

Banda S.

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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO.199 OF 1988

BETWEEN:

MOBIL OIL (MALAWI) LIMITED PLAINTIFF

AND

W.H. MWANDIRA DEFENDANT

CORAM: BANDA, J.

Jussab, Counsel for the Plaintiff
Kumange, Counsel for the Defendant
Manondo (Mrs), Court Clerk
Phiri, Court Reporter

JUDGMENT

The plaintiffs' claim against the defendant is for the sum of K9,152.18 being the alleged balance of the purchase price of fuel sold and delivered by the plaintiffs to the defendant. The plaintiffs are and were at the material time distributors of different kinds of fuel. The defendant was, at the material time, the owner of a paraffin pump at Area 25, Kanengo, Lilongwe. This case is basically factual.

It is alleged by the plaintiffs that in or about January 1987, at the instance and request of the defendant, the plaintiffs agreed to open an account in the defendant's favour for the sale and delivery to him of paraffin fuel. It is further alleged that between 16th January, 1987 and 28th August, 1987 the plaintiffs delivered to the defendant paraffin fuel to the total value of K53,628.98. The defendant denies liability and has contended that the only fuel which was ordered and adequately paid for by the defendant was valued at K43,430.70.

It was the evidence of Mr. Phiri, for the plaintiffs, that there is a pre-condition to opening accounts and that this pre-condition requires that a customer should lodge with the plaintiffs a deposit, which is banked separately from the normal trading account. He stated in addition that this deposit is intended, in the event of the customer failing to honour his bill, to off-set the amount. If, however, at the end of the business arrangement a customer owes Mobil nothing, then the amount of the deposit is refunded to the customer. Mr. Phiri emphasised that the deposit is not part-payment on a customer's account.

There are very little issues which are disputed in this case. The defendant does not deny that he ordered and was supplied fuel which is represented by the seventeen invoices which have been produced in this case as Exhibits 1 to 16 and Exhibit 42. What is disputed, however, by the defendant, is

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the inclusion on the debit side of three debit notes. Mr. Kumange has contended that fuel supplied to the defendant was supplied on invoices and not on delivery or debit notes. It was, therefore, his contention that the debit notes should not have been included on the debit side of the defendant's account as they were already paid for and to do so would be to duplicate the invoices for which the defendant had already paid the plaintiffs.

The defendant is a businessman who runs a grocery and a paraffin pump. He started the paraffin pump in 1986 and the plaintiffs have been his suppliers ever since. He stated that he began selling paraffin before a pump was installed at his place. He used to buy the fuel by cash and sometimes by cheque. There were occasions when one or two days would pass before he paid for the fuel. It was his evidence that in some instances he paid for the fuel before it was delivered. The defendant agreed, in cross-examination, after the issue of debit notes was explained to him, that the debit notes should remain on the debit side and he further agreed, in cross-examination, that the total amount of fuel sold to him was K53,628.98. He also stated that he paid to the plaintiffs a total sum of K44,476.80 during the period between January to August, 1987. The defendant further agreed that the difference between K53,628.98 and K44,476.80 is K9,152.18; which is the amount the plaintiffs are claiming in this action.

As I have shown earlier in this judgment, the dispute is founded on the debit notes. The genesis of the debit notes arises from three cheques which the defendant gave to the plaintiffs in payment of three different deliveries of fuel. It would appear that all three cheques were returned by the defendant's bankers with remarks "refer to drawer". The evidence of Mr. Phiri, for the plaintiffs, was that when a customer's cheque is returned by his bankers the procedure at Mobil is to enter a debit on the customer's account to show what had happened. It was his evidence this is what was done in respect of the three cheques which the defendant gave and were returned by his bankers. He stated that they raised debit notes in respect of returned cheques to record, in their books, that such transactions occurred in their books. He recognised debit note No.2126 dated 29th January, 1987 as one such debit note which was raised in connection with the cheque for K3,045.15 which the defendant gave to the plaintiffs and was returned by his bankers. That debit note is Exhibit 17. The witness also recognised debit note No.2148 dated 15th April, 1987; the value of the debit note is K3,500.00 and was in respect of the defendant's cheque which was returned by his banker's and that debit note is now Exhibit 18. The witness finally recognised debit note No.2152 dated 1st May, 1987 in respect of the defendant's cheque of K3,600.00 which was given to the plaintiffs and was returned by the defendant's bankers. That debit note is Exhibit 19.

It was the evidence of Mr. Phiri, for the plaintiffs, that he conducted a reconciliation and that the amount of K9,152.18 was the amount found still owing by the defendant after the reconciliation. He stated that in reconciling an

account, debits are isolated and credits are also isolated and that the end figure arrived at is the difference between the debits and the credits. He stated that the debits are as particularised in paragraph 5 of the Statement of Claim which included the debit notes. The debit notes are entered in the customer's account to show that a cheque purporting to be payment for fuel was dishonoured and at the end of the day it means that debit notes were raised after goods had already been delivered but payment in respect of the goods had not been honoured.

Mr. Kumange, for the defendant, relied to some extent on the document which the plaintiffs' Depot Manager wrote in which he indicated that the defendant did not owe the plaintiffs any sum of money and that, in fact, it was the plaintiffs who owed the defendant the sum of K46.10. That document is Exhibit D4. But it is clear on the evidence that that document was written before a full reconciliation was made by the plaintiffs. There is evidence that when Mr. Phiri received Exhibit D4 he went to Lilongwe where he held discussions with the Depot Manager and the defendant. After those discussions Mr. Phiri said he would look into the matter again. He stated it was only after a full reconciliation was made that the sum of K9,152.18 was found still owing by the defendant.

I have carefully reviewed the evidence in this case and have also considered the submissions that counsel have made in respect of their clients' cases and there can be no doubt, as I have said more than once in this judgment, that misunderstandings have arisen on the issue of debit notes. And, with respect, I find it difficult to see why that misunderstanding should have arisen as the matter seems to be very clear indeed. I am satisfied that the plaintiffs, on the evidence, have proved that each debit note, which are Exhibit 17, 18 and 19, has a corresponding receipt on the credit side or as set out in paragraph 6 of the Statement of Claim. The defendant agreed that there were receipts which corresponded with the debit notes. Indeed, it was on the basis of that concession that the defendant agreed in cross-examination that the debit notes could therefore remain on the debit side. In my judgment once the defendant conceded that it was proper to have the debit notes on the debit side and since further the defendant agreed that these debit notes had corresponding receipts, then clearly the whole issue of contention falls away. And in addition if, as is agreed by the defendant, the amount of payments he made to the plaintiffs was K44,476.80 then the difference between the debits and credits comes to K9,152.18, which is the amount the plaintiffs are claiming. It seems to me that the whole problem arose from a lack of appreciation or inability to interpret the effect of debits and credits as proved in this Court or as set out in the Statement of Claim.

I am satisfied, therefore, that the evidence is overwhelming to support the plaintiffs' case and I am satisfied therefore that they have proved, on a balance of probabilities,

their claim against the defendant. I am satisfied that there is no basis, indeed no merit, in the defendant's counterclaim which I dismiss. There will, therefore, be judgment for the plaintiffs in the sum of K9,152.18 and costs.

PRONOUNCED in open Court this 5th day of February 1991
at Blantyre.

A handwritten signature in dark ink, appearing to read 'R.A. Banda', with a stylized, cursive flourish.

R.A. Banda
JUDGE