



**IN THE HIGH COURT OF MALAWI**

**COMMERCIAL DIVISION**

**LILONGWE REGISTRY**

**Commercial Case No. 69 of 2018**

**(Before Honourable Justice KEN MANDA)**

**BETWEEN**

**HARLOD JERE.....CLAIMANT**

**AND**

**FDH BANK LIMITED.....DEFENDANT**

**CORAM: A.P. KAPASWICHE : ASSISTANT REGISTRAR**

Mr. P. Nkhata : Counsel for the Claimant

Mr. S. Imaan : Counsel for the Defendant

Mrs. C. Zude : Court Clerk

## **ORDER ON ASSESSMENT OF INTEREST**

### **BACKGROUND**

This order on assessment of interest follows hearing of proceedings for assessment of interest that was held pursuant to a ruling that ordered the defendant to pay interest to the claimant. The Claimant commenced the present matter seeking damages for breach of contract for the sale and conveyance of Title NO: Bwaila 8/180 and costs of the action. The court granted the prayer of the claimant by way of Summary Judgment. The matter then proceeded for assessment of damages before His Honour Ntchera who awarded damages; interest and costs of the assessment of damages to the claimant. On the interest, the court ordered the defendant to pay compound interest at 4% above the base lending rate with effect from the respective dates the money was paid to the defendant up to the date of actual payment.

Accordingly, proceedings for assessment of interest were commenced. Hearing of the proceedings for assessment of interest commenced on the 14<sup>th</sup> day of December 2020 before Her Honour Gumulira of which only one witness was heard being the claimant himself. The claimant adopted his sworn statement as part of his evidence and also tendered calculation of interest document that was authored by Standard Bank. The claimant told the court that he is a mechanical engineer by profession and that he does not have any financial qualification and this is why he asked a person at Standard Bank to work on the interest calculations. He stated that he would not be in a position to know if there was any error in the calculations made by the person who authored the document. He also stated that the interest was calculated on a daily basis but he is not aware as to why it was calculated on a daily basis. He indicated that the court order on interest did not indicate that calculations should be done on a daily basis. He admitted that the calculations of the interest by Standard bank went up to 10<sup>th</sup> December 2018 instead of going up to 12<sup>th</sup> November 2018. The interest calculated was MK16, 141,047.45.

After hearing the claimant, the matter was adjourned to the 19<sup>th</sup> day of January 2021 for continued hearing. On this day, Her Honour Gumulira was out of the country and the matter

proceeded before me as I had assumed the affairs of the office. The defence sought an adjournment on the said date as their witness was unwell and the matter was rescheduled to be heard on the 2<sup>nd</sup> day of February 2021. On this day, the defence proceeded to present their case and paraded one witness a Mr. Richard Chipezaani who is the Head of Finance for the defendant's Bank. He adopted his witness statement which had an attachment of interest calculations. MR Chipezaani stated that the order on interest did not state as to whether interest should be calculated on daily, monthly or annual basis. Due to this development, the interest calculation by the defence has been done on a monthly basis and the total interest payable according to the calculations of the defence is at MK13, 244,430.00. DW1 stated that he based his interest calculations on applicable rates by FDH Bank though he did not attach the documents verifying the official rates that he used for the period of calculation.

#### **ISSUES FOR DETERMINATION**

The main issue that this court has to determine is the correct quantum of interest payable.

#### **ANALYSIS AND DETERMINATION**

Before I proceed to make my determination of the interest payable, let me briefly respond to the submissions made by the defendant in the present case. The defence prayed that they be given an opportunity to make final submissions. I granted this prayer despite the fact that the defendants objected to the same. The issue raised in the submissions was that interest is not payable in the present matter and this court should dismiss the matter and not make an order of interest. There were two grounds advanced by the defence. The first ground was that the summary Judgment by Justice Ken Manda did not make an order on payment of interest as the claimant only made pleadings with regard to damages f breach of contract and costs. The order on assesment of interest came by the Order of His Honour Ntchera in his ruling on assesment of damages.

The defence argued that it was irregular for His Honour Ntchera to order payment of interest when the Judge did not order the same as it was not part of the initial pleadings. My take on this argument is very simple; I do not believe that this is the appropriate forum and time to raise such an argument. I do not have powers to overrule or alter a judgment made by my

fellow Assistant registrar hence I cannot act as prayed for by the defence. There is a court order on the file that ordered that the defendant should pay interest and the issue of whether that order was irregular or not is an issue that has to be dealt with the Supreme Court of Appeal not this court.

The second reason advanced for the dismissal of the interest assessment was that the interest calculations made by the claimant are wrong as they went beyond 12<sup>th</sup> November 2018 which is the valid date for computation of interest and further that the interest was wrongfully calculated on a daily basis instead of monthly or yearly basis as the order on the payment of interest did not specify. The claimant stated in his evidence that he is not an accountant hence he does not have expertise in accounting. He also acknowledged that the calculations were supposed to go up to the 12<sup>th</sup> day of November 2018 and not the 10<sup>th</sup> day of January 2018. It is not in dispute that the claimant accepts that his calculation of interest is faulty.

The stand taken by the defence is that since the calculation presented by the claimant is faulty then the court should not make any award of interest to the claimant. I do not agree with the position taken by the defence. It has been settled that interest is payable per my reasoning in this ruling and I have been presented with two calculations of interests. The calculations of the claimant have been found to be faulty while the calculations of the defence have not been found to be faulty. The calculations submitted by the defence were made by a competent person being a Financial Manager for the defendants Bank with vast experience. This case presents three options to this court in my view namely; the first option of ordering the interest based on the calculations of the claimant; ordering the interest based on the calculations of the defendant and ordering the interest based on the amount that this court may deem reasonable. As it has been noted in this ruling, the claimant's assessment of interest has been found wanting while that of the defence has not been undermined. I do not see any reason why this court should not endorse the calculations made by DW1 as the correct interest payable.

Having verified the Defendant's calculations as being mathematically correct and there being no issues raised by the Claimant against those calculations, I hereby assess interest payable herein at K13,224,430.00 as of 12<sup>th</sup> November 2018, and award the same to the Claimant.

**FINAL ORDER**

In conclusion, the Claimant is hereby awarded interest amounting to K13, 224,430.00 plus costs of the assessment proceedings which should be included in the bill of costs of the whole proceedings.

Delivered at Lilongwe Registry of the Commercial Division of the High Court this 1<sup>st</sup> Day of March 2021.



**ANTHONY PITILIZANI KAPASWICHE**

**ASSISTANT REGISTRAR**