

Emmanuel Mdala t/a OX-Enterprise v Zhejiang Communications Construction Group Ltd.

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice C.W.M Malonda
Cause Number:	Commercial Case No 259 of 2019
Date of Judgment:	September 08, 2025
Bar:	Ndalama and Sato, Counsel for the Claimant Sitima, Counsel for the Defendant

The Claimant, a local contractor, sought payment for construction works allegedly performed under a subcontracting arrangement with the Defendant, a Chinese construction company. The dispute arose from the parties' disagreement over the amount owed. The Claimant asserted a claim for MK71,392,290, alleging that he had performed additional works under a verbal extension of the written contracts. The Defendant denied liability, contending that the Claimant had been fully paid for all verified works and had submitted fabricated invoices. The Defendant also filed a counterclaim for MK2,852,224.60 for materials the Claimant had allegedly taken.

The Court had to determine the terms of the contracts, whether there was a breach, and if the Claimant was entitled to the reliefs sought. The Court found that the Claimant failed to discharge the burden of proof that a verbal extension to the written contracts existed, noting that the parol evidence rule prevents oral evidence from varying a written agreement. It further found the Claimant's evidence to be inconsistent and unreliable, particularly regarding the multiple invoices and the repeated use of the same contract for different sites. Conversely, the Court found the Defendant's witnesses to be consistent and their testimony corroborated by signed settlement documents.

The Court dismissed the Claimant's claim in its entirety, concluding that the Claimant's failure to obtain certification for the disputed works constituted a breach on his part. The Court upheld the Defendant's counterclaim, as the Claimant did not challenge the evidence supporting it. The Court condemned the Claimant's conduct of submitting inflated and unverified invoices as dishonest and consequently awarded costs to the Defendant on an indemnity basis.