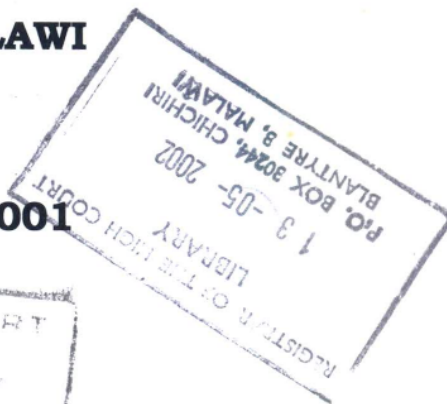


**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL CAUSE NO. 3797 OF 2001**



**BETWEEN:**

PATRICK ZACHEPA.....PLAINTIFF

-and-

LEYLAND DAF (MALAWI) LTD.....DEFENDANT

**CORAM: HON. JUSTICE A.C. CHIPETA**

Mr Chalamanda, of Counsel for the Plaintiff

Mr J.M. Chirwa, of Counsel for the Defendant

Mr K. Matola, Official Interpreter/Recording Officer

**RULING**

The Judgment Debtor has applied to settle the debt it owes to the Judgment Creditor in instalments of K30,000.00 per month. Total indebtedness in this matter appears to stand at K600,000.00. This, if ordered and abided by would mean repaying the judgment debt over a period of close to two years. The Judgment Creditor is not happy with this proposal and argues that the application to settle this debt by instalments should be dismissed with costs.

The Judgment Debtor, Leyland DAF (Malawi) Limited, at the hearing of this application, sent in its Sales Manager, a Mr Chrispin Mussa, to justify its request to the court. Armed with nothing but word of mouth, Mr Mussa spoke about how his company has lost major customers such as Malawi Government and Oilcom and as to the financial problems his company is experiencing at present. In the light of these

developments he said his company offers repayment at K30,000.00 per month, which he says they could increase should things improve. Mr Mussa indicated that as at the time of his testimony the company's financial documents were with its auditors and that he had not brought information to show how much his company is owed or what his company owes other people.

In his written submissions to this court, Mr Chalamanda, who is learned Counsel for the Judgment Creditor, laid emphasis on the point that the present Judgment debt is a result of a trading debt. The principle, he argued, is that generally courts should not allow settlement of such debts by instalments. He lamented the length of time it would take to clear this debt, bearing in mind, as he claimed, that this money has already been owing for two years.

I must say all the argument absent trading debts and the principles applicable are quite sound. I should however point out that as commenced through the writ the Judgment Creditor's claim was not lodged as a trading debt. Thus if the court is to go by the principle that the pleadings are the ones which set the limits of argument in a case, then bringing up arguments not supported by the material pleadings herein at the stage of enforcement of judgment may well be considered out of place.

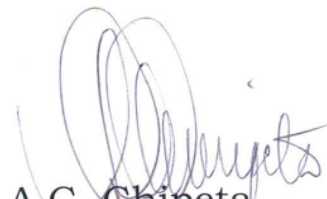
Be this as it may, however, the sum owed is huge and comparatively the monthly instalment offer is quite small. Clearly clearance of the Judgment debt at the rate will take interminably long and will really just amount to some kind of torturing of the Judgment Creditor. The disturbing thing is that the Judgment Creditor is an individual while the Judgment Debtor is a company. In normal circumstances if it was an individual owing a company and making the offer made herein, I would be inclined to think that he was trying his best. Where, however, as is the case here, a whole company seeks to use the process of Judgment Debtor Summons to repay an



individual such piecemeal handouts over such a long period, I really need to be exceptionally satisfied that indeed it really cannot afford higher payments.

In this case, on the evidence available, I really cannot say that K30,000.00 is indeed the only and the highest amount Leyland DAF (Malawi) Limited can afford to repay to the Judgment Creditor every month. The Judgment Debtor had nothing beyond the sworn word of its Sales Manager to buttress their present prayer. What we have here is a judgment debt of a sizeable amount of money owed to an individual. The Judgment Debtor needs to be seen to be serious in its endeavours to clear this debt. It was incumbent on the Judgment Debtor to amply demonstrate to this court why K30,000.00 should be accepted as a reasonable offer in respect of the settlement of this judgment debt. All material financial information which could have founded a basis for a first Order not having been brought to court, I am unable to just like that accept the offer made herein. I accordingly dismiss the Judgment Debtor's Summons herein with costs.

**Pronounced** in open Court this 2nd day of May, 2002 at Blantyre.



A.C. Chipeta  
**JUDGE**