



IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
COMMERCIAL CAUSE NO. 75 OF 2021
(Before Honourable Justice Msungama)

BETWEEN

VINU D. PATEL.....CLAIMANT

AND

JOHN HYTENGET.....DEFENDANT

Coram

E. Mvula : Assistant Registrar
P. Minjale : Counsel for the Claimant
Defendants : Unrepresented/Absent
B. Ntonya : Court Clerk

ORDER ON ASSESSMENT OF INTEREST

Background

By an action commenced on 1st March, 2021, the Claimant claimed from the Defendant an award of \$110,000.00 being unsettled rentals due to him, legal collection costs to the tune of \$16,500.00, compound interest on the sum of \$110,000.00 at the rate of 2% above bank base lending rate calculated from the time the sum fell due, namely, 18th December, 2020 to the date of actual payment, further legal collection costs on compound interest and costs of action. The court entered a default judgment on 27th July, 2021 the Defendant having failed to file a defence upon being served with the summons through email and courier. Pursuant to the default judgment, the Claimant filed an application for assessment of interest and claimed a total sum of

MK128,140,302.76 as interest in the matter herein. The Claimant submitted that a notice of assessment of interest and an assessment bundle were served on the Defendant through his Whatsapp number +46 76 845 49 24 and his e-mail address jhytenget@gmail.com. The Claimant through sworn statement of service filed on 6th November, 2023 stated that the Defendant received the documents but refused to acknowledge receipt of the same. The Court proceeded to hear Claimant's application for assessment of interest in the absence of the Defendant.

Evidence

PW1 was Mr. Vinu D. Patel, the Claimant herein. He adopted his witness statement and tendered exhibits "VP1" and "VP2", default judgment and a whatsapp message from the Defendant, respectively. He stated that Defendant's delay to pay the money that he is owing him has put him into trouble and has caused loss and damage. As such, he was forced to borrow money from the Bank and that he is paying huge sums of money as interest to the Bank. He also stated that the Defendant has been promising to pay him for the past 8 years but he keeps on defaulting. PW1 further stated in paragraph 15 of his witness statement that he believes he is entitled to compound interest on the sum due because of Defendant's failure to satisfy the default judgment.

PW2 was Mr. Friday Mwale Kunitengo, an Accountant and Consultant at Global Merchants. He adopted his witness statement and tendered exhibit "FK1" containing interest calculations as part of his evidence in chief. He stated that he calculated interest by using policy rates published by the Reserve Bank of Malawi in the newspapers. He further stated that he added 2 basis points to the policy rates in order to reflect the rate used by the Reserve Bank of Malawi when lending money to its customers. PW2 concluded by stating that the sum payable as interest amounts to MK128,140,302.76. However, the total sum payable, upon adding the principal sum, is MK247,396,802.76.

The court is called upon to determine the following issues;

- i. the principal sum to be used when calculating interest in the present matter;
- ii. the appropriate period for calculating interest;
- iii. the appropriate quantum payable as interest in the matter herein.

What is the principal sum to be used when calculating interest in the present matter?

The calculations done by PW2 indicate that interest was calculated on the sum of MK119,256,500.00 from April, 2019 to August, 2023. However, the default judgment was entered for the sum of \$110,000.00 (one hundred and ten thousand United States Dollars). There is no

mention that judgment was entered for \$110,000.00 or its Malawi Kwacha equivalent. Therefore, interest has to be assessed on the sum of \$110,000.00.

Period for calculating interest

In his computations for interest, PW2 calculated interest from April, 2019 to August, 2023. However, the Claimant claimed compound interest on the sum of \$110,000.00 calculated at the rate of 2% above bank base lending rate calculated from the time the sum fell due (18th December, 2020) to the date of actual payment-see paragraph 14 (c) of Claimant's statement of case. The calculations ought to be done in accordance with Claimant's pleadings. The computations have to start from 18th December, 2020 to the date of actual payment.

Quantum payable as interest

This will be determined after the Claimant has filed fresh interest calculations based on the principal sum of \$110,000.00 from 18th December, 2020 to the date of actual payment.

Finding

Having considered that interest ought to be calculated on the sum of \$110,000.00 from 18th December, 2020 to the date of actual payment, the Claimant has the next 14 days within which to file and serve fresh interest calculations. The matter is scheduled for re-assessment of interest on 20th February, 2024 at 9 o'clock in the forenoon.

Costs shall be in the cause.

Any aggrieved party is at liberty to appeal within thirty days from the date hereof.

Delivered in Chambers this 1st day of February, 2024 at High Court Commercial Division,

Blantyre Registry.



E.Mvula

Assistant Registrar