



**IN THE HIGH COURT OF MALAWI**

**COMMERCIAL DIVISION**

**Blantyre Registry**

**Commercial Case No. 13 of 2018**

**(Before Honourable Justice Dr. Mtambo)**

**BETWEEN**

**GRAND PRIX MOTORS.....CLAIMANT**

**AND**

**YOUTHNET AND COUNSELLING.....DEFENDANT**

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

Mr. N. Alide, of Counsel for the Claimant

Mrs. O. Mzanda, of Counsel for the Defendant

Mr. B. Ntonya, Court Clerk

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**Sankhulani, AR**

**RULING ON ASSESSMENT OF INTEREST AND COLLECTION COSTS**

## **Introduction**

This order on assessment follows hearing of proceedings for assessment of interest and collection costs that was held pursuant to a judgment and an agreed order on liability that were entered herein in favour of the Claimant.

## **Background Information**

The Claimant was at all material times a car rental service provider.

The Defendant was at all material times a non-governmental organization and the Claimant's customer.

The Claimant commenced the present action by way of a specially-endorsed summons, claiming K11,495,154.48, being the sum of unpaid car hire charges and motor vehicle repair costs owed by the Defendant, interest, collection costs and costs of the action.

The Defendant duly filed its defence, after the relevant period from which the matter became due for mandatory mediation.

At the pre-scheduled hearing of mediation, the Claimant appeared whereas the Defendant did not. Consequently, on the Claimant's application, the Defendant's defence was struck out and judgment was entered in the Claimant's favour for the sum of K11,495,154.48 aforesaid, interest as claimed, collection costs and costs of the action.

Subsequently, the Defendant took out an application to set aside the aforesaid judgment and to restore the defence. Upon that application being heard, the judgment was set aside in part in respect of the sum of K7,129,175.00 which still stood in dispute. However, judgment still stood in respect the sum of K4,365,979.48 admitted by the Defendant. Accordingly, the matter was ordered to go for mediation in respect of the said disputed sum of K7,129,175.00. At the hearing of the scheduled mediation, an order for termination of mediation was made, upon which the matter became due for a scheduling conference.

At the hearing of the scheduling conference, an agreed order on liability against the Defendant was made, the quantum of the amount due from the Defendant to be assessed by the

honourable Judge seized of the matter. Pursuant to the said agreed order on liability, the parties reached a settlement whereby it was agreed that the Defendant would pay K3,150,000.00 in settlement of the outstanding car hire charges.

The Defendant duly paid the sum of K4,365,979.00 and K3,150,000.00. In total, therefore, the Defendant paid a total of K8,115,454.00. Accordingly, the Claimant commenced the present proceedings for assessment of interest, which interest has been calculated on the said sum of K8,115,454.00.

Hearing of the proceedings for assessment of interest took place in the presence of both parties hereto. After the hearing, the matter was adjourned for an order on assessment of interest. Hence the present ruling.

#### **Issues for Determination Herein**

- Whether commercial, as contrasted from statutory, interest is payable herein.
- The appropriate principal sum and rate based on which interest is calculable herein.
- Whether an order on assessment ought to be made at this juncture.
- The appropriate quantum of interest payable herein.
- Whether collection costs are payable herein.

#### **Whether Commercial, As Contrasted From Statutory, Interest Is Payable Herein**

its calculations of interest herein, the Claimant has adopted applicable commercial bank base lending rates, to which it added 1% to arrive at final rates that were employed in calculating interest. On the other hand, the Defendant contends that commercial interest is not payable herein. According to the Defendant, assessment of interest herein has no legal basis, the reason being that the judgment herein did not provide for the same. In the Defendant's understanding, the liability that was agreed by the parties based on which judgment was entered only related to outstanding hire charges which were agreed at K3,150,000.00. The Defendant, therefore, contends that, if anything, what is payable herein is statutory interest, as provided for under **Order 28, rule 13(2)(a) of the Courts (High Court) (Civil Procedure) Rules 2017.**



In my opinion, however, the Defendant's position is correct only in part. I provide the explanation. The aforementioned order, made at the pre-scheduled hearing of mediation, striking out defence and entering judgment in the Claimant's favour expressly and unequivocally provided for the sum of K11,495,154.48 aforesaid, interest as claimed, collection costs and costs of the action. By paragraphs 10 and 11 of the statement of case herein, the Claimant did claim compound interest at 5% above the commercial bank base lending rates from the invoice dates to the date of full payment. The phrase 'interest as claimed' meant that judgment was entered for the sum of K11,495,154.48 and for compound interest at 5% above the commercial bank base lending rates from the invoice dates to the date of full payment. Now, as it has been said earlier on, that judgment was, on the Defendant's application, set aside in part in respect of the sum of K7,129,175.00 which still stood in dispute. However, that judgment still stood in respect the sum of K4,365,979.48 admitted by the Defendant. This, therefore, means that judgment still stands for the sum of K4,365,979.48 and for compound interest at 5% above the commercial bank base lending rates from the invoice dates to the date of full payment, a position that renders the issue of statutory interest a non-starter in this respect. I so opine and find. It is in this respect that I find the Defendant's contention that commercial interest is not payable herein to be untenable.

