

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 654 OF 2006**

BETWEEN

PETER MIKY EFANGE.....PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Theu for plaintiff

Defence absent

RULING

This was an application by the plaintiff for an order that the defendant pays interest on the sum of K850 000 from the 12th of May 2001 to November, 2004. The said sum of K850 000 was awarded to the plaintiff as damages for the loss of his motor vehicle which was destroyed in a cross-fire, during Operation Bwezani.

Following the award of damages on the 12th of May 2001, there was a court order of 2nd December 2002, which fixed the time for satisfying the judgment of the 12th May 2001, at 40 days. However, after the expiry of the 40 days the judgment remained unsatisfied and consequently on the 6th of February 2003, the plaintiff sought an execution decree under S8 of the Civil Procedure (Suits by or Against the Government or Public Officers) Cap. 6:01. The plaintiff was granted the decree of execution on the 26th of April 2004. Following this the defendant paid the plaintiff the sum of K850 000 between November and December, 2004. It is against this background that the plaintiff now brings this claim for interest, his

argument being that the plaintiff was denied the fruits of his litigation from 15th may 2001 to December 2004, when the full amount was settled. Briefly this was the background to this application.

The issue that is coming for consideration before this court is whether in the circumstances the court can award the plaintiff interest. In response to this question the starting point would be the observation that an award of interest by the High Court is discretionary and that the basis for the award is the fact that the defendant has kept the plaintiff out of his money; and has had use of it himself. So he ought to compensate the plaintiff accordingly. This was per Lord Denning in **Harbutt's "Plasticine" Ltd v Wayne Tank & Pump Co. Ltd** [1970] 1 Q.B. 447.

However, in the exercise of its discretion, the court in Malawi has to bear in mind that its jurisdiction has been limited by S. 11(a) (v). further, it was the decision of the Supreme Court of Appeal in the case of **Gwembere v Malawi Railways Ltd.**, 9 MLR 369, at page 378, that sub-paragraph (v) does not provide that interest can be claimed as of right but that it allows the court discretion to direct the payment of interest but only in the cases of debt as distinct from damages. In addition, the Supreme Court also held that in exercising its discretion under S. 11 of the Courts Act, the High Court should be guided by the principle that was laid down by Lord Hershell, L.C. in **London, Chatham & Dover Ry. Co. v South E. Ry. Co.** [1893] A.C. 429. The principle basically states that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongly withholding the money from the other ought not, in justice, to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to use it.

In applying the above principles to this instance, it is noted that the matter involved damages and hence falls out the

ambit of S. 11 of the Courts Act. At the same time I do not think that it can be said that the Attorney General was wrongly withholding this money as there was element of them enjoying the money, in my view, was non-existent. In view of these two aspects then, I do not think that the court can exercise its discretion in this instance and award the plaintiff interest. In view of this the plaintiff's application for interest fails and is duly dismissed.

Made in Chambers this.....day of.....2007

K.T. MANDA
SENIOR DEPUTY REGISTRAR