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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1714 OF 1993

BETWEEN:

UNISPARES PLAINTIFF

and

N.T.S. LIMITED DEFENDANT

Coram: E B Twea, REGISTRAR
Tembeu, Counsel for the Plaintiff
Zimba (Miss), Counsel for the Defendant

Court: This is the Order

O R D E R

This summons was brought under Order 14A of the Rules of Supreme Court, for the court to determine where the two invoices in issue: Nos 13654 and 13674 formed part of the contract between the parties and whether it was a term of the contract that interest at the rate of 2% was payable on all overdue accounts.

The facts in this case as deponed and argued by the parties' counsels are that the defendant made orders to the plaintiff for goods which the plaintiff supplied. The plaintiff issued invoices: 13654 and 13674 for the said goods. It was not disputed that the invoices bear the same date as the Order. The invoice contained a term that read "30 days Nett", and N.B. which among other things, stipulated that 2% interest would be payable on all overdue accounts. This is what gave rise to the matter in issue.

I have considered the issues raised by the parties in their argument. Having regard to the cases of Munthali vs. U.T.M. (Mw) Ltd 7 MLR p.438, Chapelton V. Barry U.D.C. (1940) 1K.B. 532. I would agree that the approaches taken by the Honourable Judges therein would not be faulted: that a ticket, ordinarily, is not a

contractual document but be taken to be an acknowledgement of payment. More like a receipt so to speak. However, I would not think that this argument would hold in case of an invoice.

An invoice ordinarily is notification of liability following supply of goods ordered. In the ordinary business sense the party ordering may have a quotation, or the supplier would be willing to accept deferred payment.

In the present case, none of the parties disclosed how they came to enter into such transaction: supply on non-cash basis. However, regard being had to the fact that the invoice dated 30th March 1993 was not disputed and is worded the same as that dated 15th April 1993, one would be inclined to think that the defendants were aware that the supply of goods on deferred payment would attract interest. In the same view, one has to consider that the order only quotes the quantity and description of goods and invoices stipulate the unit price and gross price, one would be blowing hot and cold if the contents thereof were taken apart to say which part of the document forms part of the contract and which one doesn't. If the other parts of the invoices form part of the contract, then the document must be looked at as a whole contract.

It is my finding, therefore, that there is no basis for taking the documents apart and I hold that the invoices form part of the contract and that 2% interest is payable on overdue accounts.

Each party to bear its own costs.

Pronounced in Chambers this 18th day of August, 1994, at Blantyre.



E B Twea

ACTING REGISTRAR OF THE HIGH COURT