

THE HIGH COURT
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IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
COMMERCIAL CAUSE NO. 35 OF 2008
(Before Honourable Justice Msungama)

BETWEEN

SKIPCO MALAWI LIMITED.....CLAIMANT

AND

BLANTYRE PRINTING & PUBLISHING CO. LTD.....1ST DEFENDANT

BLANTYRE PRINTING & PACKAGING CO. LTD.....2ND DEFENDANT

Coram: E.M. Zidule : Assistant Registrar

S. Machinjili: Counsel for the Claimant

L. Mwantisi : Counsel for the 2nd Defendant

B. Ntonya : Court Clerk

RULING

Background

By a ruling dated 26th May, 2021, the Claimant was awarded the sum of MK2,440,543.64, compound interest on the said sum at the National Bank of Malawi PLC lending rate plus 1% per annum with effect from the date when the amounts became due to the date of payment and party and party costs. On 1st September, 2021, the parties executed an Agreed Order which required the 2nd Defendant to pay the sum of MK67,879,131.22 as interest within 6 months at MK11,500,000.00 every month, starting from September,

2021. Contrary to the agreement, the 2nd Defendant paid the first instalment on 7th October, 2021. On 9th November, 2021, the 2nd Defendant paid the second instalment while the third payment was made in December, 2021. Each payment was for the sum of MK11,500,000.00. Further, on 27th January, 2022, the 2nd Defendant paid the sum of MK20,000,000.00 and made the final payment on 29th March, 2022 in the sum of MK13,379,131.22.

On 21st August, 2023, the Claimant filed an application for assessment of interest on the basis that the sum of MK67,879,131.22 paid by the 2nd Defendant was interest calculated from 28th February, 2008 to the date of judgment which is contrary to the ruling delivered by the Court on 26th May, 2021 requiring interest to be calculated to the date of payment. The Claimant stated in paragraphs 7 and 8 of his sworn statement in support of the application for assessment of interest, filed on 21st August, 2023, that Accountants at its company computed the accumulated interest on the principal sum of MK2,440,543.64 from 28th February, 2008 to the various dates of payment up to 31st January, 2023. It was also submitted by the Claimant that further interest calculations will be provided from 31st January, 2023 to the date of assessment of interest and date of payment. Upon doing computations, the Claimant submitted that there is an outstanding interest in the sum of MK6,449,610.98 payable by the 2nd Defendant.

On 27th September, 2023, the 2nd Defendant filed a notice of preliminary application objecting to the assessment and called upon the court to determine whether the said assessment is *res judicata* the 2nd Defendant having paid the agreed sum of money in accordance with the Agreed Order in full and final settlement of the Claimant's claim. The Claimant filed a sworn statement in opposition to the notice of preliminary objection on 12th October, 2023, and stated in paragraph 8 thereof that ***"the judgment debt outlined in the Agreed Order is a mistake as the figure was computed from the date the sums became due to the date of judgment and not to the date of payment as stated in the judgment."*** Surprisingly, the Claimant is raising this issue 2 years after execution of the Agreed Order and over a year after the final payment was made by the 2nd Defendant.

The sole issue to be determined by the court is whether the court should proceed to hear Claimant's application for assessment of interest the parties having executed an Agreed Order requiring the 2nd Defendant to pay the sum of MK67,879,131.22 as interest on the principal sum of MK2,440,543.64 within 6 months from September, 2021.

Discussion

The Claimant argues that the 2nd Defendant computed interest from the date the sums became due to the date of judgment and not to the date of payment, which sum amounted to MK67,879,131.22. However, the Claimant signed the Agreed Order to show that it was amenable to the terms stipulated therein. If at all, the Claimant did not agree with the amount that was payable as interest, they could have raised the issue before signing and filing the Agreed Order for Court's endorsement. This did not happen. Both parties are therefore bound by the terms of the Agreed Order.

Even though the Claimant insists that it does not intend to vary the Agreed Order, one wonders what the Claimant seeks to achieve when it argues that interest was calculated up to the date of judgment and not payment, which makes the amount paid by the 2nd Defendant less than what the Claimant was meant to receive as interest. One also wonders where the Claimant is getting the authority to claim interest for the late payments and default, in September, 2021 and February, 2022. It appears to this court that the best way to deal with the issue at hand is to vary the Agreed Order so that it captures the correct amount payable as interest from the date the amounts became due to the date of payment and not judgment. Varying the Agreed Order will also enable the Claimant to claim interest for the late payments which resulted into the 2nd Defendant making the final payment in March, 2022 instead of February, 2022 since the 2nd Defendant defaulted in September, 2021 and February, 2022. However, this can only be done by commencing a fresh action against the 2nd Defendant-see the case of **The Registered Trustees of Smallholder Farmers Fertilizer Revolving Fund of Malawi (SFFRFM) v. The Registered Trustees of Tobacco Association of Malawi (TAMA) Civil Cause Number 2357 of 1997.**

Finding

The finding of this court is that the Parties having executed an Agreed Order requiring the 2nd Defendant to pay the sum of MK67,879,131.22 as interest, the Claimant cannot seek assessment of interest on the basis that the 2nd Defendant calculated interest from the date the amounts became due to the date of judgment instead of computing the same from the time it became due to the date of payment. This is an Agreed Order, duly signed by the parties and endorsed by the court. The parties are therefore bound by the terms of the Agreed Order, they cannot vary the same at this stage. Further, the Claimant had the right to enforce the Agreed Order having noted that the 2nd Defendant defaulted in the payment of the monthly instalments. The application for assessment of interest is, therefore, dismissed on the reasons aforesaid. Each party shall bear its own costs.

Any aggrieved party is at liberty to appeal against the decision of this court within 21 days from the date hereof.

Delivered in Chambers this 29th day of November, 2023 at High Court Commercial
Division, Blantyre Registry.



E.M. Zidule

Assistant Registrar

