

THE HIGH COURT
(COMMERCIAL DIVISION)
LIBRARY
P/BAG 22, BLANTYRE



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 219 of 2016

(Before Honourable Justice Katsala)

BETWEEN

ENERGEM PETROLEUM LIMITED.....CLAIMANT

AND

MR. BAISI.....DEFENDANT

CORAM: D.H. SANKHULANI, ESQ., ASSISTANT REGISTRAR

Mr. N. Alide, of Counsel for the Claimant

Mr. Makiyi, of Counsel for the Defendant

Mr. Ntonya, Court Clerk

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Sankhulani, AR

ORDER ON ASSESSMENT OF INTEREST

Introduction

This order on assessment follows hearing of proceedings for assessment of interest that was held pursuant to a summary judgment and a judgment on merits made herein.

Background Information

The Claimant was at all material times a supplier of fuel and fuel products. The Defendant was at all material times a businessman operating the Injena Filling Station in Area 50 in Lilongwe City. The Claimant commenced the present action by way of writ of summons, claiming, inter alias, the sum of K41,455,731.44, being money owed to it by the Defendant for fuel and fuel products supplied to him.

The Defendant duly filed his defence.

Subsequently, on the Claimant's application, summary was entered, inter alias, for the sum of K35,014,375.14. By the said judgment, the remaining money out of the Claimant's total claim was ordered to go to trial.

Trial was eventually had, and a judgment on the merits was entered in the Claimant's favour for, inter alias, the sum of K6,045,602.60, making a total judgment sum of K41,059,997.74.

Accordingly, proceedings for assessment of interest were commenced. Hearing of the proceedings for assessment of interest took place in the presence of both parties hereto. After the said hearing, the matter was adjourned to today's date for an order on assessment of interest. Hence the present order.

Issues for Determination herein

- The correct judgment sum herein.
- Whether the rate of 8% above commercial bank base lending rate is apposite herein.
- The correct quantum of interest payable herein.
- The correct quantum of statutory collection charges payable herein.

The Correct Judgment Sum Herein

The present application for assessment of interest is supported by a sworn statement and a supplementary one. The Defendant filed a sworn statement in opposition to the application, raising three issues, which shall be dealt with seriatim.

The first issue, which is also the relevant one under this sub-heading, that was raised on the Defendant's behalf against the Claimant's calculations was that they were premised on an incorrect judgment sum of K41,455,731.44. However, the supplementary sworn statement referred to above took care of that irregularity which was indeed there. In it, calculations of interest were done using the correct judgment sum of K41,059,997.74 as above mentioned. At the hearing of the present proceedings, Counsel for the Defendant even conceded that the irregularity referred to above had been corrected through the supplementary sworn statement.

It is my finding, therefore, that the issue of the Claimant's calculations being based on an incorrect judgment sum naturally fell away, in view of the Claimant's supplementary sworn statement in support of the present application.

Whether the Rate of 8% Above Commercial Bank Base Lending Rate is Apposite Herein

This is the second issue that was raised on the Defendant's behalf against the Claimant's calculations of interest.

In its calculations of interest, the Claimant adopted applicable commercial bank base lending rates, as gotten from the Reserve Bank of Malawi. To that, it added 8% to arrive at final rates that were employed in calculating interest. The Defendant objects to that approach being adopted. According to the Defendant, addition of the 8% margin is exorbitant and unconscionable, contrary to **Section 3 of the Loans Recovery Act**. Additionally, the Defendant contends that, in fact, the agreement between the parties did not contain an interest rate component in the event of default on payment. According to the Defendant, an addition of 1% or 2% margin to the applicable commercial bank base lending rates would have been reasonable.

I am, however, unable to agree with the Defendant in this regard. Having gone through the summary judgment and the judgment on merits herein, I found that both clearly provided for interest at 8% above commercial bank base lending rate. It is my finding, therefore, that the rate of 8% above commercial bank base lending rate is apposite in the present matter. It is so ordered.

The Correct Quantum of Interest Payable Herein

According to the Claimant's calculations, total interest payable herein for the period between 27th August 2015 and 28th February 2018 comes up to K68,712,770.67. The third and final issue that was raised against the Claimant's calculations of interest arises from this. The Defendant contends that the correct quantum of interest herein is K39,135,291.88.

It is clear, however, that the Defendant used, in his calculations, a different rate from that of 8% above commercial bank base lending rate as above found and ordered. It, therefore, means that the total interest payable as calculated by the Defendant was incorrect, having being based on wrong rates. I did my own calculations, and arrived at the same quantum of K68,712,770.67 being interest, as was arrived at by the Claimant.

Having verified the Claimant's calculations as being mathematically correct and there being no other issues raised by the Defendant against those calculations apart from the issues already highlighted and determined upon above, I hereby assess interest payable herein for the period between 27th August 2015 and 28th February 2018 at K68,712,770.67, and award the same to the Claimant.

The Correct Quantum of Statutory Collection Charges Payable Herein

According to the Claimant's calculations, the correct quantum of statutory collection charges herein is K3,417,566.80. The Defendant objects to that quantum on the ground that it was based on incorrect principal sum.

Both the summary judgment and the judgment on merits herein provided for payment of statutory collection charges. The formula for calculating statutory collection charges is found in **Table 6 of the First Schedule to the Legal Practitioners (Scale and Minimum Charges) Rules** as follows:

- (i) 15% on the first K500,000.00;
- (ii) 10% on the next K1,000,000.00; and
- (iii) 3% on the balance.

Applying the above formula to the sum of K109,772,768.41 (being principal/judgment debt plus interest herein), I did my calculations, and found the sum of K3,423,183.05 as being the correct quantum of statutory charges payable herein. I award the same to the Claimant.

Final Order

Summary

By way of summary, therefore, the Claimant has been awarded the following: the sum of K41,059,997.74 being the principal/judgment debt; the sum of K68,712,770.67 being interest; and the sum of K3,423,183.05 being statutory collection charges.

Conclusion

In total, therefore, the sum of K113,195,951.46 is hereby awarded to the Claimant herein plus costs of this action, the quantum thereof to be agreed between the parties herein or, if not so agreed, taxed by this court.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 5th day of June 2018.



D.H. SANKHULANI

ASSISTANT REGISTRAR

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