taken off, the figures will look similar to the months of January and February. This Court quickly observes that upon examination of the receipts for March, 2016 in question, this Court is unable to appreciate and agree with the defendant’s assertion that a ‘1’ was added.

122. The defendant then asked this Court to recall that the allegations of cheating in this case were revealed in the following month of April 2016. It is the defendant’s submission that the claimant has failed to show to this Court and prove that his tea suffered any damage. It submitted that the reason the claimant cannot show this Court the damaged tea is that he sold all his tea to Eastern Produce Malawi Ltd as shown in its evidence.

123. This Court agrees with the defendant’s submission that the claimant ought to have brought evidence to substantiate the fact that he lost a certain estimated amount of tea, namely, 22 241 kg. This Court is sure that there is a whole science out there about estimations, including crop estimation. The claimant should therefore have utilized such and should have brought evidence on estimation of his lost tea which should have been subjected to scrutiny by the defendant in the usual fashion rather than just bringing a few receipts from the previous season that are well below the figure of 22 241 kg of tea being claimed by the claimant as lost tea and base a claim on such few receipts. It is not clear to this Court at all how the claimant made his estimation of 22 241 kg for the 2016/2017 tea selling season from a few receipts that he produced before this Court from the previous tea selling season of 2015/2016. That is a fatal flaw in the claimant’s efforts at proof of alleged loss of tea.

124. As suggested by the defendant, evidence of estimated loss would also have included pictures of the tea bushes that went unharvested and the like. This is the requisite evidence that could have proved the claimant’s loss to the appropriate standard and would have been subject to the usual interrogation. As it stands, it is possible that such evidence was not brought because the claimant indeed sold such tea to other buyers such as Eastern Produce Limited as alleged by the defendant. In the end, even if it were to be granted that a written contract existed, which in fact never existed, and was breached by the

- defendant the claimant has failed to substantiate the loss of 22 241 kg of tea due to want of proof.
125. In the foregoing circumstances, the claims for K3, 276, 099.30 being cost of damaged tea, damages for breach of contract, damages for loss of profit and loss of business therefore fail contrary to the submissions by the claimant.
126. The last issue for consideration is whether the defendant defamed the claimant by mentioning him in relation to the issue of cheating at the defendant's tea weighing shed in the two memos in exhibit SM3.
127. The claimant observed that in its memos date 31<sup>st</sup> August 2016 and 13<sup>th</sup> September 2016, the claimant repeatedly published word cheating at the weighing shed. And that the word directly referred to the claimant. He noted that in both stated letters he was specifically mentioned to have been cheating at the weighing shed. And that it is therefore not in dispute that the words were referring to the claimant.
128. The claimant asserted that the defendant did not dispute publication of the words. And that, actually, the defendant admitted publishing these words but alleged that the words were said by fellow colleagues of the claimant. He noted that this is specifically found at paragraph 10 of the defence. He then noted that, however, no single farmer was mentioned by the defendant to be the one who made these words.
129. The claimant then reiterated that it is clear that the words were contained in the defendant's memo signed by the defendant Certification Manager Mr Salamu. And that he denied the allegations.
130. He then noted that the Cambridge dictionary defines cheating as to "behave in a dishonest way in order to get what you want". The claimant then observed that the defendant further seemed to have been asserting a defence of justification for the words. He noted that, however, the claimant denied the allegation as being false. That he was never charged for any cheating. And that he was not offered opportunity to be heard. He added that during the trial herein the defendant did not offer any plausible defence for the publication. And further, that the defendant did not justify the same at all.
131. The claimant then submitted that Gatley on *Libel and Slander* defines a defamatory imputation as a statement to a man's discredit, or a statement which tends to lower him in the estimation of right thinking members of the society, or a statement which tend to injure a person's reputation in his office, trade or profession. See *Youssouf v Metro-Goldwyn Mayer* (1934) 50 TLR 581 at 584 per Lord Scrutton.

