



IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
CIVIL CAUSE NO 68 OF 2017

BETWEEN

ALLAN MANG'ANDA.....PLAINTIFF

-AND-

NATIONAL BUS COMPANY LIMITED.....DEFENDANT

CORAM

H/H B. CHITSAKAMILE, ASSISTANT REGISTRAR

Mr Chancy Gondwe for the Defendant

Mr Ian Twea for the Plaintiff

Alexander Tepeka, Official Interpreter

RULING

1.0. Introduction

The plaintiff herein obtained summary judgment against the defendant entitling him to a principal sum of K2,500,000.00, compound interest thereon at 5% above the base lending rate from the date the debt fell due to date of payment and costs of the action. The plaintiff then took out a summons on application for assessment of interest. When the summons came up for hearing Counsel for the defendant raised two preliminary issues. Firstly he argued that the calculations of interest counsel was purporting to submit as evidence per his sworn statement should have been deposed to by an officer of the National Bank of Malawi as it constituted part of Bankers Books under the Bankers Books Evidence Act. Secondly, Counsel argued that it was apparent on the face of the sworn statement that there had been an error in the calculation as it was unthinkable that the sum of K2,500,000.00 would rise

to K59,397,002 in just a year. He then asked the court to dismiss the application altogether.

In reply, counsel for the Plaintiff agreed that there is a procedure for tendering Bankers books or entries in Bankers books as per the Bankers Books Evidence Act. He however indicated that what he was tendering was not what would be termed evidence or entries in Bankers Books in terms of S.2(4) of the Bankers Books Evidence Act. He indicated that he had exhibited to his statement, a public notice on National Bank website indicating the interest rate and had simply made the contested calculation of interest as per the universal formula.

2.0. The Issues

The issues that I am called upon to determine are first whether a schedule of calculation of interest is bankers' books evidence that should be tendered by an authorized officer under the Bankers Books Evidence Act and second whether the defendant's allegation that the calculation is wrong on the face of it is enough to warrant dismissal of the application altogether.

3.0. Applicable law

S.2(4) of the Bankers Books Evidence Act provides as follows;

"Expressions in this Act relating to "bankers' books" include loose leaf records and records produced by mechanical or electronic means, ledgers, day books, account books and all other books used in the ordinary business of the bank"

S.4 of the Act clarifies the matter further and determines who is to give evidence of bankers' books. It says;

"4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it first be proved that the book was at the time of making the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner for oaths, or person authorized to take affidavits."

In **Malawi Savings Bank Limited v Mkandawire t/a Malangowe Investments** MSCA Civil Appeal No. 38 of 2014 the court said;

"We however note that in the nature of banking business, proof of records of transactions may be given orally or by way of affidavit by a partner or an officer of the bank as stipulated in section 4 of the Bankers' Books Evidence,

Cap. 4:05 of the Laws of Malawi. The Bankers' Book Evidence Act makes special provision for proof of contents of what are described as Banker's Books, being any form of bank records including ledgers, day books, cash books, account books and all other books or records used in the ordinary business of the bank."

4.0. Determination

The reading of the Bankers' Books Evidence Act shows that to qualify as Bankers Books the document must be one listed in S.2(4) and other books used in the ordinary business of the bank.

Clearly, a schedule of calculation of interest does not fall in any of the items listed in S.2(4). Further, it cannot be said to be a book used in the ordinary business of the bank. Banks are not necessarily in the business of calculating or computing compound interest despite clearly having the expertise to do so. As such it is not a requirement that a Sworn statement exhibiting a schedule of Interest be deposed to by an officer or partner of a bank.

This objection by the defendant is thus misconceived and must fail.

The second issue taken by the defendant is that the calculation by the plaintiff appears blatantly wrong as there is no way the sum of K2, 500,000.00 can rise to over K59,000,000.00 where interest is compounded.

I must say counsel for the defendant is entitled to make this observation. But then he is being extreme to ask the court to dismiss the application altogether without pointing out where the plaintiff is getting it wrong. This he could do by way of a sworn statement by himself or by any expert detailing the mistakes and offering an alternative schedule of calculation.

5.0. Disposal

The result is that the defendant's objections are found wanting and not warranting dismissal of the application. The same are dismissed. The defence are given 21 days to file a response to the plaintiff's calculations. The court then will sit to assess the interest.

Costs of the application are for the Plaintiff.

Pronounced in chambers this 25th day of May 2018



BENEDICTUS CHITSAKAMILE

ASSISTANT REGISTRAR