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IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE No. 289 of 1979

B E T W E E N:

COMMERCIAL BANK OF MALAWI LIMITED ..... PLAINTIFF  
and  
P.T. KABAIH ..... DEFENDANT

Coram: TOPPING, Ag.J.

Msisha of Counsel for the Plaintiff

Defendant unrepresented and not present

Official Interpreter: Kawinga/Kaundama

Court Reporter: Kelly

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J U D G M E N T

In this matter the Commercial Bank of Malawi Limited claimed the sum of K1194:94t from the defendant, Mr. P.T. Kabaih. The particulars endorsed on the statement of claim show that the money is payable by the defendant to the Plaintiff as being monies lent by the Plaintiff to the Defendant by way of overdraft on the defendant's current account with the plaintiff and compound interest thereon at the rate of 15% per annum from the date of the statement of claim to the date of payment and which rate of interest the defendant agreed to pay at the time of obtaining overdraft facilities from the plaintiff.

The defendant entered an appearance and filed a defence but, although he was served with a notice of hearing, he did not attend court and the only evidence adduced has been on behalf of the plaintiff.

Mr. W.C.E. Holman, a Bank Manager to the plaintiff company, gave evidence that the defendant was employed with the plaintiff and that he obtained an overdraft from the plaintiff at the rate of 15% per annum interest on the outstanding amount.

Mr. Kabaih for some reason which is not in evidence, left the bank, and on leaving was entitled to receive salary and leave pay and he was also indebted to the bank in the amount outstanding on his overdraft. The plaintiff bank for reasons of consideration did not wish to cause hardship to the defendant and did not insist upon immediate repayment of the amount due in full, but agreed to wait until the defendant had

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obtained employment so as to enable him to pay back the overdraft. In spite of numerous letters from the Plaintiff the Defendant did not pay back the overdraft, the amount of which at the date of the writ was K1194:94t.

In his defence the defendant alleged that the bank agreed to write off the amount outstanding on his overdraft. He says the bank agreed to do this because of his service at the bank. He also says that at the determination of his employment all monies due from him to the bank were deducted.

Having heard Mr. Holman I am perfectly satisfied that the bank did not make any arrangement to write off the amount then due from the defendant either because of his past service or for any other reason. Considering the evidence of Mr. Holman, which is uncontradicted, I am left in no doubt that the defendant owes the plaintiff the sum of K1194:94t and interest on that amount from the date of the statement of claim to the date of payment at the rate of 15%.

There will be judgment for the Plaintiff with costs to be taxed or agreed.

Pronounced in open court this 15th day of September 1980  
at Blantyre.

R.G. TOPPING  
Ag. JUICE