

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1480 OF 1994

BETWEEN:

RACHEL G. MKWEZALAMBA t/a GANOS TRANSPORT PLAINTIFF
AND

CARGO FORCE LIMITED DEFENDANT

CORAM : CHIMASULA PHIRI, JUDGE
P. Nkhono of Counsel for the plaintiff
Defendant - absent/unrepresented
Nasiyaya - Official Interpreter
Mrs Khan - Official Recorder

JUDGMENT

The plaintiff's claim is for the sum of SAR39,860.00 or its Malawi Kwacha equivalent being balance in respect of transport services rendered by the plaintiff to the defendant at the defendant's own request. The plaintiff further claims the sum of K18,772.98 being balance in respect of services rendered by the plaintiff to the defendant at the latter's own request. The plaintiff claims interest on the sums found due from 1st September 1994 at the rate as the court may determine. The plaintiff also prays for costs of these proceedings.

The defendant denies owing the plaintiff the sums of SAR39,860.00 and K18,772.98 and puts the plaintiff to strict proof thereof. The defendant further states that the amounts claimed above arise out of trips unauthorised by the defendant and as such the defendant is not liable for the same to the plaintiff.

The case was held in the absence of the defendant. Initially the defendant was represented by Messrs Lawson and Company who were discharged on 5th September, 1996 on the ground that they were unable to get instructions from their client. The matter was then scheduled for hearing on 25th and 26th March 1997. A notice of hearing was sent by post but the defendant did not appear. On 25th March 1997 the matter was adjourned to 15th and 16th May 1997 and the court ordered that service should now be by way of inserting two adverts in the local papers. These adverts appeared in the Daily Times of 7th and 8th May 1997. The defendant did not appear. The court ordered the plaintiff to proceed giving evidence in the absence of the defendant.



The plaintiff testified that she is a business lady. She is a transporter under the style of Ganos Transport and has been in business since 1981. In the course of her business she came across the defendant who asked her to ferry its cargo between Malawi and Johannesburg in the Republic of South Africa. The defendant prepared an agreement to that effect in the form of a letter dated 16th February, 1994. It was signed by both parties on that date. It has been tendered in court as Exhibit P1. In the execution of this agreement the plaintiff prepared and sent invoices to the defendant for payment in respect of services rendered but the defendant has not paid the sums due to the plaintiff. She tendered in court exhibits P2 to P8 which are invoices number 74 of 16th May 1994 for R4,500.00; number 61 of 26th May 1994 for R4,200.00; number 63 of 29th May 1994 for R10,080.00; number 76 of 16th May 1994 for R5,000.00; number 55 of 10th June 1994 for R5,000.00; number 56 of 27th June 1994 for R10,080.00 and number 54 of 27th June 1994 for R6,000.00 respectively. The total sum is SAR44,860.00. She stated that the defendant only paid R5,000.00 in respect of invoice number 76 leaving a total balance of R39,860.00 which she is now claiming.

The plaintiff further produced other invoices which have been marked as exhibits P9 to P11. Invoice number 81 of 10th May 1994 is for K3,198.00. Invoice number 62 of 27th May 1994 is for R10,089.00 converted into Malawi Kwacha at the then rate of 2.0872 on 10th June 1992 came to K21,038.98. The defendant paid K15,000.00 leaving a balance of K6,038.98. Finally Invoice number 53 for 10,000.00 Zimbabwean dollars converted into Malawi kwacha at the rate of 0.9536 on 13th June 1994 came to K9,536.00. The net total balance for these 3 invoices is K18,772.98 which the plaintiff is now claiming. This marked the end of her evidence.

Counsel submitted on her behalf that under Section 11(a)(v) of the Courts Act - (Cap.3:02) the High Court has discretionary powers to direct interest to be paid on debts, including judgment debts. Counsel has contended that since the plaintiff is a business lady she relies on proceeds from her business for the transport cashflow. She has been financially inconvenienced. He submitted that the plaintiff could have invested this money for profits. He prayed that the court should award her interest at Bank lending rate up to the date of payment and that the same be assessed by the Registrar.

I am satisfied that the plaintiff has proved her claim up to the requisite standard. I am convinced that there was an agreement between the plaintiff and the defendant for the ferrying of cargo between Malawi and Johannesburg. I find as a fact that after rendering services the plaintiff invoiced the defendant but the defendant has not fully discharged the plaintiff's dues. There still remains SAR39,860.00 and K18,772.98. I award the plaintiff these sums. The forex to be converted into Malawi Kwacha on payment. On the issue of interest, I am also inclined to exercise my discretion in favour of the plaintiff for the reason that these debts have been long

overdue. However, the plaintiff is not in business of lending money as Banks do. She would deposit any surplus money in a savings or fixed deposit account. The interest rates for such accounts are usually lower than Bank lending rates. Therefore I would award the plaintiff interest rate of ordinary savings deposits from 27th July 1994 when this action commenced. The interest is awarded up to the date of payment of judgment debt. Since the rates have been fluctuating and the date of payment is unknown, the interest will have to be assessed by the Registrar or his deputy. The defendant is also condemned to pay costs of this action.

PRONOUNCED in open court at Blantyre this 19th day of May, 1997.



G.M. Chimasula Phiri
JUDGE