



REPUBLIC OF MALAWI
COMMERCIAL DIVISION
BLANTYRE
REGISTRY

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 13 of 2020

(Before Honourable Justice Alide)

BETWEEN

ADMIKE IMPORT AND EXPORT.....CLAIMANT

AND

ADMARC LIMITED.....DEFENDANT

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

Mr. L. Gondwe and Ms. D. Manjandimo, of Counsel for the Claimant

Mr. S. Mumba, of Counsel for the Defendant

Mr. B. Ntonya, Court Clerk

.....
Sankhulani, AR

RULING ON AN APPLICATION FOR JUDGMENT ON ADMISSION

Introduction

This ruling follows hearing that was held on the Claimant's application for judgment on admission, brought under **Order 12, rule 28**, as read with **Order 10, of the Courts (High Court) (Civil Procedure) Rules 2017**.

Background Information

The Claimant commenced the present action by way of a specially-endorsed summons, claiming, amongst other reliefs, the sum of K652,360,000.00, being money owed to it by the Defendant for maize supplied. The other reliefs claimed were compound interest, collection costs and costs of the action.

The Defendant did put in its defence.

Later on, the Claimant took out an application for summary judgment.

Subsequently, and before the said application for summary judgment could be heard, the parties executed and caused to be issued an agreed order. By that agreed order, the judgment was entered in favour of the Claimant for the aforesaid sum of K652,360,000.00, subjecting all the other reliefs aforementioned to the court's determination, to be made subsequently, at the Claimant's instance.

Later on, the Claimant's application for summary judgment aforesaid was heard. By the judgment that was followed, judgment was entered in the Claimant's favour for compound interest, collection costs and costs of the action.

Accordingly, the Plaintiff commenced proceedings for assessment of interest and collection costs. However, before the assessment proceedings were heard, the Claimant did put in notice that at the hearing of those proceedings, it would be applying for judgment on admission for the sum of K916,361,331.63 being a total of interest and collection costs allegedly admitted by

the Defendant. The application for judgment on admission is supported by a sworn statement deponed by Mr. Gondwe, of counsel.

On the scheduled date for hearing of proceedings for assessment of interest and collection costs, this Court heard Claimant's application for judgment on admission aforesaid in the presence of both parties hereto who appeared through counsel. The matter was then adjourned for ruling. Hence the present ruling.

Issues for Determination herein

- Whether there was an admission by the Defendant of the sum of K916,361,331.63.
- Whether judgment on admission ought to be entered herein.

Whether There Was An Admission By The Defendant Of The Sum Of K916,361,331,63

For a judgment on admission to be entered, the admission in question may be express or implied but, in either case, it must be clear and unequivocal (**Construction and Development Limited vs. Munyenembe 12 MLR 292**).

In the matter at hand, the Claimant relies on an alleged admission as implied from the Defendant's emails to the Claimant. The background to this is that, in support of proceedings for assessment of interest and collection costs, the Claimant filed a sworn statement deponed by one James Aaron. Calculations of interest, marked as 'JA 1', were attached to that sworn statement. By 'JA 1', total interest payable by the Defendant to the Claimant came up to K870,544,205.63. According to the Claimant, after the said sworn statement in support of assessment had been served on the Defendant, there was an exchange of emails between Mr. Gondwe, of counsel for the Claimant, and Mr. Mumba, of counsel for the Defendant. Photocopies of the emails have been attached to the aforementioned sworn statement in support of the present application, and altogether marked as 'LG 2'. Now, as I understand it,

the Claimant's sole basis or ground for the present application is that the Defendant's emails to the Claimant as contained in 'LG 2' constitute an admission on the part of the Defendant to pay the Claimant the sum of K916,361,331.63 comprising the sum of K870,544,205.63 being interest and the sum of K45,817,126.00 being collection costs.

However, having critically analyzed the Defendant's emails to the Claimant as contained in 'LG 2', I have come to the conclusion that judgment on admission is not apposite in the matter at hand. I furnish reasons. Granted, the Claimant's emails in issue contain references to interest and collection costs. However, they do not indicate the quantum of interest or collection costs referred to. They do not even contain reference to the sworn statement by James Aaron. Now, getting to the Defendant's emails, my finding from my analysis of them is that they constitute an admission that the Defendant is liable to pay a quantum of interest and a quantum of collection costs known only to the parties hereto and nobody else. And, just as it has been the case with the Claimant's emails, my finding is that the Defendant's emails do not indicate the quantum of interest or collection costs referred to. They do not even refer to James Aaron's sworn statement aforementioned. And even if they did, James Aaron's sworn statement only contains a quantum of interest, that is to say, the sum of K870,544,205.63. As a matter of fact, that sworn statement is completely silent on any quantum of collection costs. In the premises, and on the evidence before me, I find that the Defendant's emails as contained in 'LG 2' do not constitute a clear and unequivocal admission on the part of the Defendant to pay the Claimant the sum of K916,361,331.63 comprising the sum of K870,544,205.63 being interest and the sum of K45,817,126.00 being collection costs or indeed any other specific quantum of interest and collection costs. There was no admission by the Defendant of the sum of K916,361,331.63 in the matter at hand, I so find, finally. It is unnecessary, therefore, to consider arguments that were raised by the Defendant, in opposition to the present application, as that would only be an academic exercise.

Whether Judgment On Admission Ought To Be Entered Herein

In view of the immediately foregoing finding, it is my finding here that judgment on admission ought not to be entered herein; clearly, it is not apposite in the present matter.

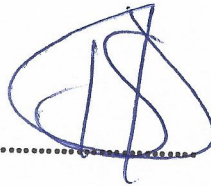
Final Order

In view of the foregoing findings and reasoning, I hereby dismiss the present Claimant's application for judgment on admission in its entirety.

Accordingly, the Claimant shall take out a notice of adjournment of proceedings for assessment of interest and collection costs, in order for a new date of hearing to be set.

As regards costs, each party herein shall bear their own costs of the just-dismissed application.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 14th day of January 2021.



D.H. SANKHULANI

ASSISTANT REGISTRAR

