



The plaintiff has calculated that his share of the compensation money amounted to E34 014.23 but he has failed to take into account that what must be deducted from this amount is the amount of the purchase price of the property which has in fact not been paid notwithstanding the fact that the guarantees were issued. He has calculated the amount which fee claims as being 31.789% of the E107.000. Clearly from this amount has to be deducted the purchase price of the property less the amount of E2 500 which was paid on account of the deposit and other incidentals of the agreement.

The amount of the purchase price was in terms of the agreement which is annexure "A" to the particulars of claim was E9 000. The amount which has to be paid is the amount as calculated less the purchase price but add back what was paid. This amount has to be paid for a number of reasons.

Firstly, as I said the agreement has not been cancelled and the defendant is still obliged to deliver the property against payment of the purchase price. Of course he cannot do so because of the expropriation. Risk of profit or loss in the land passed to the plaintiff once the agreement was concluded and signed. There was provision in the contract for agreement that possession be taken at a particular date but the blank was never filled so that the common law provision remains, that the risk passed on the contract becoming complete in the sense that it was agreed upon.

In accordance with the law as set out in LAWSA Volume 10 1995-1996 EXPROPRIATION par 44, and the authorities quoted in this connection where land is expropriated after a completed sale but before transfer the purchaser is entitled to be paid the expropriation compensation paid by the expropriator to the seller.

I therefore rule in favour of the plaintiff and order that payment be made by Defendant to the Plaintiff in the sum of E27 514,23 together with interest calculated at 9% per annum from the date on which the defendant received the compensation until date of payment and costs.

S.W SAPIRE

ACTING CHIEF JUSTICE