

Background

The Claimant supplied various pharmaceutical products to Queen Elizabeth Central Hospital (customer) on 14th February, 2013. The total cost for the supplied goods was MK6,462, 000.00. Unfortunately, the customer did not make any payment for the supplied goods. This made the Claimant to commence proceedings against the Defendant, on 14th December, 2017, pursuant to Section 3 of the Civil Procedure (Suits by or Against the Government or Public Officers) Act. Claimant sought payment of the sum of MK6,462,000.00, compound interest on the said sum at commercial bank lending rate, legal collection costs and reimbursement of legal fees lost by the Claimant in pursuing the claim. A defence was filed by the Defendant on 11th January, 2018. However, the matter did not proceed for trial since the parties entered into an agreement that Defendant should pay the principal amount and interest on the principal sum to be assessed by the Registrar if not agreed by the parties. Claimant was also awarded costs of action which shall also be assessed by the Registrar if not agreed by the parties.

Hearing of the application for assessment of interest was conducted on 14th April, 2021. Notice of adjournment for assessment of interest was duly served on the Defendant on 24th March, 2021. However, the Defendant did not show up for trial and no word was sent for their absence. This made the court to hear the application in the absence of the Defendant.

Evidence

No witness was called to testify since, according to Counsel Roka, the Claimant was not served with notice to cross examine Munir Kharodia's sworn statement. Counsel Roka, therefore, adopted the statement sworn by Munir Kharodia outlining the basis for the assessment and the amount being sought in interest. Counsel Roka stated that interest had accumulated to MK56,184,441.05 as at 31st October, 2021 (exhibit MK3 provides a thorough computation of the said amount). He therefore prayed that interest should be assessed as prayed for.

Issues for determination

- i. What is the appropriate rate for calculating interest in this matter?
- ii. Should interest be compounded?
- iii. What is the appropriate amount to be payable as interest in this matter?

What is the appropriate rate for calculating interest?

The Claimant, in its summons, prayed for compound interest on the sum of MK6,462,000.00 until full settlement of the debt. The Order made by Katsala, J, required the Registrar to assess the amount to be paid as interest if not agreed by the parties. The Claimant obtained interest rates from National Bank of Malawi and attached the same to the sworn statement of Munir Kharodia. 1% was added to the interest rates that have been provided for court's reference. The Defendant did not make any submissions as regards interest rates to be used in the matter herein. The court will therefore adopt the rates submitted by the Claimant since there is no contrary view.

Effective period

The debt became due on 14th February, 2013 and such being the case interest is payable from March, 2013 to date of full payment. However, Counsel Roka informed the court that the principal sum remains unpaid. Since Claimant did not produce applicable reference rates from 1st November, 2020 to the date the court conducted assessment proceedings, interest shall be assessed from March, 2013 to 31st October, 2020.

Should interest be compounded?

Claimant prayed for compound interest in its summons. Since judgment was entered in favour of the Claimant, interest shall be calculated on a compound basis.

What is the appropriate quantum of interest to be paid by the Defendant?

The Claimant pegged total interest payable at the sum of MK56,184,441.05 as at 31st October, 2020. The court did its own calculations and hereby confirms the calculations done by Mr. Munir Kharodia to be correct. Interest for the period of 16th March, 2013 to 31st October, 2020 has therefore been assessed at MK56,184,441.05.

Costs for assessment of interest have been awarded to the Claimant. The said costs shall be taxed if not agreed by the parties.

Delivered in Chambers this 16th day of April, 2021 at High Court, Commercial Division, Blantyre Registry



Emelia Mvula Zidule
Assistant Registrar