132. He also submitted further that it is settled principle that every man is entitled to his good name and to the esteem in which he is held by others and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third party or to persons without lawful justification or cause. He also asserted that if such a defamatory statement is made in printing or some other permanent form, the tort of libel is committed and the law presumes damages to the plaintiff. See: *Ratcliff v Evans* [1892] 2 QB 254 CA at page 529 per Bowen LJ; and *South Hetton Coal Co. Ltd v North Eastern News Association* [1894] 1 QB 133 CA at 144.
133. The claimant then noted that words are not defamatory merely because their publication has a damaging effect on the plaintiff's reputation, there has to be a statement of fact or expression of opinion or imputation conveyed by them which will have this effect.
134. He then observed that a statement of claim in an action of libel and slander usually alleges that the words complained of are false. See *Bromage v Prosser* (1825) 4 B&C 247 at 255. And that the law presumes however that the words which tend to defame the plaintiff are false unless and until the defendant pleads and proves that they are true. See Report of the Committee on the law of Defamation (1948).
135. He observed further that in practice the claimant in an action of libel or slander always alleges that the defendant falsely and maliciously wrote or spoke and published of and concerning the claimant the defamatory words complained of.
136. The claimant then noted that if the defendant without justification or excuse did what he knew or ought to have known to calculate to injure the plaintiff, he must at least civilly be held responsible though his object might have been to injure a person other than the plaintiff or though he might have written it in levity only. It is said that no one cast about firebrands and death and then escape from being responsible by saying that he was in sport. See *Capital & Counties Bank Ltd v Henty and Son* (1882) 7 App Cas 741 H.L per Lord Blackburn.
137. The claimant then asserted that in order to prove defamation, the elements must be proved. He observed that the statement must be defamatory. And indicated that the definition of a defamatory statement is found in the common law. He noted that since the communication of concepts and sentiments is an inherently inexact phenomenon, so too, is the definition of a defamatory statement. He added that whilst the edges of what constitutes a

defamatory statement are a little fuzzy, the general concept can be found through reference to a number of cases. See *Parmiter v Coupland* (1840) 6 M&W 105 and *Berkoff v Burchill* [1996] 4 All ER 1008.

138. The claimant then observed that defamation need not be particularly insidious. And, thus in *Tolley v Fry & Sons Ltd* [1931] AC 333, the claimant, a well-known amateur golfer, was depicted in a caricature (without his permission) with a bar of the defendant's chocolate in his back pocket. The implication was that the golfer had endorsed the brand (else why depict him?), and that therefore the golfer had pursued paid advertising opportunities contrary to his amateur status. As well as the effect on his reputation, this might have resulted in him being barred from several golf clubs. This claim was successful.

139. The claimant then asserted that the statement must be about the claimant. He noted that that it must be established that the defamatory statement is about the claimant. And that this will usually be simple, if the claimant is named or identified. But that sometimes, the exact subject of a statement will be unclear. He noted that, nevertheless, if the claimant can be identified from the information included in the statement, then this criterion will be satisfied. See *Morgan v Odhams Press* [1971] 1 WLR 1239.

140. The claimant then observed that the statement must be published. He indicated that as noted above, defamation is about communication of a statement. And that this is referred to as publication, although this term has a specific legal meaning. See *Pullman v W. Hill & Co Ltd* [1891] 1 QB 524. The claimant further observed that the statement must be defamatory of the claimant. See *Cooke v MGN Ltd* [2014] EWHC 2831.

141. The claimant submitted that in the present matter he pleaded and proved that there was publication and the publication was about him. He submitted further that this fact was actually admitted by the defendant. He noted that during the trial, Mr Salamu told the court that it was the farmers who made the allegations. He noted, however, that the question is not who made the allegations and that the question is who made the publication. He asserted that, clearly, the publication was made by the defendant in its memos to several people. He asserted further that the publication was about the claimant. That the publication was false as no proof was given of it and no charge was made against the claimant.

142. The claimant asserted further that he already proved in Court that he was a person who is held highly among his peers. That he was holding the

position of chairman of small holder tea growers' association Block. And further, that he was the one who was signing contract in his Block. He submitted that, therefore, words that the said chairman was cheating was shocking to many of his colleagues and he was ridiculed. He therefore submits that the defendant should be held liable for defamation and should be ordered to pay damages for defamation.

