

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO 765 OF 2003

BETWEEN

M.G. BANDA t/a COUNTRY TRUCKING PLAINTIFF

- AND -

PRESS AGRICULTURE DEFENDANT

CORAM : HON. KAMANGA J.

: Nkhutabasa, for Plaintiff

: Mussa, for Defendant

: Gonaulinji, Court Interpreter

JUDGMENT

This is the plaintiff's summons to amend judgment that was in the plaintiff's favour on 29th day of June 2006. The application is made under Order 20 of the Rules of the Supreme Court which provides

“clerical mistakes in judgment or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court on motion or summons without an appeal.”

In the aforesaid judgment of 29th June 2006 the matter was one of breach of contract. The plaintiff was claiming a sum of K2,923,957.53 as balance due and owing from the defendant as payment for supplying various items at the defendant's request.

Upon considering the evidence that was before court, the court made a finding that in the document Exhibit P4 that had a list of invoices that formed the substance of the claim, there were some double entries. The double entries were as per figure K188,040.00 as per invoice numbered 160, and figure K203,940.00 as pre invoice numbered 187. The judgment noted that these figures had been duplicated. Now the judgment further observed that when the deduction due to double entry is done, the result is MK1,509,523.00 as the amount that defendant owes the plaintiff.

However, a mathematical deduction of MK188,040.00 and MK203,940.00 from K2,923,957 results in K2,432,977.53. The judgment reads that the answer is MK1,509,503.00. To that extent, I acknowledge that a conclusion that the amount owed to the plaintiff is MK1,509,503.00 based on the mathematics involved was an error. The amount owed to the plaintiff by the defendant, based on the mathematics herein is Mk2,431,977.53 and I amend the principal sum accordingly.

Then there is the issue of interest. The court had made the following order with regard to interest.

“As the plaintiff is a business entity I award the plaintiff 5% interest on the sum owed from the period of end December 2001. I have come up with a particular month of December 2001 as the non payment range in period from January 2000 to July 2002. The interests are to be compounded yearly until date of payment. Calculations to wit shall be done by the Registrar.”

It is the plaintiff's observation that the learned judge awarded the plaintiff 5% on the sum owed from the period of the end of December 2001. At the same time, the learned judge had made a finding that the plaintiff is a commercial entity. The plaintiff thereby observes that it being a commercial entity and the debt being commercial in nature; the plaintiff is of the sincere and honest belief that the judge meant to award interest at 5% above the bank lending rate or any such higher rate and not merely the 5% that was awarded.

A reading of the judgment herein leaves me in no doubt that the learned judge was making a deliberate decision to award the plaintiff a 5% interest compounded yearly from December 2001 despite the fact that plaintiff is a commercial entity. Consequently it does not become a clerical mistake, nor an accidental slip. If plaintiff is aggrieved with the quantum of interest, the solution lies in appeal and not in amendment of the judgment.

Then there is the issue of costs. The judgment is silent on costs. Normally costs follow the event. As the court has the powers to vary its own orders to make its meaning plain, I do so make such order that as plaintiff succeeded in the claim against the defendant, costs are granted to the plaintiff.

The judgment of 28th June 2006 is therefore amended as follows:

- The judgment debt is K2,431,977.53
- Interest is at 5% compound interest from December 2001.
- With costs to the plaintiff.

MADE in Chambers this 10th day of October 2007.

Kamanga I. (Mrs)

J U D G E