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**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL APPEAL CAUSE NUMBER 9 OF 2018**

**(Being civil cause number 675 of 2018 before the Senior Resident Magistrate Court sitting at Blantyre)**

**BETWEEN**

**THOMAS MANDALA**

**APPELLANT**

**AND**

**STANDARD BANK**

**RESPONDENT**

**CORAM: JUSTICE M.A. TEMBO,**

Appellant, Present and unrepresented  
Masamba, Counsel for the Respondent  
Mankhambera, Official Court Interpreter

**JUDGMENT**

1. This is the decision of this Court on the appellant's appeal against the decision of the Senior Resident Magistrate Court sitting at Blantyre by which the lower court dismissed the appellant's claim for the sum of K25 364 being excess of loan repayment by the appellant to the respondent for lack of proof by the appellant.

2. The appellant commenced a claim for K25 364 being excess repayment of a loan he had obtained from the respondent. The facts of the case as per the record show that the appellant obtained a loan from the respondent in the sum of K140 000 on 20<sup>th</sup> September, 2012 repayable in 24 monthly instalments of K8 000. The appellant only managed to repay five instalments and defaulted as a result of losing his employment in January, 2013.
3. On 29<sup>th</sup> November, 2013, the appellant's bank account with the respondent received a sum of K121 175.81 which went straight to repaying the loan with accumulated arrears. This was not disputed by the appellant.
4. The evidence on record shows that the appellant wondered how the sum of K121 175. 81 would not be enough to settle a loan of K140 000 which was partly serviced by five instalments. The lower court noted that the respondent's manager tendered in evidence proof of the loan and copies of the appellant's bank statement which showed the history of the appellant's loan herein.
5. The respondent explained that the appellant's operating account had arrears of K43 496.71 in May, 2013. Further, that the said account received K121 175. 81 on 29<sup>th</sup> November, 2013. It elaborated that, out of that sum around K5 000 was applied on accrued monthly account fees. A further K116 616.52 was applied to the loan account and left an outstanding balance of K65 258.98 and the loan was written off on 1<sup>st</sup> August, 2014.
6. The lower court concluded that from that evidence it was clearly explained how the K121 175.81 was not enough to liquidate the loan that had been defaulted upon for a number of months and thereby accumulated interest on default in addition to the defaulted instalments.
7. Being dissatisfied with the lower court's decision dismissing the appellant's claim before the lower court, the appellant filed this appeal and indicated four grounds of appeal as follows:
  - 1) The learned trial Magistrate erred in law by determining matters relating to how the loan was accumulating and probably bring forth the documentary evidence showing the same.
  - 2) The learned trial Magistrate erred in law by holding that the appellant's loan will be accumulated when there was a default whereas there was no evidence by the respondent as per the loan agreement.

- 3) The learned trial Magistrate erred in law and fact by holding that the appellant was not entitled to claim K25 364 from the respondent when the appellant besides having defaulted the monthly repayment, he managed to pay the loan within the stipulated period of the loan agreement.
- 4) The lower court judgment is against the weight of the evidence.

8. The appellant sought that the lower court decision be set aside and that he be awarded damages, interest and costs.
9. This Court wishes to state at the outset that, on hearing civil appeals, this Court has the following powers as provided in section 22 of the Courts Act:

In a civil appeal the High Court shall have power—

- (a) to dismiss the appeal;
- (b) to reverse a judgment upon a preliminary point and, on such reversal, to remit the case to the subordinate court against whose judgment the appeal is made, with directions to proceed to determine the case on its merits;
- (c) to resettle issues and finally to determine a case, notwithstanding that the judgment of the subordinate court against which the appeal is made has proceeded wholly on some ground other than that on which the High Court proceeds;
- (d) to call additional evidence or to direct the subordinate court against whose judgment the appeal is made, or any other subordinate court, to take additional evidence;
- (e) to make any amendment or any consequential or incidental order that may be just and proper;
- (f) to confirm, reverse or vary the judgment against which the appeal is made;
- (g) to order that a judgment shall be set aside and a new trial be had;
- (h) to make such order as to costs in the High Court and in the subordinate court as may be just.

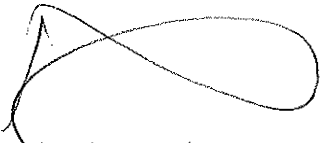
10. The appeal is by way of rehearing. That means this Court will subject the evidence before the lower court to a fresh scrutiny.
11. This Court has considered the record of the matter from the lower court and observes that the lower court properly analyzed the evidence and was properly convinced that the default by the appellant on his loan resulted in accumulated

arrears of instalments and interest which was not satisfied by the payment of K121 175.81 into the appellant's account on 29<sup>th</sup> November, 2013. In view of this, the grounds of appeal cannot stand. The lower court did not make any of the errors sought to be attributed to it in the grounds of appeal.

12. This Court therefore, in exercise of its powers, in particular under section 22 (a) of the Courts Act, dismisses the appeal on the grounds alleged.
13. Having said the foregoing, this Court observes that during the trial, the appellant asserted that the sum of K121 175.81 that was deposited into his account herein and which was applied by the respondent to his outstanding loan was a pension payment from his former employer. This is clearly recorded in the handwritten notes of the lower court at page 4 (four).
14. This Court notes that section 73 (1) (c) of the Pension Act provides that amounts paid out of a pension fund by way of benefits in respect of a member shall not be liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatsoever.
15. In that regard, this Court observes that the appellant was unrepresented before the lower court and this particular issue of protection of pension benefits under section 73 (1) (c) of the Pension Act was never raised by the appellant and the lower court also did not address its mind to the same.
16. In exercise of its wide powers on appeal, in particular under section 22 (d) of the Courts Act, this Court orders the lower court to take additional evidence from the parties on whether the sum of K121 175.81 was indeed pension benefits and determine whether the actions of the respondent in levying the outstanding loan herein contravened section 73 (1) (c) of the Pension Act which came into operation in 2011 and may be applicable to the facts in this matter on protection of pension benefits.
17. It is specifically directed that the taking of the additional evidence and determination of the question in the preceding paragraph shall be done by the Chief Resident Magistrate at Blantyre as soon as is practicable.
18. For the avoidance of doubt, both parties herein shall be restricted to providing evidence on whether the sum in question was indeed pension benefits and then the Chief Resident Magistrate shall determine the question whether there was a violation of the Pension Act necessitating a reversal of the levy on the pension benefits in favour of the appellant in line with the dictates of the Pension Act.

19. Each party shall bear its own costs on this appeal in the circumstances of this case where the appellant appears indigent.

Made in open court at Blantyre this 23<sup>rd</sup> June, 2021.



M.A. Tembo  
**JUDGE**

