

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.7 OF 1985

BETWEEN: SHANKAR EXPORTS LTD.....PLAINTIFF

- and -

NOOR AGENCIES.....DEFENDANT

Coram: MAKUTA, C.J.

Kaliwo of counsel for the Plaintiff
Ng'ombe of counsel for the Defendant
Kadyakale, Law Clerk
Longwe, Court Reporter

JUDGMENT

By writ of summons dated 9th January, 1985 the Plaintiff claims the sum of \$6372.27 (MK9867.25 rate of exchange as at 2nd January, 1985) from the Defendant being balance of interest and commission charges under Bill of Exchange number FBC 81/17.

The Plaintiff is a company situated in Hong Kong. It runs a Confirming House. Its business is to open Letters of Credit on behalf of clients who wish to import goods. It then charges the clients a commission and interest for the period of credit. The Defendant, on the other hand, is a trading company. It imports technical and engineering products and distributes them on wholesale basis in Malawi.

In July 1980 the Plaintiff was requested by the Defendant to open a Letter of Credit in favour of suppliers, Hyosung Corporation of Seoul, South Korea. The order was for tyres and tubes which were to be shipped in two lots with at least 60 days apart. The two shipments were, in fact, made. Accordingly two Bills of Exchange, Numbers FBC 80/1072 and FBC 81/17, were drawn and sent to the Defendant. These were accepted. Both Bills were mentioned in the Statement of Claim. But the Plaintiff applied, at the commencement of hearing of this case, to delete Bill Number FBC 80/1072 from the Statement of Claim. Consequently, the only claim that is being pursued is that under Bill Number FBC 81/17, Exhibit P10. The amount involved on this Bill of Exchange is \$19,648.36.

Mr. Lalkhur Shankadas Mulani would appear to be the proprietor of Shankar Exports Limited and he runs it. He told the Court that there was part payment on Bill No.FBC 81/17. But there was a shortfall of interest and financing

charges in the sum of \$6372.27. His company, accordingly, issued a debit note, exhibit P13, to Noor Agencies. That, in fact, is the basis of this action. The money is not paid.

Mr. Abdul Raof Nurmahomed Kidy is Chairman and Managing Director of a group of companies, including the Defendant. He told the Court that Bill of Exchange No. FBC 81/17, exhibit P10, is not the actual Bill his company accepted. On exhibit P10 there is the following indorsement: "IN THE EVENT OF FAILURE TO EFFECT PAYMENT ON DUE DATE A FINANCE CHARGE OF 1% PER MONTH TO BE COLLECTED PLUS INTEREST AT 28% P.A." According to him the actual Bill did not have this indorsement. If it had the indorsement he would not have accepted it because this amounts to a further finance charge additional to the charge which was already on the invoice.

It is observed that exhibits D11 and D12 are Bills of Exchange which were drawn by the Plaintiff on the Defendant, and accepted by the Defendant, on other previous invoices, not the subject of this litigation, and were exhibited to prove that the usual Bills do not have the indorsement appearing on exhibit P10. It is also observed that exhibit P10 is a "THIRD" part or a triplicate copy. Mr. Songo, PW2, a man with long experience in Bills of Exchange and works for National Bank, Customs Road Branch in Limbe, told the Court that Bills of Exchange are often drawn in a set of three. Exhibit P10 is a third part of a set. It is therefore possible to find some indorsement, which was not on the original, on a third part or copy. It was submitted by Mr. Ng'ombe that the indorsement on exhibit P10 could have been inserted subsequent to the acceptance. In any case there is no acceptance by the Defendant on exhibit P10. In my view, there appears to be some substance in this submission and any charges based on it may be questionable.

