

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1511 OF 1994**

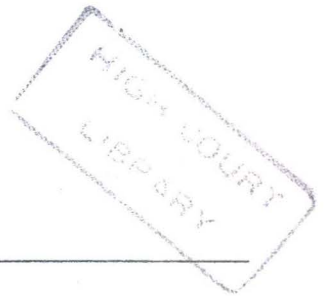
BETWEEN:

ERICK DICKWORTH PLAINTIFF

AND

JAGDISH SINGH BHAMBRA
AS EXECUTOR OF THE ESTATE
OF THE LATE IAN ROBLYN DEFENDANT

CORAM: **POTANI, DEPUTY REGISTRAR**
 Banda, Counsel for the Plaintiff
 Malera, Counsel for the Defendant



RULING

The application before me is one for computation of interest. It is supported by the affidavit on Abdul Aziz Kassam, of counsel for the plaintiff and that of Nigel Williams, Corporate Services Manager for the Commercial Bank of Malawi. Also, there is an affidavit filed in opposition to the application sworn by Ian Malera, of counsel for the defendant.

It is necessary to give a brief history of the matter. The plaintiff brought this action against the defendant for the recovery of the

sum of 97,000 pounds sterling with interest and damages for breach of contract. Then on December 13, 1994, the parties entered a consent judgement in the following terms:

"It is hereby ordered by consent of the parties that the defendant do pay to the plaintiff the sum of 63,000 pounds sterling plus interest thereon from the due date thereof to the date of payment at the rate of thirty six (36) per centum per annum and costs to date of this action but limited to the said amount, such costs to be taxed by the Registrar in default of agreement between the parties".

It would be recalled that counsel for the defendant sought to object to the use of the affidavit of Nigel Williams on the ground that it contains hearsay evidence. In response, counsel for the plaintiff submitted, without elaborating, that the objection was premature and anticipatory. Be that as it may, what is significant is that in his arguments and submissions on the application, counsel for the plaintiff made no reference to the affidavit of Nigel Williams. In consequence, I shall entirely ignore that affidavit in determining the issues before me.

It is not in dispute that the 63,000 pounds sterling being claimed by the plaintiff relates to two transactions: firstly sale of shares in Delamere Properties and secondly sale of shares in Unit Investments Ltd. Further there is no controversy that the parties had agreed that payment for the shares would be by instalments. Therefore, each instalment was due on a different date. It should



also be borne in mind, at this juncture, that there is no dispute that the defendant has since made some payments in liquidation of the judgement debt. Such payments, will have to be taken into account in arriving at the sum due.

One major issue, that emerged from counsel's respective arguments, relates to the effect of payments made by a debtor on a debt which comprises of principal sum and interest. On this question I am guided by Clayton's case (1861), Mer 572 cited by counsel for the plaintiff. That case is authority for the proposition that where a judgement debt comprises of principal sum and interest, payments made by the judgement debtor settle the interest aspect first before being applied to settle the principal sum. Reverting to the present case, it would be noted that the computation of the sum due, as set out in exhibit 'AAK1' exhibited to the affidavit of Abdul Aziz Kassam, is in line with the law as laid down in the Clayton's case. Counsel for the defendant argued that the defendant's understanding had always been that payments made would first be applied in extinguishing the principal sum. To this end, two letters by the defendant to the plaintiff exhibited as 'IM2' and 'IM3' to the affidavit in opposition were relied on. I have had occasion to read both letters. The relevant part of 'IM2' seems to be paragraph 3 which states as follows:

"We write to advise for the record that our understanding is that interest payable on the consent judgement, is simple and our client will only pay simple interest on a reducing balance and not compound interest"

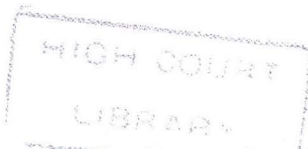
As for 'IM3' the relevant part is paragraph 1 which reads:

"Further to our letter of 1st instant we now enclose herewith our cheque for K700,000.00 in payment of the principal sum due in respect of the consent judgement".

It would be observed that in 'IM2' the issue the defendant is raising relates to interest being simple and not compound. As regards 'IM3' there is a proposal by the defendant that the payment accompanying the letter should be applied to extinguish the principal. The question, however, still remains: was there an agreement by the parties that payments made by the defendant would first be applied to extinguish the principal? To answer this question the contents of 'IM4' being a letter by the plaintiff to the defendant as a response to 'IM2' and 'IM3', have to be considered. The pertinent part of IM4 is paragraph 2 which reads:

"These amounts will be applied firstly towards reduction of any interest which may be due on the dates of payment and when all interest due has been paid then in reduction of the principal"

A reading of the above paragraph clearly shows that the plaintiff was not in agreement with what the defendant proposed in 'IM3' that the payments made should first be applied to pay off the principal. I would therefore find that there was no mutual understanding or agreement that payments would first be applied towards reduction of the principal. There being to such agreement



by the parties, the principles laid down by the law apply. As stated earlier, the Clayton's case lays down the principle that where a debt comprises of a principal sum and interest, payments made are first applied to pay off interest and it is only after interest has been fully made that payments are applied to extinguish the principal. Counsel for the plaintiff also cited Chitty on Contracts 27th Edition para 21-054 and the case of Income Tax Commissioner vs. Maharajadhiraja of Darbhanga (1933) LR 60 IA 146 at P 157 in support of this principle of law. Such being the position, in arriving at the sum due, I shall follow the principle by regarding payments made by the defendant as having first been applied to pay off interest.

