



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1197 OF 2006**

BETWEEN:

MIKE MOPA MISSIPLAINTIFF

- AND -

ELLEN AARON PANGANIDEFENDANT

CORAM: THE HONOURABLE MR JUSTICE E.B. TWEA

Absent, of Counsel for the plaintiff
Chiphwanya, of Counsel for the defendant
Mr M. Manda – Official Interpreter

J U D G M E N T

Twea, J

This is an appeal from the ruling by the Deputy Registrar refusing leave to set aside a judgment in default entered against the defendant.

I am well aware that in appeals of this nature, which come by way of rehearing, I am not bound by the findings made by the Registrar: *Evans Vs Bartlam [1937] A.C. 473*. However, I am at liberty to adopt the reasoning of the Registrar where I think fit, than set out my own reasons: *Rae Vs Yorkshire Bank plc, The Times October 16, 1989 C.A.*

In the present case the reasoning of the Deputy Registrar is quite clear. The appellant however, abandoned the original appeal on irregularity of the

judgment before this court. She preferred a new ground for appeal based on defence on merit which is deponed as part of the affidavit on her behalf. In paragraph 4 of the affidavit it is averred that she borrowed K30, 000 from the respondent in December, 2005. She agreed to pay the respondent K45, 000 at an unspecified time and date. It is deponed that when she delayed in making payment and the respondent added more interest and forced her to sign documents acknowledging that she borrowed more than the K30,000. Again, when or where this happened is not disclosed. She now claims that the debt is usurious in nature and is uncautionable.

I find that the averments are just an afterthought. This matter has been in court since 20th April, 2006. She never proffered any defence. During the hearing before the Registrar these matters were not raised at all. One wonders how, she would have overlooked this in the first place. In any case there is no substance in the allegations that she has made. I therefore, do not find that she has any defence on merit. I therefore dismiss the appeal with costs.

I confirm the orders made by the Deputy Registrar.

Pronounced in Chambers this 12th day of August, 2008 at Blantyre.

E. B. Twea
JUDGE