Mr. Kidy also testified that he is being asked to pay for what has already been settled. His attention was drawn to the claim, for the first time, by a letter dated 27th April 1982, exhibit D5, from the National Bank of Malawi to Noor Agencies. It advised that the drawers were claiming interest of US \$3557.09 on Bill FBCU 81/17 for a statement of account amounting to US \$19,648.36. The drawers of the Bill were, of course, the Plaintiff. Mr. Kidy then approached the bank for details as to how the interest was calculated. He was provided with a statement of interest charges from the Plaintiff. This is exhibit D4 and it amounts to US \$3557.09. On 14th June, 1982 National Bank of Malawi wrote to the Plaintiff's bank in Hong Kong, Banque Nationale de Paris, advising that the claim on the Bill of Exchange FBCU 81/17 had been forwarded to the Defendant but nothing was heard from them. The letter which was copied to the Defendant was exhibit D6. The copy asked the Defendant to reply to the letter of 27th April, 1982. On 2nd November 1982, Messrs Savjani & Company were advised by letter from the National Bank of Malawi to claim the sum of \$3557.09 from the

Defendant. The letter was copied to the Defendant and to the Banque Nationale de Paris in Hong Kong. The National Bank of Malawi were acting on instructions from Banque Nationale de Paris. As a result of this Mr. Kidy, on behalf of the Defendant, went to the office of Messrs Savjani & Company with a view to settling the claim. After a lot of calculations the bank was telephoned to advise on the exact rate of exchange. The amount of US \$3557.09 came to K2,556.92. This was paid by cheque, exhibit D9, in full and final settlement of the claim. The cheque was subsequently cashed. Messrs Savjani & Company were satisfied and no court proceedings were instituted.

Mr. Mbendera is a Legal Practitioner with Messrs Savjani & Company. He told the Court that in 1982 Savjani & Company received instructions from the National Bank of Malawi to act for Shankar Exports Limited claiming on Bill of Exchange No. FBCU 81/17. This was a shortfall of interest amounting to US \$3557.09. The Defendant were contacted and Mr. Kidy, on behalf of the Defendant, called at the office of Messrs Savjani & Company. After some calculations were made on the rates of exchange prevailing at that time a cheque in the sum of K2656.92 was drawn in full and final settlement of the claim. A receipt was issued. The cheque was subsequently deposited. Mr. Mbendera expressed surprise that another claim, this time in the sum of US \$6372.27, is being made on the same Bill of Exchange. It is also worth noting that Mr. Songo, the witness from the National Bank, Customs Road Branch in Limbe, expressed surprise that the Plaintiff is claiming much more than what was already recovered on the same Bill of Exchange.

It is also interesting to note that the Plaintiff, in March 1982, claimed the sum of US \$6,660.76 as shortfall of interest on the same Bill of Exchange No. FBCU 81/17. What it all amounts to is that the Plaintiff claimed three different sums of money viz: US \$3,557.09, US \$6,660.76 and US \$6,372.27 on the same Bill of Exchange. When asked why there were these inconsistent claims Mr. Mulani replied that he did not know why he did it. When questioned further whether it was deliberate, coincidental or accidental, he replied that it was accidental. Other explanations were that the sum of US \$3,557.09 did not include 1% financing charges. He also stated that the dates used by the bank to compute the interest charges differed from the dates used by the Plaintiff. These explanations are, in my view, untenable because the figures were calculated by the Plaintiff who, in turn, passed them to the bank. The Plaintiff must therefore have taken into consideration the proper rate of interest, the correct dates and the correct amount of money on which interest was based.

In my judgment, the shortfall of interest on Bill of Exchange No. FBCU 81/17 was settled and this is clear from the evidence of Mr. Kidy and supported by that of Mr. Mbendera and Mr. Songo.

It was submitted by Mr. Kaliwo that since the claim in these proceedings is US \$6,372.27 and its equivalent in Malawi as at 2nd January 1985 rate of exchange was K9,867.25, the amount of K2,656.92 paid on Bill of Exchange No.81/17 should be considered as part payment leaving a balance of K7,210.33. There is no basis for doing this and it should be recalled that K2,656.92 was in full and final settlement of the Bill. In any case the rate of exchange prevailing in 1982 differed from that prevailing in 1985.

I have considered the evidence in this case and on the balance of probabilities, I am of the view that the Plaintiff has not substantiated the claim and it is dismissed with costs.

Pronounced in open Court on this 17th day of December 1987 at Blantyre.


F.L. Makuta
CHIEF JUSTICE