



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI SITTING AT BLANTYRE
PRINCIPAL REGISTRY
CIVIL DIVISION
CIVIL CASE NUMBER 297 OF 2018
BETWEEN

MAITLAND TRUSTEES LIMITED-----CLAIMANT

AND

MULLI BROTHERS LIMITED-----DEFENDANT

CORAM: HIS HONOUR THE ASSISTANT REGISTRAR

Mr. Majamanda, Counsel for the Claimant,
Mr. C. Gondwe, Counsel for the defendant,
Mr. F. Mathanda, Clerk/Official Interpreter,

RULING

Daniels AR

1. The matter was coming for assessment of interest. Counsel for the defendant raised a preliminary objection and argued that they had an agreement with the claimant to the effect that the loan was to be pegged in dollars to overcome the issue of interest. Counsel for the claimant has argued that the correspondence if anything was on without prejudice basis and that anything that happened between them was in furtherance of their desire to have the debt settled within a reasonable time. I have not before me seen any material admissible enough to warrant the argument of Counsel for the defendant. The argument is from the totality of the issues unfaithful and impotent as it comes. This will soon become apparent.
2. Again, there was an issue of Counsel for the defendant seeking to move this Court to have the issue sent to the honourable Judge on the pretext that the issue before me is contentious. This was claimed to come under Order 25 Rule 2 of the Courts (High Court) (Civil

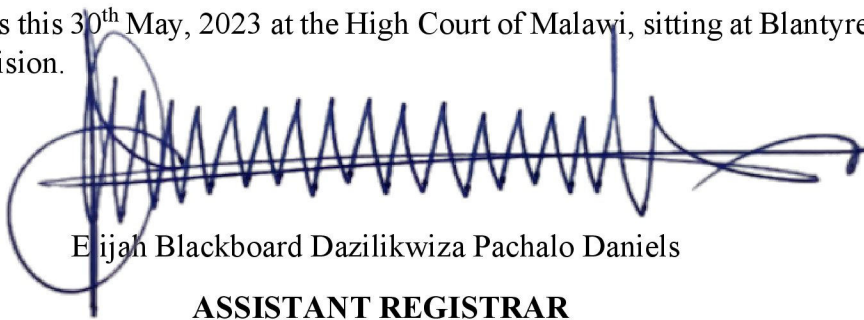
Procedure) Rules, 2017. I must be quick to mention that I have gone through the submissions made on this point and I must say that I do not think that there is anything contentious here that the Registrar sitting as he does herein cannot handle. As it were, this Court was sitting by the authority of the Judge on record pursuant to Order 25 Rule 1 of the Courts (High Court) (Civil Procedure) Rules 2017 to like earlier enunciated, proceed to handle the assessment proceedings. Thus, this case must be treated differently as against the reasonings of Elida Liphava & Others v Prime Insurance & Another Civil Appeal No. 40 of 2018 (Unreported), where the Registrar proceeded without the sanction of Order 25 Rule 1 of the Courts (High Court) (Civil Procedure) Rules 2017.

3. Again, let me respectfully make it vividly clear that I do not hold the view that the Supreme Court in the case above should be heard or understood to mean that every time Counsel raises an objection and claims the matter to be contentious, then the Registrar should immediately fold his hand in total submission and or surrender and do as Counsel suggests. That reasoning is so dangerous. I mean, if a Judge gives the Registrar authority to deal with a matter, there can be objections in Court which may be ruthless as they come, should the Registrar refer to the Judge all that as they come? Where do we draw a line? I mean, wouldn't that understanding violate the spirit of Order 1 Rule 5(1)(d) of the Courts (High Court) (Civil Procedure) Rules, 2017 that matters must be dealt with speed and justly? I wonder.
4. With greatest respect, I further hold the view that it is incorrect to comprehend the Elida Liphava & Others v Prime Insurance Limited & Another (Supra) case to mean that one cannot appeal to the Supreme Court the decision of the Registrar even where Order 25 Rule 1 of the Courts (High Court) (Civil Procedure Procedure) Rules 2017 was complied with. That is not a correct interpretation as suggested by the reasonings of Counsel for the defendant. I decline to give life to such reasonings. They are unstainable in their defiance of the correct interpretation of the Elida Liphava Case. All in all, just like argued by Counsel for the claimant, I decline the invitation to exercise my mind under Order 25 Rule 2 of the Courts (High Court)(Civil Procedure) Rules 2017 on the premise that there is nothing contentious before me, because the understanding of this Court is that whether an issue is contentious or not is not such because Counsel says it is, in my considered view, that must remain a question of fact and that the Registrar has to exercise his mind on such a question before we end up abusing and hiding under Order 25 Rule 2 of the Courts (High Court) (Civil Procedure) Rules 2017, to refer every issue to the Judge.
5. I mean, before me is an elementary question, which is whether the claimant is entitled to be given interest on the loan owed by the defendant. As it were, I have already explained that the evidence that Counsel for the defendant purported to rely on that they had an agreement to put the loan in dollars so as to avoid interest, is to say the least inadmissible because he relies on “without prejudice” communications between the parties.
6. Be that as it may, and for the avoidance of doubt, let me again say that in the event that my reasonings are found wanting and therefore lacking, still one wonders whether by design or slip of the mind, Counsel has not explained why the order of the Court dated 27th May,

2021 at paragraph 1, indicates the debt owed in dollars and paragraph 2 of the said judgment has in lucid terms directed that 3% interest above lending rate be payable to the date of full payment. That is clear. There is no way the defendant should pretend that putting the money in dollars was with the understanding that there would be no interest because in the said order, the amount owed is in dollars and the interest percentage is also directed in clear terms. Conclusively, the objection by Counsel has no merit, it must not be incubated as to suppose that it can have any semblance of life.

7. I decline to sustain the objection with the aforementioned reasons.
8. Further, I order that for the purposes of these proceedings the claimant must be paid costs by the defendant because under Order 31 Rule 3 of the Courts (High Court) (Civil Procedure) Rules 2017, the discretion on costs is of the Court.
9. This Court further orders that this matter must be set down for assessment of interest within 14 days from the date of this order.
10. It is so directed.

MADE in chambers this 30th May, 2023 at the High Court of Malawi, sitting at Blantyre, Principal Registry, Civil Division.



Eijah Blackboard Dazilikwiza Pachalo Daniels

ASSISTANT REGISTRAR