143. On its part, the defendant submitted as follows, on whether or not there is any act of defamation by the defendant towards the claimant in the circumstances of this case. It observed that Chatsika J. in the case of *Nyirenda v AR Osman & Co.* (1993) 16 (2) MLR 681 at 702 is very instructive. It noted that the judge said:

Defamation has been defined, in different terms, as the publication of a statement "which tends to lower a person in the estimation of right-thinking members of society generally; or which make them shun or avoid that person". It has also been defined as any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of the society generally, to cut him off from society or to expose him to hatred, contempt or ridicule. Having established that the statement or imputation answers the above qualities, four things Must be satisfied in order for the plaintiff, subject, of course, to the availability of any possible defence:

That the words complained of were published maliciously

That they are defamatory

That they refer to the plaintiff

That they were published"

144. It observed further that the Judge further stated on page 704 as follows:

Simply stated, the law on this point is that on the grounds of public policy and convenience, and when the statement is made on the appropriate occasion, a person may make statements about another which are defamatory and untrue provided he makes the statement honestly and without any indirect or improper motive, he is not liable in defamation.

.....Having regard to the facts of this case, I find that the defendant would not incur any liability in defamation, even if the imputations are defamatory if it can be proved that (a) the statement was made in the course of discharging a public or

private duty or (b) that the defendant had a legitimate interest in the matter and (c) that it is made in order to obtain redress for grievance.

145. The defendant then asserted that, in an attempt to provide evidence for defamation, the claimant's evidence is contained in paragraphs 6.13, 6.14 and 6.15 of the claimant's witness statement and exhibit marked SM3 which is an internal memo from Mr. Salamu the defendant's Certification coordinator, to the defendant's Out Growers Manager. The defendant pointed out that the memo was meant to seek direction and advise from the Out Growers Manager on the issue of "cheating at tea weighing sheds" because the issue involved some Block leaders and members of the Sanctions and Approvals Committee and it was dragging to be resolved. The defendant noted that the last paragraph of this letter reads as follows: "Considering the fact that this non-conformity is critical in nature, I have written this letter to you sir for direction and advise"

146. The defendant then observed that the memo was written by Mr. Salamu in the course of discharging his duties and that the defendant had a legitimate interest in the matter and the statement was made in order to obtain redress for a grievance. It submitted that it would therefore not incur any liability for defamation, even if the imputations may be defamatory. Further, the defendant opined that the writer of that memo wrote it honestly, truthfully and without any malice. And that this can easily be discerned from the tone of the letter. The defendant referred to the case of *Nyirenda v AR Osman & Co.* (1993) 16 (2) MLR 681.

147. The defendant then submitted that, the claimant did not bring any witness to prove that he was lowered in the estimation of others because of this memo. It pointed out that, during cross-examination the claimant agreed that the allegations that some farmers were cheating at tea weighing shed were made at a meeting of farmers in April 2016 and that they came from his fellow farmers. And that, in fact, exhibit SM3 mentions that the allegation was first made by the claimant's own secretary for his block, Thyolo Block, namely Mr. Pendame. The defendant then asserted that the assertion by the claimant that the allegations were made by the defendant cannot be supported. The defendant observed that the claimant's statement of case in paragraph 8 and 9 plead as follows:

8. "the claimant pleads that during one of the agricultural extensions and training sessions for Nchima smallholder tea growers, which was organised by the defendant, on 28<sup>th</sup> April 2016 there was an allegation that some farmers were



conniving with weighing clerks and were stealing green tea from nearby estates and also bribing clerks in order to get more money.

9. “the claimant herein was one of the smallholder farmers mentioned to have been involved in the alleged malpractice”

148. The defendant then asserted that, in an attempt to prove the above pleading, the claimant in paragraph 6.7 of his witness statement states “that in or around 28<sup>th</sup> April 2016 the defendant made an allegation that I was conniving with weighing clerks and I was stealing green tea from nearby estates and also bribing clerks in order to get more money”.

