IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

MSCA CIVIL APPEAL NO. 17 OF 1997

(Being High Court Civil Cause No. 439 of 1988)

BETWEEN:

KARONGA MANUFACTURERS
ASSOCIATION (KAMA).....APPELLANTS

- and -

DEVELOPMENT OF MALAWIAN
TRADERS TRUST (DEMATT).....RESPONDENTS

BEFORE: THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR JUSTICE KALAILE, JA
THE HONOURABLE JUSTICE MRS MSOSA, JA
Bazuka Mhango, Counsel for the Appellants
Nkowani, Counsel for the Respondents
Chirambo (Mrs), Official Interpreter/Recorder

J U D G M E N T

Kalaile, JA

The appellants, Karonga Manufacturing Association, claimed against the respondents the sum of K4,012.82 interest, damages for conversion and costs of the action in the High

Court.

The proceedings then came before the Registrar for assessment of interest. The issue before the Registrar was the meaning of “interest at current rate from August 1985" to the judgment date. It was the opinion of the Registrar that the Judge’s intention was to reinstate the appellants to the position in which they would have gained from the loan had they had the opportunity to use or invest the funds in issue.

Accordingly, the Registrar held that the interest rate applicable is the rate at the time of assessment of 45% less 5% on capital, to wit 40%. He, therefore, awarded the appellants K117,617.57 less 10% which would have accrued as tax on interest. The total interest awarded came to K105,855.82. This ruling was delivered on 20th February, 1996.

On 1st April, 1996, the first respondent took out an application to set aside the Registrar’s ruling on the award of interest. This application also came before the Registrar. After listening to Counsel’s arguments, the Registrar set aside his own ruling of 20th February, 1996 and made a fresh assessment of interest in which he awarded the sum of K13,952.30. Now, the learned Judge held that the Registrar had no jurisdiction to set aside his earlier award of assessment. He also held that when the trial Judge awarded interest at current interest rate from 1985, he meant various interest rates applicable from 1985 to 1995. Applying this principle to the application under consideration, the learned Judge found the interest to be K13,950.30, and he awarded this amount to the appellants.

This appeal is against the findings and Orders made by the learned Judge from the appeal against the findings and Orders of the Registrar.

Mr Mhango, Counsel for the appellants, argued principally that the proper interest rate which the learned Judge should have applied is the “commercial interest rates” and not the “bank savings rates”. He cited a number of authorities in support of this proposition.

Counsel for the respondents, Mr Nkowani argued, on the other hand, that the proper rate to apply is the bank savings rate, because this is the rate which the appellants would have had in mind if they had invested the

amount they were entitled to. Again, Counsel cited some authorities in support of this proposition.

We do not consider it necessary to examine the authorities cited by either Counsel, for reasons which we shall shortly give. It seems to us relevant and important to examine the way the appellants framed their pleadings in this particular case. For purposes of this appeal, we shall consider and confine our attention to paragraph 6 of the appellants’ pleadings. It reads -

"6. CONSEQUENTLY the plaintiff pleads that the first defendant is vicariously liable to pay the said sum of K4,012.82 from 1st June, 1985 at the going bank rate up to the date of payment."

Evidently, the appellants did not indicate in their pleadings whether they were calling for the "commercial rate" or the "investment rate", both being "bank rates". According to The Supreme Court Practice 1995 Edition, Vol. I, at page 39, the commercial and investment rates are described as follows -

(a) The commercial rate - or rates which the plaintiff would have had to pay to borrow the money. It is uncertain to what extent the personal circumstances of the plaintiff are relevant; there is a discussion in the judgment of Forbes, J. in Tate and Lyle Food and Distribution v. G.L.C. [1982] 1 W.L.R. 149; [1981] 3 All E.R. 716, which suggests that a plaintiff of high standing should receive somewhat less than the ordinary run of plaintiff and vice versa, but that the abatement or increase should be moderate.

The commercial rate is commonly used in commercial cases, including claims on bills of exchange. The practice of the Commercial Court is to award interest at base rate plus one per cent. This, however, is no more than a presumption which can be displaced by evidence showing that such a rate will be unfair to one party or the other (Shearson Lehman Hutton Inc. v. Maclaine Watson & Co. Ltd. (No. 2) [(1990) 3 All E.R. 723).

(b) The investment rate - at which the plaintiff could have invested the money. This is the basis of the practice in personal injury cases (see para. 6/2/16). Until recently this has been taken to be the Short Term Investment Account rate; since April 1, 1983 this investment has not been generally available and it is becoming more usual to take the rate payable on judgment debts (see para. 42/1/12). These rates have in the past been markedly lower than commercial rates, but at other times the difference may be small." [Emphasis supplied]

Order 6, r.2, rr.10 states that all claims for interest must be pleaded. (O.18, r.8, rr.4 further states that a party must plead specifically any claim for interest under section 35A of the Act or otherwise".)

In the case at hand, the appellants did not specifically plead for interest at the commercial rate nor at the investment rate. They pleaded for interest at the bank rate which is not specific enough.

On the same pages 39-40 of The Supreme Court Practice 1995 Edn, Vol. I, under the

heading **Rates of Interest** is paragraph (f), which provides that -

"Ordinary interest - It has been said that there is no such thing as "ordinary" or "correct" interest. In practice the Court will sometimes assess interest by reference to the rates of interest available on monies invested in Court on special account during the relevant period, or by reference to Judgment Act rates. This is the rate awarded on default judgments and in most cases by the Masters in the Q.B.D. Such rates will be relied on, however, only where no better guide as is appropriate or available. There are other methods of assessment which may be used, e.g. one or more per cent over base rate from time to time in force, which are more sophisticated and accurate than the slow moving special account rate, or the even slower moving Judgment Act rate (United Bank of Kuwait v. Hammond [1988] 1 W.L.R. 1051, C.A., at p.1064). The usual practice in the Commercial Court is to award interest at one per cent above base rate, unless such rate would be unfair to one or other of the parties (Shearson Lehman Hutton Inc. V. Maclaine Watson & Co. Ltd. (No. 2) [1990] 3 All E.R. 723). In assessing damages in an action against solicitors for negligence in the conduct of a personal injuries claim, the question may arise whether the correct rate of interest to be included in the award is that appropriate to a personal injuries claim (special account) or whether it is the higher rate appropriate to a judgment; in such a case it is within the discretion of the court to award interest at the Judgment Act rate, and there is nothing exceptional about using such rate as an exercise of discretion. When a court is considering the appropriate rate of interest for a period from the date of the cause of action to the date of the judgment, the rate payable on judgment debts is a convenient starting point (Pinnock v. Wilkins & Sons, The Times, January 29, 1990; The Independent, March 13, 1990, C.A.)." [Emphasis supplied]

The Judge in the Court below appears to have applied the principles as stated in the Rules of the Supreme Court under paragraph (f), at page 39 cited above. In Malawi, the Judgment Act rate would appear to be prescribed under the provisions of section 65 of the Courts Act (Cap. 3:02), which states that every judgment in civil proceedings shall carry interest at the rate of five per centum per annum or such other rate as may be prescribed. In our opinion, this is the rate which should be applied in the circumstances of the case under consideration. The Registrar is, therefore, directed to make the award based on this interest rate.

Costs to the respondents.

DELIVERED in Open Court this 24th day of November,1999, at Blantyre.

Sgd .....

R A BANDA, CJ

Sgd .....

J B KALAILE, JA

Sgd .....

A S E MSOSA, JA