

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 654 OF 2006**

BETWEEN

GREY ISAAC MITTAWA.....APPELLANT

AND

**AGRICULTURAL RESEACH
EXTENSION TRUST.....RESPONDENT**

CORAM: SINGINI, J.

Salima, of counsel for the Plaintiff
Kaluwa, of counsel for the Defendant
Mr Kaferanthu, Court Clerk

JUDGMENT

This is an appeal against the order of the Senior Deputy Registrar at the Lilongwe District Registry, His Honour Manda, in which he ruled against the appellant in the appellant's claim for interest over delayed payment of part of compensation money that the appellant was paid under the Workers Compensation Act (Cap. 55:03).

The appellant was an employee of the respondent, the Agricultural Research Extension Trust. He was stationed at the headquarters in Lilongwe. In March, 1997, the appellant was sent on duty to Nkhotakota travelling in a motor vehicle belonging to the respondent. On the way back to Lilongwe, the vehicle was involved in a road accident and the appellant sustained injuries to his right arm. The injuries resulted in the amputation of his right middle finger.

Following the injuries, the appellant lodged a claim under the Workers Compensation Act to the Workers Compensation Commissioner. The Commissioner assessed the appellant's compensation for the injuries at K262, 845.00. The Commissioner then sent a formal "Claim of Compensation" to the respondent on behalf of the appellant requiring the respondent to countersign the form of Claim of Compensation if the respondent agreed with the assessment by the Commissioner and to return the form with payment of the amount of compensation, that is, K262, 845.00. The form sent by the Commissioner was dated 31st July, 1997. The respondent was allowed a period of two months up to 30th September, 1997, to return the form with full payment.

The respondent did return the form within the specified period but with only part payment of the total amount of compensation as assessed by the Commissioner. That partial amount was K100, 000.00, leaving a balance of K162, 845.00. Sometime in 2002, after some five years of waiting to be paid the balance, the appellant brought an action in the Industrial Relations Court (registered as Matter No IRC 292 of 2002) against the respondent to claim for the balance. The court did not set down the claim for adjudication until three years later on 20th June, 2005, when the court gave directions that it did not have jurisdiction over the matter and that the matter be transferred for adjudication before the appropriate forum since the Workers Compensation Act conferred jurisdiction instead on courts of magistrates.

Before the plaintiff's claim was heard by the appropriate forum, the respondent, on 6th March, 2006, paid the remaining balance of the compensation money to the appellant. Then on 13th April, 2006, the appellant took out a summons before this Court against the respondent

claiming interest for the delayed payment of that amount. An affidavit of service on the respondent was filed in Court showing that the respondent was served on 18th April, 2006. The respondent did not file a defence and on 29th May, 2006, the appellant obtained a default judgment which ordered that “the defendant (respondent) do pay the plaintiff (appellant) interest at commercial bank lending rate on the principal sum of K162, 845.00 from 1st October 1997 to 6th March 2006 to be assessed plus reimbursement on collection fees and government surtax on the said collection fees”.

The matter came before the Senior Deputy Registrar on 20th December, 2006, for assessment of interest when the Senior Deputy Registrar heard counsel for the appellant. On 27th December, 2006, the Senior Deputy Registrar made his order which ruled that the appellant could not in law take out a separate action to claim interest only if not claimed with the principal amount and therefore there could be no assessment of interest, in effect ruling that the action for claim of interest was ill conceived in law and was therefore not valid and so was the default judgment. The appellant has appealed against the order of the Senior Deputy Registrar. I heard the appeal in chambers on 25th June, 2007, and adjourned to give judgment.

The appeal raised three grounds: (a) that “the learned Senior Deputy Registrar erred in refusing to award interest because there was already judgment (referring to the default judgment) in the cause ordering that interest be paid by the Defendant”; (b) “the learned Senior Deputy Registrar erred in determining whether interest was payable because the defendant never pleaded for the same as it was required under Order 18, rule 8, of the Rules of the Supreme Court”; and (c) “the learned Senior

Deputy Registrar erred in finding that interest per se is not a cause of action but had to be combined with a main action”.

As for the first two grounds of appeal, it is true that the respondent, as defendant, did not file any defence to the claim for interest and did not attempt to have the default judgment obtained by the appellant as plaintiff set aside nor sought to be heard on assessment of interest before the Senior Deputy Registrar. In this whole action for claim of interest by the appellant, the respondent entered appearance only at the point of this appeal and to oppose the appeal and filed the defence and supporting skeleton arguments on the very day I heard the appeal and as court convened. However, I will not seek to rule on those two grounds. I consider that the appeal really turns on the last ground which raises the point of law of whether interest can or cannot be claimed if not claimed with the principal amount; and this, to my mind, is the crux of the matter in this appeal, that is, if a claim of interest can be an independent cause of action before the courts.