149. The defendant submitted that the evidence and the pleading above do not match. It pointed out that it is not true that on 28<sup>th</sup> April 2016 the defendant made any allegation against the claimant. And that the allegations were made by the claimant’s own colleagues. That, in fact, the claimant’s exhibit SM3 mentions the person who started the allegations on the 28<sup>th</sup> of April. And that the said person is a fellow farmer and not the defendant. The defendant submitted that the claimant’s evidence is therefore meant to mislead this Court and should not be taken seriously. It reiterated that the claimant clearly and correctly states in his pleading that on 28<sup>th</sup> April “the claimant herein was one of the smallholder farmers mentioned to have been involved in the alleged malpractice”. And that this came from fellow farmers and not the defendant.

150. The defendant then asserted that the allegations of cheating were investigated and turned out to be true. And that if the allegations were true, the same cannot be defamatory. See *Zinga v Airtel Malawi Ltd*, Civil Cause No. 74 of 2014 (HC) (MZ). The defendant then posited that the evidence of cheating by the claimant is hiding in plain sight in the evidence before this Court. It called upon this Court to examine the sales receipts exhibited by the claimant carefully. It pointed out that the claimant’s exhibit SM2 shows 2 sales receipts for January, 2016 in the sums of 782kg and 669kg; 2 sales receipts for February, 2016 in the sums of 877kg and 904kg; 2 sales receipts for March, 2016 in the sums of 1 978kg and 1 888kg. The defendant asked that this Court should look at the receipts for March, 2016 closely and compare to the receipts of the previous months of January and February, 2016. It asserted that this Court will note that the receipts for March have much higher kilograms than the previous months. And that this Court will note that in the previous months the number of kilograms were all below one thousand

but in March the kilograms are over double as much. It reiterated that it is not difficult to see that a “1” was added to the figures of March and that if the same is taken off, the figures will look normal and similar to the months of January and February, 2016. The defendant asked this Court to also look at the number of kilograms for the months of August and September as exhibited by the claimant and stated that this Court will note that the number of kilograms are far from reaching even one thousand. It pointed out that it shows 219kg and 838kg for August; and 114kg and 505kg for September, 2016. The defendant then submitted that these figures for the expected average number of kilograms per month are very telling and revealing of the allegations of cheating. The defendant reiterated that this Court is also called upon to recall that it is in evidence that these allegations of cheating in this case were revealed in the following month of April, 2016. The defendant submitted that with these revelations there can be no case of defamation against the defendant.

151. This Court appreciates the allegations of defamation as pleaded by the claimant in his statement of case. This Court observes that, contrary to the submissions by the defendant, the case of defamation appears in paragraphs 8 and 9 of the claimant’s statement of case, in fact, the case of defamation is pleaded in paragraphs 18 to 22 of the statement of case as follows:

- 18) The claimant further pleads that by memo addressed to several farmers including people including Out Growers associations, the defendant published the following words “*cheating at tea weighing sheds*”.
- 19) The claimant avers that the defendant mentioned the claimant in the said memo as one of the farmers who were cheating.
- 20) The claimant avers that such allegations were false.
- 21) By the said words the defendant meant and were understood to mean that the claimant is a cheater and not trustworthy; the claimant is a criminal; the defendant is a thief.
- 22) The claimant pleads that the said publication has greatly injured the claimant in his credit character and reputation and has been brought into public odium and contempt and has been defamed.

152. Therefore, as far as the pleadings are concerned, the claim for defamation is therefore not premised on the publication of the statement at the

training meeting alluded to by the defendant which was held on 28<sup>th</sup> April, 2016.

153. In terms of the evidence, the claimant indicated that the defendant published a memo in exhibit SM3 in which it indicated the allegation of cheating against the claimant. This evidence is in paragraphs 6.13 to 6.15 of the claimant's statement of case and not in paragraph 6.7 alluded to by the defendant.

154. There is therefore no variance between the claimant's statement of case and the evidence on the issue of defamation. This is contrary to the submissions by the defendant on this point. The issue is therefore whether the defendant indeed defamed the claimant by reason of the two memos marked as exhibit SM3.

