

Bester Chungano vs China Railway 20 Bureau Group and Roads Authority Civil Cause Number 383 of 2022

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Cause Number 383 of 2022
Date of Judgment:	April 01, 2025
Bar:	For the Claimant: Mr. Hope Mvonye For the 1st Defendant: Mr Alfred Lungu, For the 2nd Defendant: Mr Bruno Matumbi and Mr Lovemore Chikopa

The Claimant, a homeowner, commenced an action against the 1st Defendant, a contractor, and the 2nd Defendant, a statutory body, seeking costs for repairs and damages. The Claimant alleged that vibrations from the Defendants' heavy machinery used in the construction of the Nsanje-Marka Road caused extensive cracks and damage to his house. The Defendants denied the claims, asserting that the vibrations were not powerful enough to cause the alleged damage given

the property's distance from the road. The Defendants also argued that the Claimant's refusal to allow a monitoring team access to the property made it difficult to ascertain if the cracks were pre-existing. Furthermore, the 1st Defendant contended that as a mere contractor, any compensation should be borne by the Government of Malawi and the 2nd Defendant.

The Court had to determine whether the Claimant had proven, on a balance of probabilities, that the Defendants' construction activities were the direct cause of the damage to his property. The Court also had to assess the credibility of the evidence presented by both parties.

The claims were dismissed in their entirety. The Court held that the Claimant had failed to prove his case on a balance of probabilities, finding no direct evidence to link the cracks to the road works. The Court found the evidence of the 2nd Defendant's witness, a Project Engineer, to be more credible, accepting his opinion that the vibrations were within acceptable levels and would have dissipated before reaching the Claimant's property. The Court also agreed that the cracks could have been caused by other factors, such as the use of heavy railway steel in the construction of the house, which could have overburdened the structure. The Court ordered each party to bear their own costs.