



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Lilongwe District Registry

Commercial Case No. 393 of 2018

(Before Honorable Justice K.T Mtalimanja)

BETWEEN

**MZUZU CITY COOUNCIL COMMUNITY SAVINGS AND INVESTMENT PROMOTION
COOPERATIVE SOCIETY (MCC
COMSIP).....PLAINTIFF**

AND

MZUZU CITY COUNCIL.....DEFENDANT

CORAM: A.Z. GUMULIRA, ASSISTANT REGISTRAR

Mr. Matumba, Of Counsel for the Plaintiff

Mr. Tembo, Of Counsel for the Defendant

Mr. Kachilambe, Court Clerk

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ORDER ON ASSESSMENT OF INTEREST

Introduction

This order follows a hearing of proceedings for assessment of interest that was held pursuant to a consent order executed by the parties herein on 20th March 2019. The consent order stated in part that interest and costs of the action were to be assessed by the court if not agreed upon by the parties.

Clearly the parties did not agree on the payable interest hence these proceedings.

Background Information

The claimant, a Cooperative Society comprising of employees of the defendant, entered into an agreement for the smooth running of the cooperative with the defendant. Clause 2(iii) (a) of the said agreement provided that the defendant would deduct loans, shares and other dues that the claimant advanced to its members from their monthly salaries and remit them to the claimant. The defendant deducted money amounting to MK 19,325,549.06 from the claimant's members as per the agreement and that this was done between the months of November 2016 to November 2017.

However the defendant only remitted the sum of MK 3,800,000.00 to the claimant leaving a balance of MK 15,525,549.06. The claimant refused and or neglected to remit the balance to the claimant despite several demands hence this action.

As already stated above the parties executed a consent order allowing the defendant to settle the amount in instalments and to pay interest on the owed sum as will be assessed by the court.

The Evidence.

Brenda Njiramo, an accountant working for the claimants, testified in this court that she calculated interest in the matter at a compounded rate because the operations of the claimants were negatively affected and members suffered economically because of the defendant's actions in withholding money due to the Cooperative Society. She further pointed out that the money would have been lent out to members of the society at a profit, as they usually charge interest on all sums lent out to its members and that the society would have thereby registered a huge profit from the same, if not for the defendant's actions.

According to her calculations, the interest payable by the defendants totaled MK 17,650,419.41 compounded at the rate 31% for a period of 2 years and 8 months from November 2016 to June 2018.

She tendered as evidence calculations showing how she arrived at the sum of MK 17,650,419.41 as the interest payable in this matter, marked BN1.

On the other hand Mr. Christopher Chiotcha Phiri, a Human Resource Officer from Mzuzu City Council asked the court to peg the interest payable in this matter at MK 7,000,000.00. It is not clear what percentage this witness used to arrive at this figure, however he pointed out the fact that the court must take into consideration the fact that the base lending rate has been fluctuating since 2016 and that therefore we cannot use the rate adopted by the claimants. He also told the court that the claimants usually charge 10% as interest on all their loans.

The defendants had undertaken to file written submissions outlining how the interest payable herein ought to be calculated in 7 days from the date of assessment, it being the 15th of August 2019. As of today, the defendants have not filed any document to that effect.

I therefore proceed on the basis of the claimant's submissions and the oral evidence of the defendant's sole witness.

Issues for Determination

1. The quantum of interest to be awarded to the claimant.

The quantum of interest to be awarded to the claimant.

Although the heading reads as is above, in making a decision on the quantum of interest payable in this matter, the court will essentially be asking whether this is a proper case for awarding compound interest as has been claimed by the claimant.

I wish to remind myself at this point that "Interest" is defined as the compensation allowed by law or fixed by the parties for use or forbearance of borrowed money (**Black's Law Dictionary (6th Edition)**).

The Supreme Court held in the case of **Gwembere v. Malawi Railways Ltd. 9 MLR 369, at page 378** that the law does not provide that interest can be claimed as of right but that it allows the court discretion to direct the payment of interest but only in the cases of debt as distinct from damages. The court went further to hold that the High Court should be guided by the Principle laid down by Lord Herschell L.C in **London Chatham Dover Ry. Co v. South E. Ry. Co [1983] A.C 429** which states that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongly withholding the money from the other ought not, in justice, to benefit by having that

money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to use it.

The interest awarded may either be calculated as simple interest or compounded. However, compound interest is only awarded where the claimant has proven that his actual losses were more than he would recover by way of interest under statute or simple interest. But, in any event, it is evident that the test is one of fairness and justice and that a court takes into account a variety of factors which would include: whether the claimant has actually sustained a loss (over and above loss of the principal sum) or can prove whether it has sustained such a loss; and whether even if the claimant has sustained such a loss, the defendant has benefited from the time value of the money or would, otherwise, be "out of pocket" if required to pay compound interest on the principal.

Whether the claimant has sustained a loss over and above loss of the principal sum

The evidence is clear that the claimants would have given out more loans and charged interest on the said loans and would have made a huge profit had the defendants remitted the money to them in time as agreed.

It is also in evidence that the claimant's operations were affected due to the withholding of the said money by the defendant. It is therefore very clear in my mind that the claimants lost much more than just the withheld sum of money during this period.

Whether the defendant has benefited from the time value of the withheld money

The evidence is again clear that the said sums of money were deducted from the defendant's employees who are members of the claimant Cooperative Society, and that the money was never remitted to the claimant. It is also in evidence that the defendants have not finished paying back the said money to the claimants as at this date. Clearly, the facts do speak for themselves in that the said money was put to some other use by the defendants, and to their benefit of course. The defendants have clearly benefited from the time value of the said money.

Ultimately the defendants were under an obligation as per the agreement between them and the claimants to remit the deducted sums of money to the claimant, an obligation which they breached to the detriment of the claimant's success in profits and to the defendant's own use.

I opine that this is a proper case to award compound interest on the principal claimed.

The defendants have not furnished us with any evidence of the fluctuating lending rate nor have they given the court a precise account of how they arrived at the sum of MK 7,000,000.00 as the amount of interest payable in this matter.

On the other hand, I have checked and verified the claimant's calculations for precision and correctness of both the rates used as being the rates obtaining within the period in question and the mathematical aspect of it, and I have no reason to shed doubt on the same.

Final Order

I therefore order that the interest payable in this matter is **MK 17,650,419.41**

Delivered in Chambers at the Lilongwe Registry of the Commercial Division of the High Court this 27th day of August 2019.



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A.Z GUMULIRA

ASSISTANT REGISTRAR