155. This Court has considered the first memo in exhibit SM3 dated 31<sup>st</sup> August, 2016 and agrees with the defendant that the import of this memo cannot be defamatory. This is because, although it publishes the allegation of cheating, the tone of the memo is clear that the author was seeking directions on how that allegation of cheating was to be resolved given that the issue had dragged on for a while.

156. In the circumstances, this Court agrees with the defendant's submission that the memo of 31<sup>st</sup> August, 2016 was written by Mr. Salamu in the course of discharging his duties and that the defendant had a legitimate interest in the matter and the statement was made in order to obtain redress for a grievance. This Court agrees further that in that case, the defendant would therefore not incur any liability in defamation, even if the imputations may be defamatory. Further, this Court agrees with the defendant's view that the author of that memo wrote the memo honestly, truthfully and without any malice. And that this can easily be discerned from the tone of the letter. See the case of *Nyirenda v AR Osman & Co.* [1993] 16 (2) MLR 681.

157. This leaves the second memo in exhibit SM3 which in this Court's view imputes cheating to the claimant. This may be defamatory. There is a dispute as to whether the allegation of cheating was justified in view of the fact that the claimant was never heard in the matter. The defendant indicated that it is the Sanctions and Approvals Committee that can explain on the issue of the hearing and that that Committee is comprised of farmers and ought to have been sued and not the defendant.

158. This Court however agrees with the claimant that the second memo in exhibit SM3 was authored by the defendant. And that, as such the Sanctions

and Approvals Committee cannot be called into the matter by the defendant who has to answer for what it authored and published concerning the claimant.

159. The claimant asserted that there was no justification for the allegation of cheating against the claimant as appears in the second memo in exhibit SM3 since he was never heard on the allegation. On the other hand, the defendant says that the March, 2016 sales receipts kilograms show that the allegations of cheating that were made in the following month of April, 2016 were most likely true and that these higher than usual sales kilograms for March, 2016 are an indicator of the truthfulness of the cheating allegations. The view of this Court is that indeed the justification on the cheating allegation would reasonably have been had if the claimant was heard and given a chance to contest the allegation cheating and even to contest the defendant's theory of cheating based on the sales figures for March, 2016 which are now said to be a result of cheating at the weighing shed. There is no evidence that the claimant was heard on the allegations. The complicating factor in this matter is however that the issue of cheating at the weighing shed dragged for a long time since the claimant resisted a hearing on the same given his position as a farmers' Block chairperson. It would be unfair in the circumstances for the claimant to rely on the fact that he was never heard when it was actually him who resisted the hearing. The claimant appears to have contributed to the whole situation of not being heard here as submitted by the defendant.

160. This Court agrees with the defendant that in the circumstances of this matter, it is fundamental to observe that the claimant was supposed to bring proof that the allegations of cheating published about him in fact lowered his estimation in the minds of the right thinking members of his community of farmers and those that were addressed in the memo in question given that the allegation of cheating emanated from his fellow farmers. The claimant appears to assume that his reputation got injured or lowered accordingly. He has not brought any evidence from those he said ended up regarding him as having a lower character or those he says ridiculed him. There is no evidence in that regard. Such evidence is vital for this Court to be satisfied that on the whole of the circumstances of this matter the claimant's reputation was indeed lowered and that he was ridiculed as he claims.

161. This Court observes that defamatory words imputing a criminal offence are actionable per se. See *Munthali v Mwakasungula* [1991] 14 MLR 298 (HC). The defamatory words herein did not impute a criminal offence. The

gist of the issue herein was cheating at the tea weighing sheds. This Court is therefore unable to find that the claimant has proved that the allegation of cheating herein in fact tended to lower his reputation in the whole of the circumstances of this case where he never called any of the people addressed in the memo including those from the farming community who raised the allegation herein.

162. The claimant's claim for damages for defamation therefore fails.

163. The entirety of the claimant's claim therefore fails. Costs normally follow the event and shall be for the defendant to be assessed by the Registrar, if not agreed within 14 days.

Made in open court at Blantyre this 20<sup>th</sup> May 2022.



M.A. Tembo  
**JUDGE**

