

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 3611 OF 2001



BETWEEN:

LANDED PROPERTY AGENTS LTDPLAINTIFF

AND

LILONGWE CITY ASSEMBLYDEFENDANT

CORAM: M.A. TEMBO, ASSISTANT REGISTRAR
Mulemba, Counsel for the Plaintiff
Kalua, Counsel for the defendant

ORDER

This is this court's order on the plaintiff's application for determination of the instant case on a point of law under Order 14A Rules of Supreme Court.

By its summons the plaintiff sought this court to determine several questions. But on the hearing of the summons the plaintiff sought this court to determine a single question of law only namely, whether the plaintiff is entitled to interest on a judgment that was entered in its favour herein. The defendant strongly opposed the instant application.

This matter has a long history, which this court does not wish to reproduce. The plaintiff sued for the sum of K10, 956,284.16 being the balance of fees payable on a property valuation contract executed between the plaintiff and the defendant which contract had been breached by the defendant. The plaintiff proceeded to obtain a judgment on that claim in default of the defendant's defence in January 2002. That judgment was for the principal sum due plus interest at the prevailing bank lending rate. The defendant had

at various periods been satisfying the principal sum of the judgment debt. But the defendant applied to set aside the default judgment herein because it had a defence in relation to the claim for interest in that interest was expressly excluded under the contract between itself and the plaintiff. This court set aside the said default judgment in part only as it related to interest upon finding that the defendant appeared to have a good arguable defence. Now this summons is taken out for this court to determine whether the plaintiff is entitled to interest on the balance of the judgment sum on the basis of the judgment itself and not on the basis of contract between the plaintiff and defendant, which had been breached. The plaintiff's counsel strongly argued that the plaintiff is entitled to interest on the balance of the judgment due to the plaintiff from the defendant in terms of section 65 Court Act. That section 65 Courts Act is to the effect that every judgment in civil proceedings shall carry interest at 5% per annum or such other rate as may be prescribed. The defendant's counsel argued in the main that the contract between itself and the plaintiff still subsists, as it had not been repudiated. And that therefore judgment cannot be entered on a point of law. But this court is of the view that the issues raised by defence counsel in relation to that contention are misconceived and misleading especially in view of the fact that those issues were put to rest by the judgment in default of defence. And for that reason this court shall not be labour itself discussing the issues of repudiation of the contract, the subject matter of this action, as raised by both counsel. The default judgment settled the same in favour of the plaintiff.

It appears to this court that since the judgment was entered in default of the defendant's defence in 2002 the parties have met, discussed their differences and then agreed on the way forward namely that the defendant pay the judgment debt by installments. And these agreements constituted a waiver at law of the plaintiff's right to full payment of the judgment debt herein at once. There were such agreements which resulted in reduction of the balance herein to K4, 356221.55 at the time of the instant summons. The last one of such agreements was the one that the defendant did not respect by not paying the agreed installments from February 2004 to the date of the instant summons. In line with the law as set out in *Zgambo v KFCTA 12 MLR 311* when a party is kept out of its money then it is entitled to compound interest thereon at 1% above the bank lending rate.

In the instant case this court is of the view that it would be appropriate to find that the plaintiff is entitled to interest on the judgment sum at 1% above the prevailing bank lending rate from February 2004 to date of payment of the balance of the judgment sum herein of K4, 356,221.55. And it is so ordered.

Made in Chambers at Blantyre thisAugust 2004.

M.A. Tembo

ASSISTANT REGISTRAR

