



MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 680 OF 2001

BETWEEN:

S R NICHOLAS LIMITED PLAINTIFF

AND

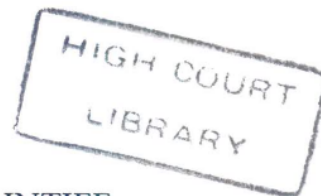
MALAWI TELECOMMS LTD.....DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR.

Hara, Counsel for the Plaintiff

Katsala, Counsel for the Defendant

Duke



ORDER

This is this court's order on the plaintiff's application for 15 % collection costs on a particular debt of K5, 000, 000.00 admitted by the defendant herein.

The arguments on this application were made before the then Registrar some time back.

The plaintiff filed an affidavit in support of the application and the defendant also filed an affidavit in opposition.

The plaintiff stated in its affidavit that the defendant paid part of the debt admitted herein on 15 March 2001, a day after the plaintiff had issued and served the writ of summons herein on the defendant claiming the sum admitted by the defendant. And argued that as a result the plaintiff is entitled to 15 % collection costs on the whole of the admitted sum in terms of the Legal Practitioners (Scale and Minimum Charges) Rules that prevailed in 2001. The plaintiff also argued that the defendant did not state anything in its affidavit about the alleged date of payment of part of the debt. On the contrary, counsel for the defendant submitted that there

was no evidence about the date of the alleged payment of part of the debt admitted herein. And that the alleged part payment was actually effected before the plaintiff served the writ of summons on the defendant disentitling the plaintiff from 15 % collection costs on the alleged part payment.

This court has thought long and hard about this and is of the view that there is affidavit evidence by the plaintiff about the date of payment of part of the debt admitted herein. There is no contrary affidavit evidence by the defence. This court therefore is swayed by the plaintiff's affidavit evidence as opposed to defence counsel's unsworn oral submissions contesting the date of the part payment. And so finds that the defendant effected part payment of the admitted debt herein after being served with the writ of summons by the plaintiff. That entitles the plaintiff to claim 15 % collection costs on the whole of the admitted sum.

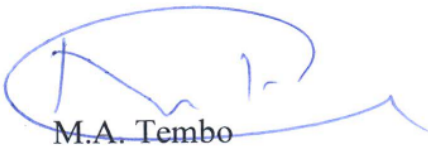
The defendant though submitted further that the plaintiff in the statement of claim did not plead the claim for 15 % collection costs. The plaintiff submitted that it did claim the 15 % costs of the amount claimed.

This court has had occasion to look at the statement of claim herein and finds that the same clearly states that costs at 15 % of the amount of debt claimed is part of the plaintiff's claim against the defendant herein. This leaves the defendant's denial of the claim for collection costs without merit.

In the premises set out above this court awards the plaintiff collection costs at 15 % of the sum admitted by the defendant herein.

This court is to be addressed on the question of costs on the instant application.

Made in Chambers at Blantyre this ^{12th April} ~~March~~ 2005.


M.A. Tembo
ASSISTANT REGISTRAR

