

Mbalamb, J.

HIGH COURT
LIBRARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 947 OF 1989

BETWEEN:

M B TILIKA (MALE).....PLAINTIFF

- and -

C B SPUNI (MALE).....DEFENDANT

CORAM:

TAMBALA, J.

Makhalira, of Counsel, for the Plaintiff
Mpheta Chiume, of Counsel, for the Defendant
Manondo (Mrs), Official Interpreter
Court Reporter, Longwe

J U D G M E N T

The plaintiff claims from the defendant a sum of K3,819.00, being a debt due and owing from the defendant. The latter denies the claim and counter-claims a sum of K2,098.00.

The evidence of the plaintiff was that he is a businessman at Luchenza Trading Centre where he owns a shop. The defendant is also a businessman at the same place. On 16th May 1989, the defendant asked the plaintiff to lend him a sum of K3,819.00. The plaintiff agreed. He wrote a cheque for the required amount and gave it to the defendant. He wrote on a page of a book which he kept that the defendant had borrowed K3,819.00 from him and that he would pay back the debt on 15th June 1989. The defendant signed at the bottom of the page. The defendant has since not paid back the debt.

The plaintiff said that he subsequently contacted Mr Chikwatu, a debt collector. On 6th September 1989, Chikwatu met the defendant at Luchenza Trading Centre. The defendant was in the company of Mr Mtshinga, a South African national. Mr Chikwatu asked the defendant about the debt and he readily admitted that he owed the plaintiff the sum of K3,819.00. He promised to settle the debt in two weeks' time. He signed a document which showed the debt and the promise to settle it on or before 21st September 1989. Mr Mtshinga signed the document as a witness. The defendant and Mr Mtshinga told Mr Chikwatu that the defendant was going to South Africa with Mtshinga and that the debt would be paid back upon his return.

HIGH COURT
LIBRARY

The defendant denied to have borrowed money from the plaintiff. His story was that a man called Magwa, a South African national, came to Luchenza and borrowed his pick-up. Magwa was using the pick-up while he stayed in Luchenza. The plaintiff was interested in purchasing a vehicle from South Africa, but he lacked foreign exchange. Magwa told the plaintiff that he had a Mercedes Benz in South Africa. He suggested that the plaintiff could pay him the money in Malawi and he could send the vehicle to Malawi upon his return to South Africa. It was later agreed that the defendant would travel with Magwa to South Africa to collect the Mercedes Benz. It was the evidence of the defendant that the plaintiff produced K3,819.00 and gave it to Magwa. He said that he signed for the money as a witness.

The defendant said that he travelled with Magwa to South Africa by air. When he reached South Africa, he became sick. He returned to Malawi. After he recovered, he went back to South Africa again, by air. He met Mr Magwa who told him that he had sold the car. Magwa gave him a video set comprising a TV screen and video. He travelled back to Malawi by air bringing with him the video set. He said that when he brought the equipment to Malawi he was unable to clear it with Customs Department because of lack of funds. He told the plaintiff about the problem, but he seemed uninterested. A friend of the defendant who works for Air Malawi cleared the video set. He is keeping it. He intends to sell it to realise the money which he spent in clearing the item.

The defendant signed for a debt of K3,819.00 in a book kept by the plaintiff. He promised to repay the debt a month later. When he was visited by a debt collector, he did not dispute the debt. He signed a document acknowledging the debt and promising to settle it within two weeks. In his evidence, the defendant said that he was forced to sign the document. He was unable to explain why the plaintiff could force him to sign in the book. If the money was taken by Magwa, I was unable to understand why the defendant could sign a document which stated that he borrowed the money and he would pay it back in a month's time.

I believed the plaintiff's story. It had the support of documents signed by the defendant. I thought the evidence proving the debt was formidable. The defendant's story failed to shake it. My impression was that the defendant's story was a mere fabrication intended to cause delay in paying back the debt. It is totally incredible and I reject it. The plaintiff's claim is successful. I dismiss the defendant's counter-claim with costs.

The plaintiff and the defendant are both businessmen. They appreciate the need to employ money to earn interest or profit. The defendant's defence and counter-claim were

merely a device intended to buy time before he paid back the money. I would, in the circumstances, make an order against the defendant for payment of interest.

I enter judgment in favour of the plaintiff for the sum of K3,819.00 with simple interest at the rate of 18% from 15th June 1989 to 31st January 1994, i.e. 4 years and 7½ months. The interest alone comes to K3,179.39. The total amount comes to K6,998.39. I would round this sum to K7,000.00. The defendant is, therefore, ordered to pay to the plaintiff a sum of K7,000.00. He shall also pay the costs of these proceedings.

PRONOUNCED in open Court this 4th day of February 1994, at Blantyre.

D G Tambala
D G Tambala
JUDGE