



THE HIGH COURT
(COMMERCIAL DIVISION)
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IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 207 of 2017

(Before Honourable Justice Dr. Mtambo)

BETWEEN

MASTER GADAMA.....CLAIMANT

AND

MARK SPROUT SECURE FINANCE LIMITED.....DEFENDANT

CORAM: D.H. SANKHULANI, ESQ., ASSISTANT REGISTRAR

M/s P. Minjale and K. Kunitengo, of Counsel for the Claimant

Mr. F. Chikavumbwa, of Counsel for the Defendant

Mr. A. Nyirongo, Court Clerk

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Sankhulani, AR

RULING ON PRELIMINARY OBJECTION TO ASSESSMENT OF INTEREST

Introduction

This ruling follows hearing of a preliminary objection that was raised by the Defendant against hearing of proceedings for assessment of interest herein.

Background Information

The Claimant commenced the present action by way of a specially-endorsed writ of summons, seeking an order that the interest rates charged by the Defendant on the loan obtained by the Claimant from it are harsh and unconscionable, an order that the Defendant should reimburse money paid to it in excess of money due as per normal and proper interest rates and an order of permanent injunction restraining the Defendant from selling the Claimant's property located on title number Soche East KC1/22, damages for inconvenience and costs of the action.

The cause of action herein arose from a loan that the Claimant had obtained from the Defendant, on which loan the Defendant has allegedly been charging harsh and unconscionable interest rates.

This matter went through several processes that are not intended to be highlighted herein. Suffice it to say, for now, that eventually the Claimant moved the court to make a proper, fair and just calculation of interest payable on the loan in issue herein. Upon hearing that motion, the Honorable Judge seized of this matter ordered that fair and reasonable interest herein be calculated at the rate of 30% and compounded annually.

Pursuant to the said order for fair and reasonable interest, the Claimant commenced proceedings for assessment of interest on the loan aforesaid. The relevant notice of assessment of interest herein is supported by a sworn statement. On the scheduled date for assessment, the Defendant raised the present preliminary objection to the assessment proceedings, after the Claimant's side had been heard on assessment. The Defendant had not filed prior notice of the said preliminary objection. Nevertheless, the Claimant's side responded to the preliminary objection. After the preliminary objection was held, the matter was adjourned to today's date for a ruling on the preliminary objection and/or an order on assessment, depending on this Court's decision.

Issues for Determination herein

- Whether or not the sworn statement in support of assessment herein ought to be struck out.
- Whether or not the preliminary objection herein ought to be upheld.
- The appropriate quantum of interest herein.

Whether or Not the Sworn Statement in Support of Assessment Herein Ought to be Struck Out

As it has been mentioned earlier on, the relevant notice of assessment of interest herein is supported by a sworn statement. It was sworn by counsel for the Claimant. On the one hand, the Defendant prays that the sworn statement be struck out, on two grounds. The first ground is that the sworn statement deposes to facts that were supposed to be deposed to by the Claimant, and not counsel. The second ground is that the sworn statement is on interest calculations done by counsel who is layman in the field of interest calculations. The Defendant, therefore, prays that the sworn statement be struck out and that proceedings for assessment of interest be adjourned to a later date after the Claimant has sworn a statement in support and also after interest calculations have been done by an expert. Thus the Defendant objects to hearing of the assessment proceedings herein. That is gist of the present preliminary objection. On the other hand, the Claimant contends that the facts raised by the sworn statement are not new to the parties. Further, the Claimant in essence contends that this court has the capability to calculate interest without having recourse to expert guidance thereon. The Claimant, therefore, prays that the present preliminary objection be dismissed and that the present assessment proceedings be proceeded with.

I find the Defendant's contentions to be tenable. On the issue of the sworn statement having been sworn by counsel, **Order 18, rule 6(1)** of the **Courts (High Court) (Civil Procedure) Rules 2017** is instructive. It provides that a sworn statement shall only contain facts that the deponent is able to prove with his own knowledge. However, there is a qualification or an exception to this rule, and that is provided for under **Order 18, rule 6(2)** of the **Courts (High Court) (Civil Procedure) Rules 2017**. It provides that a sworn statement may contain a statement of information and belief provided the sources of the information or the basis for the belief are also set out in the statement. So, at law, a deponent should only depose to facts that he is able to prove with his own knowledge. However, a deponent may depose to a statement of information or belief, so long as he mentions the sources of the information or the basis for the belief. Coming to the matter at hand, counsel, in the sworn statement in support, deposes to the fact that the

Claimant had obtained a loan from the Defendant in 2015. Counsel also deposes to the fact that the Claimant has made two payments, in partial liquidation of the loan in issue herein. Clearly, these are facts that only the Claimant can prove with his own knowledge, since it was him who obtained the loan and made the said repayments. In other words, counsel for the Claimant cannot prove the facts aforesaid with his own knowledge. I so opine and find. Since it has just been found that counsel for the Claimant cannot prove the facts aforesaid with his own knowledge, it now remains to be determined whether the qualification or exception provided for under **Order 18, rule 6(2) of the Courts (High Court) (Civil Procedure) Rules 2017** holds in so far as counsel's sworn statement in issue herein is concerned. Relevant to the determination of this question is Paragraph 2 of the sworn statement which reads as follows, and I quote:

"2. **THAT** unless otherwise stated I depone to matter of fact based on the knowledge of the facts surrounding this matter as averred to me by the applicants which I verily believe to be true and correct and any matters of opinion expressed herein are based on such information (sic)."

From the above-reproduced paragraph, it is clear that counsel deponed to a statement of information and also provided the source thereof. However, it is also clear that counsel deponed to a statement of belief without stating the basis for that belief, in contravention of **Order 18, rule 6(2) of the Courts (High Court) (Civil Procedure) Rules 2017**. I so find.

As it has been mentioned earlier on, the second ground for the present preliminary objection is that the sworn statement in support of assessment is on interest calculations done by counsel who is layman in the field of interest calculations.

I cannot agree more. Although this court is capable of calculating interest by itself, it still needs guidance from someone with the relevant expertise in the field. At the hearing of the assessment, counsel for the Claimant admitted being lay in the field of interest. It would, therefore, be precarious for this Court to proceed to assess interest based on guidance from someone who has conceded to be lay in the field of interest calculations.

In view of the foregoing, I finally find that the sworn statement of counsel herein ought to be struck out for deponing to facts which the deponent is not able to prove with his own knowledge, for deponing to a statement of belief without stating the basis thereof and also for deponing to interest calculations done by someone lacking the relevant expertise.

Whether or Not the Preliminary Objection Herein Ought to be Upheld

In view of the immediately foregoing finding, I find that the preliminary objection herein ought to be upheld. The assessment proceedings shall have to be reheard, after the Claimant has himself sworn a statement in support and after calculations of interest are done by an expert.

The Appropriate Quantum of Interest Herein

This issue has naturally fallen away, in view of the immediately foregoing finding.

Final Order

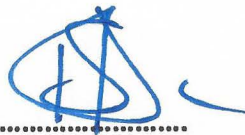
In view of the foregoing findings and reasoning, I hereby uphold the present preliminary objection. Hearing of assessment proceedings that took place on 22nd January 2019 is hereby set aside.

The Claimant shall cause to be issued a fresh notice of adjournment of proceedings for assessment of interest, after complying with the above directions.

Costs

These usually follow the event, although they are in the Court's discretion, always. Each party herein shall bear their own costs of hearing of the just-upheld preliminary objection and the just-set-aside hearing of assessment proceedings.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 25th day of January 2019.



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D.H. SANKHULANI

ASSISTANT REGISTRAR

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