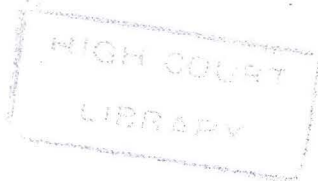
It was also argued by the defendant that the rate at which the plaintiff seeks interest to be calculated, which is 36 percentum per annum, is very high and unconscionable. Counsel for the defendant submitted that at the time of the transactions giving rise to the present case, interest payable on pounds sterling accounts was 3 percentum per annum. To this end, the defendant has exhibited as 'IM1', a letter from the National Bank of Malawi confirming the assertion by counsel. The first observation to be made on this contention is that the consent judgement sets out the applicable interest rate at 36 percentum per annum. The consent judgement was duly executed by both parties and the defendant did not suggest any impropriety or irregularity of the consent judgement either in the manner it was executed or its form. My view is therefore that the issue relating to the applicable rate of interest is res judicata. In case I am wrong on this finding, by

operation of the doctrine of estoppel, the defendant is precluded from denying the plaintiff his rights arising from the conduct of the defendant in executing a consent judgement on the terms which were clearly set out in the consent judgement.

It came out clearly from counsel's respective arguments and submissions that interest calculations were to be on simple and not compound interest basis. What I need to consider is whether or not the plaintiff's interest calculations as set out in 'AAK1' exhibited to the affidavit of Abdul Azizi Kassam are on simple interest basis. On this point, counsel for the defendant, with due respect, just made a bare assertion that the calculations were on compound interest basis without establishing the allegation. Counsel for the plaintiff stated that interest was calculated on simple interest basis and he went further to explain the formula employed as being, principal multiplied by time multiplied by rate over/divided by one hundred ($\frac{PTR}{100}$)

I have had occasion to carefully examine the interest calculations as set out in 'AAK1' and I am satisfied that they are based on simple interest basis. It would seem counsel for the defendant formed the impression that interest was compounded because of the great amounts of interest that have accrued which in my view can easily be understood in the light of the applicable rate of 36 percentum per annum and the long period of time over which the interest has accumulated.

I have examined the Table marked 'AAK1' exhibited to the



affidavit of Abdul Aziz Kassam referred to above. It is quite clear that the Table is prepared in line with the rule in Clayton's Case where payments received from the defendant were applied first in reduction of the interest due at the date of payment. The interest due in terms of the consent judgment was simple interest only and I confirm that, that is the way interest has been treated in the Table. Accordingly, I accept the contents of the Table as reflecting the true state of affairs and agree with the method of calculations used in it and consequently with the amounts as shown therein on the dates mentioned.

At this point I shall proceed to determine the amount payable. As at December 13, 1994, the date of the consent judgment, the principal sum owed was 63,000.00 pounds sterling as is recorded in the consent judgment. There was interest payable from the due dates calculated in the sum 63,974.95 pounds sterling. Interest continued to accrue as long as the principal sum remained unpaid.

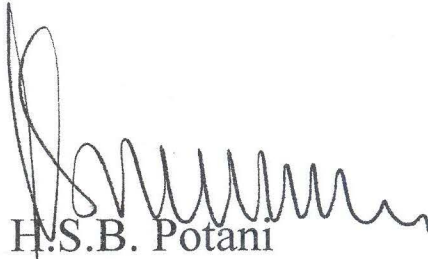
The defendant made the first payment on May 8, 1995 in the sum of K100,000.00. The exchange rate applied was 1 pound sterling to K25.46. This exchange rate is not disputed. The defendant's payment therefore translated to 3,927.73 pounds sterling. This payment reduced only the interest sum which at the time was 71,728.79 pounds sterling. The defendant made several payments thereafter but at no point did the defendant pay all the interest, that had accrued and was due, as such no single payment reduced the principal sum which remained at 63,000 pounds sterling throughout.

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The defendant stopped payments in september 1997. At that time, the principal sum was not reduced in any way and a certain amount of interest remained due in the sum of 31,387.68 pounds sterling. It follows therefore that further interest continued to accrue after September 1997 on 63,000 pounds sterling at 36% per annum. It cannot be said that the defendant discharged his obligations as he has not paid all the interest accrued and has not paid any part of the principal sum.

I accordingly hold that the whole of the principal sum of 63,000 pounds sterling remains due and unpaid. I also hold that simple interest is due on that sum at 36% per annum and that as at 19th September 1997 the interest already accrued and due was 31,387.68 pounds sterling. Calculations of simple interest using the formula PTR show that further interest accruing due from October 1997 to December 1999 (a period of 27 months) is 51,030 pounds sterling. This amount must be added to the two amounts I have already found due and owing and therefore I order that the defendant pays the plaintiff the sum of 145,390.68 pounds sterling owing as at December 31, 1999. The plaintiff is further entitled to interest accruing on 63,000 pounds sterling from December 31, 1999 at the agreed rate of 36% up to date of payment on the same basis as if has been calculated before. The plaintiff also gets the costs of this application.

Made in Chambers this day of February 10, 2000

A handwritten signature in black ink, appearing to be "H.S.B. Potani". The signature is written in a cursive style with a large initial "H" and a long, flowing line extending to the right.

H.S.B. Potani

DEPUTY REGISTRAR