As regards the sum of K3,150,000.00 aforementioned, the Defendant's contention that commercial interest is not payable would seem to be tenable. I furnish the reason. As it may be implied from what has been said earlier on, judgment for any sum beyond K4,365,979.48 was set aside in whole. This, in my opinion, means that even the order for compound interest on any sum beyond K4,365,979.48 had been set aside. Therefore, for interest to be payable on the sum of K3,150,000.00, there needed to be a fresh or specific order therefor. Now, the aforementioned agreed order on liability against the Defendant that was made at the hearing of the scheduling conference provided for the quantum of the amount due from the Defendant to be assessed by the honourable Judge seized of the matter. My finding from a simple analysis of that order shows that it did not provided for interest at all. It is my further finding, therefore, that commercial interest is not payable on the said sum of K3,150,000.00. It is only statutory

interest that is payable on this sum. It is in this respect that I find the Defendant's contention that commercial interest is not payable herein to be tenable.

In the premises, my final finding is that both commercial interest and statutory interest are payable herein, as per the foregoing findings and reasoning.

#### **The Appropriate Principal Sum And Rate Based On Which Interest Is Calculable Herein**

In view of the foregoing findings and reasoning, I find that the principal sum on which compound interest herein is calculable is K4,365,979.48 and also that the rate at which the same is calculable is 5% above the commercial bank base lending rates from the invoice dates to the date of full payment.

#### **Whether an Order on Assessment Ought to be Made at this Juncture**

I have decided to deal with this question as a preliminary issue. The reason is that I have noted an omission on the Claimant's part which, in my opinion, is of a fundamental nature.

In support of the assessment proceedings, the Claimant filed a sworn statement by one Getrude de Hyjusman. Exhibited to the said statement are calculations of interest, marked as 'A'. The omission I have noted has to do with the applicable rates of interest employed in those calculations. The Claimant did not proffer any documentary proof of the base lending rates it employed in its calculations. It did not even mention the name of the commercial bank whose base lending rates it employed. This omission, in my opinion, puts into serious question the veracity of the base lending rates employed by the Claimant in its calculations of interest. The result of this is that the Claimant's calculations of interest are unreliable so much so that no weight whatsoever may properly be attached thereto. I so opine and find. In the premises, I find that it was highly irregular for the Claimant, in calculating interest, to employ commercial bank base lending rates whose evidence it did not proffer.

On the foregoing, I am of the considered view that an order on assessment ought not to be made at this juncture. In my most considered opinion, the omission or irregularity as



highlighted above can only be cured by setting aside hearing of the assessment proceedings that was held herein.

### **The Appropriate Quantum of Interest Payable Herein**

This issue has naturally fallen away, in view of the immediately foregoing reasoning.

### **Whether Collection Cost Are Payable Herein.**

The Defendant contends these are not payable herein. The Defendant's sole ground for this contention is that, after commencement of proceedings, a party is no longer entitled to collection costs, as per **Table 6** of the **Minimum Scale Charges** under the **Legal Education and the Legal Practitioners Act**.

In my opinion, the issue whether or not collection costs are payable does not arise at this assessment stage. What matters at this stage is whether there is, in this matter, an order for payment of collection costs. This question can best be answered by considering the judgment and order hereinbefore mentioned.

The aforementioned order, made at the pre-scheduled hearing of mediation, striking out defence and entering judgment in the Claimant's favour expressly and unequivocally provided for collection costs. Now, as it has been said earlier on, that judgment was, on the Defendant's application, set aside in part in respect of the sum of K7,129,175.00 which still stood in dispute. However, that judgment still stands in respect the sum of K4,365,979.48 admitted by the Defendant. This, therefore, means that judgment still stands for the sum of K4,365,979.48 and for collection costs on that sum and on commercial interest payable herein. I so opine and find.

As I have said earlier on, judgment for any sum beyond K4,365,979.48 was set aside in whole. This, in my opinion, means that even the order for collection costs on any sum beyond K4,365,979.48 had been set aside. Therefore, for collection costs to be payable on the sum of K3,150,000.00, there needed to be a fresh or specific order therefor. Now, my finding from my analysis of the aforementioned agreed order on liability against the Defendant that was made at the hearing of the scheduling conference, providing for the quantum of the amount due from the Defendant to be assessed by the honourable Judge seized of the matter, is that it did not

provide for collection costs at all. It is my final finding, therefore, that collection costs are payable herein, but only on the sum of K4,365,979.48 and commercial interest payable herein.

**Final Order**

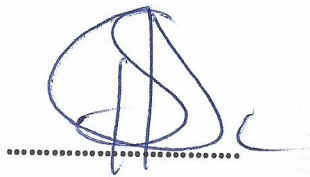
In view of the foregoing findings and reasoning, I hereby set aside hearing of proceedings for assessment of interest and collection costs that was held herein on 7<sup>th</sup> December, 2020.

The Claimant shall cause to be issued a fresh notice of assessment of interest, after redoing calculations of interest in a way that effectuates the above findings and reasoning, and also after proffering evidence of commercial bank base lending rates employed.

Accordingly, the Defendant's application to dismiss the present proceedings for assessment of interest and collection costs is hereby dismissed.

As for costs, each party herein shall bear their own costs of the just-set-aside hearing of assessment proceedings.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 11<sup>th</sup> day of January 2021.



**D.H. SANKHULANI**

**ASSISTANT REGISTRAR**

