

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 346 OF 1991



BETWEEN:

NATIONAL BANK OF MALAWI.....PLAINTIFFS

- and -

PATRICK MEKE CHIMWAZA.....DEFENDANT

CORAM: TAMBALA, J.

Tembenu, of Counsel, for the Plaintiffs

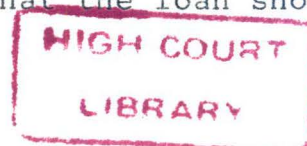
Assani, of Counsel, for the Defendant

R U L I N G

The plaintiffs commenced this action by Originating Summons. They seek an order for delivery of possession of mortgaged premises, foreclosure and sale of the said premises. There is an affidavit sworn in support of the action. The defendant opposes the action.

The facts show that National Bank, the plaintiffs, agreed to lend the defendant sums of money not exceeding K6,000.00. The loan was expected to attract interest at a fluctuating rate. The agreement was entered into by the parties on 25th September 1980. The loan was secured by a mortgage of the defendant's leasehold property on Plot No. BL/C/964 situate at Chilomoni. The mortgage was duly registered in the Deeds Registry as Deed No. 51740. By a letter dated 3rd November 1981, addressed to the defendant, the plaintiffs demanded repayment of the loan. At that time the principal sum together with interest totalled K8,501.20. The defendant failed to pay back the loan. It is also unclear if he responded to the plaintiffs' letter of 3rd November 1981. On 29th March 1989 a default judgment was entered in favour of the plaintiffs. The judgment was for the sum of K11,061.54. The Court ordered that the judgment sum should bear interest at the rate of 18.5% with effect from 23rd January 1984.

In an affidavit in opposition, the defendant complains that the plaintiffs charged interest at the rate of 20% per day. He contends that the agreement was that interest was payable at the end of the year. I do not think that it makes any material difference whether interest was charged by the bank on a daily basis or at the end of a year. He further complains that the 20% rate of interest was oppressive. The defendant agreed that the loan should



attract interest at the bank's rate. The rate of interest was 20% at the relevant time. This rate kept fluctuating. It would seem that it was applicable to other customers of the bank. I do not find this rate of interest to be oppressive. The defendant should not complain about an agreement into which he entered freely.

In his affidavit, the defendant stated that the plaintiffs are holding his fixed deposit which by 30th May 1980 amounted to K1,019.37. He asked that this sum, together with interest, should be allowed to off-set the sum due to the plaintiffs. I called an official from the National Bank to give evidence and explain how the bank dealt with the defendant's fixed deposit. The bank's official who came to give evidence relating to the defendant's fixed deposit was Mr Kasambara. He agreed that the defendant had a fixed deposit of K1,000.00 with National Bank. He, however, said that the bank had a lien over the money and they uplifted it before it earned interest. They applied it to reduce the loan. He said that the deposit was frozen in this manner on 19th April 1982.

It seems to me that the plaintiffs acted unfairly towards the defendant as regards his fixed deposit. If the deposit was K1,019.37 on 30th September 1980, it must have earned some interest by the 19th April 1982, when it was frozen. Again, if the deposit had not been uplifted, it would have earned a substantial sum by way of interest from 1980 to this year. The bank allowed the money which they advanced to the defendant to earn interest continuously; but they, at the same time, froze the defendant's fixed deposit and precluded it from earning any interest. Perhaps that's the bank's practice.

In the affidavit in support of the action, it was stated that the principal sum together with interest totalled K45,354.53 as at 21st June 1991. This sum was arrived at after applying the bank's rate of interest throughout the relevant period. This was erroneous, since the Court ordered that an interest rate of 18.5% per annum should be applied to the judgment debt of K11,061.54, with effect from 23rd January 1984. According to my calculation, the total judgment debt together with interest comes to K25,892.86 as at 29th March 1989.

The plaintiffs seem to contend that the loan must continue to attract interest until it is repaid by the defendant. They want the judgment debt to keep on bearing interest beyond the 29th March 1989, when the default judgment was entered. That would be wrong. What we have after the 29th March 1989 is not a loan from the plaintiffs to the defendant; it is a judgment debt. According to that judgment, the defendant is required to pay K11,061.54 with interest at 18.5% per annum, with effect from 23rd January 1984. He is required to pay a definite sum which has crystallised as at 29th March 1989. He is no longer obliged

to pay a fluctuating sum depending upon when the defendant chooses to repay the loan. The defendant is, therefore, required to pay to the plaintiffs K25,892.86.

The plaintiffs seek, among other remedies, foreclosure of the mortgaged premises. Commenting on this relief in a book entitled MORTGAGES by PAUL FAIREST, 1975 Edn., the author states:

"This is the most drastic of the remedies available to the mortgagee. It amounts to a total abolition of the mortgagor's equity of redemption, so that the mortgagee becomes entitled to the property freed and discharged from the equity of redemption."

The Court is not aware of the present market value of the mortgaged premises. In the circumstances, I am not prepared to extinguish the defendant's right to his equity of redemption before comparing the value of the premises with what is now due and owing to the plaintiffs.

In the result, I order that the plaintiffs shall be at liberty to sell the mortgaged property to realize the judgment debt of K25,892.86, plus any costs, charges and expenses properly incurred by the plaintiffs in connection with the sale. I order the defendant to deliver possession of Plot No. BL/C/964 situate at Chilomoni to the plaintiffs within 14 days from the date of this Order, to enable them to exercise their power to sell the property.

The plaintiffs are granted costs of this action.

MADE in Chambers, this 12th day of August 1992, at Blantyre.

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D G TambaIa
JUDGE