Both counsel have cited the case of *Packaging Industries (Malawi) Limited v Produce Marketing Supplies Limited and Others* 11 MLR, 60 and have placed reliance on the authority of that case for their differing positions. At page 64 of the report, the learned Judge, Unyolo, J. as he then was, adopted the explanation in 1 *The Supreme Court Practice* 1979, para.22/1/5 “that the element of interest in a plaintiff’s cause of action for debt or damages is merely an addition or supplement to that cause of action and is ancillary thereto in the sense that the original cause of action for debt or damages must first be established and only then will interest on such debt or damages become payable.”. In the same passage the Judge then continues to concluded that “In such circumstances, it would

seem that a claim for interest has no separate or independent identity and cannot itself be regarded as a separate cause of action.”.

Counsel for the appellant submits that the cited passage from the decision in that case would have authority only in claims for debts or damages and that the claim in the present case is not for a debt or damages but for a statutory compensation due under an Act of Parliament. Counsel for the respondent, on the other hand, submits that the passage is authority for the proposition that interest on a principal amount cannot constitute a separate cause of action on its own if there is no claim for the principal amount as was also ruled by the Senior Deputy Registrar. This latter position might also be construed from the learned Judge’s conclusion in the last sentence in the passage; but, quite properly in my view, the learned Judge qualified his conclusion with the phrase “in such circumstances” and he cannot therefore be held to have made a general conclusion that interest alone cannot constitute a separate cause of action in all circumstances. Indeed, without those qualifying words the learned Judge would have drawn a conclusion beyond the import of the guiding explanation in para.22/1/5 of *The Supreme Court Practice, 1979*, which appears to limit itself to claims for interest on debts or damages. But even with respect to debt or damages, my own reading of the explanatory note, in discord to the conclusion the learned Judge drew, is that it does negate a claim for interest as a cause of action, but that the original cause of action for debt or damages has to be established, in a way stating the obvious.

I find myself, though, more persuaded by the words of Diplock, L.J. in *Letang v. Cooper* (4) [1965] 1 Q.B. at 243-243 quoted at page 64 in *Packaging Industries (Malawi) Limited v. Produce Marketing Supplies*

Limited that “a cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person”.

It is a fact in the present case that for an unexplained reason the respondent withheld payment of a large part, a greater part for that matter, of the compensation money that was payable to the appellant. The appellant waited for the withheld payment for three years before taking court action in the Industrial Relations Court to claim the withheld payment. The respondent was duly served with process but did not respond. It also took the Industrial Relations Court another three years to set down the matter and only to direct that it did not itself have jurisdiction over the matter. This was on 20th June, 2005, when the court issued the order of its directions. Still, it was not until several months later on 6th March, 2006, that the respondent paid up the balance of the compensation money to the appellant.

I hold that the delay on the part of the respondent, and in this case of close to nine years, in paying to the appellant the balance of his compensation money was inordinate and wrong; and justice cannot allow the wrong consisting in such delay of payment to be suffered without a remedy. In the words of Diplock, L.J. *supra*, the delay constituted a situation that entitled the appellant to an effective remedy before the courts and, in my view, with legitimate expectation for interest to be awarded on the delayed payment. Liability for interest on the delayed balance of the principal amount was clearly incurred by the time the respondent chose to pay up the balance, and the party could not escape liability for interest by taking such a calculated move in paying up the balance.

In my judgment, therefore, there is no rational reason why a claim of interest for delayed payment cannot constitute a separate cause of action in a proper case, and I make no distinction whether it arises from delayed payment of a debt or damages or, as in the present case, compensation or other liquidated sum. I recognise the principle advanced before me by counsel for the respondent and in the order of the Senior Deputy Registrar that interest is awarded at the discretion of the court, but I see no diminution of this principle just because a claim of interest is made as a separate cause of action in a proper case. Judicial discretion will always be exercised in the interests of justice as the court may determine in the particular case.

In the present case, I hold that the claim for interest on the delayed payment of the balance of compensation money due by the respondent to the appellant was a proper cause of action on its own and that the default judgment obtained by the appellant was also proper. I accordingly allow the appeal by the appellant, with costs against the respondent, and I set aside the order of the Senior Deputy Registrar and I order that the interest claimed by the appellant be assessed in accordance with the default judgment obtained by the appellant.

MADE in chambers at the Lilongwe District Registry this 2nd day of April, 2008.

E.M. SINGINI, SC
JUDGE