

YONNAH SHIMONDE AND FREIGHT AND LINERS AND MERIDIEN BIAO BANK (Z) LTD

SUPREME COURT

NGULUBE, C.J., SAKALA AND CHIRWA, J.J.S.

24TH NOVEMBER, 1998 AND 13TH APRIL, 1999

(S.C.Z. JUDGMENT NO. 7 OF 1999)

Flynote

Civil Law - Conveyancing - Mortgage - dispute over computation of compound interest.

Headnote

The second appellants defaulted on a loan they had borrowed from respondent bank; the loan was secured by a Mortgage over a house belonging to the now deceased first appellant. The bank went into liquidation. At the time of the transaction, the bank was charging commercial interest which was also compounded. After the commencement of the action right down to the summary judgment and despite the bank then having gone into receivership prior to liquidation, interest continued being charged on the said basis. The court below ruled that commercial compound interest would continue to be charged on the judgment debt until payment despite supervening receivership and subsequent liquidation. He rejected the submission that interest upon the judgment should be limited to 6% which was the rate then applicable under the Judgments Act prior to the latest amendments. The appellants appealed.

Held:

The appeal succeeds to the extent that the Judgment below has be reversed and varied on the question of interest. There can be no justification for allowing the charging of compound commercial interest forever by a liquidated bank which is obliged, by law, to stop conducting business.

Appeal

allowed.

Cases referred to:

- (1) Bank of Zambia v Anderson and Andrew Anderson (1993) S.J. 41 (S.C.)
- (2) Attorney-General v Mooka Mubiana Appeal No. 38
- (3) Union bank Zambia Ltd v Southern Province Co-operative Marketing union Ltd (1997) S.J. 30 (S.C.)

For the appellants: F.M. Hamakando, of Hamakando Zulu & Co.

For the respondents: Christina Kunda of Corpus Globe.

Judgment

NGULUBE, C.J.: delivered the judgment of the Court.

The second appellants defaulted on a loan they had borrowed from the respondent bank; the loan was secured by a mortgage over a house belonging to the now deceased first appellant. Meanwhile, the bank has also since gone into liquidation. It was in evidence that at the time of the transaction, the bank was charging commercial interest which was also compounded. After the commencement of the action and right down to the summary judgment and despite the bank then having gone into receivership (prior to liquidation), interest continued being charged on the said basis.

The learned trial Commissioner declined to give the bank possession of the mortgaged property opting to allow more time to the debtors to discharge all their obligation and foreclosure only to follow in the event of further default. Surprisingly, the bank did not think to garnishee Zambia Railways who had admitted to owing the appellants a sum far greater than was the subject of the suit.

The parties disagreed on the computation of the indebtedness mostly on account of the continued charging of commercial compound interest which even failed to take account of certain moneys which were paid into court. On application to the learned trial Commissioner for review, the court ruled that commercial compound interest would continue to be charged

on the judgment debt until payment and this inspite of the supervening receivership and subsequent liquidation. He rejected a submission that interest upon the judgment should be limited to 6% which was the rate then applicable under the Judgments Act prior to the latest amendments.

In choosing to apply a rate of interest upon the judgment debt based on the current bank rates at the time, the learned trial Commissioner relied on Statutory Instrument No. 174 of 1990 which amended the rate of interest specified at the time in the High Court Rules. However, that Statutory Instrument infact flew in the teeth of the Judgments act which prevailed over the subordinate legislation and which decreed 6% as the rate of interest on a money judgment. The decisions of this court, such as **Bank Of Zambia v Anderson S.C.Z. Judgment No.13 of 1993, Attorney-General v Mooka Mubiana Appeal No. 38 of 1993** made it very clear that the provisions of an Act of parliament could not be ignored nor overridden by a mere Statutory Instrument. See Section 20 (4) of the Interpretation and General Provisions Act, Cap.2. The Judgments Act has since been amended and it accords with what the Statutory Instrument had proposed. However, the fact still is that at the time of the judgment herein, it was not lawful to award more than 6%. The appeal concerned the award of commercial interest ad infinitum; it has to succeed and interest of 6% substituted.

There was also a ground of appeal urged by Mr. Hamakando that, as from the date of receivership and subsequently, the bank should not have charged any interest at all. As Miss Kunda countered, the relationship of banker and customer does not terminate merely upon a receiver to run the bank being appointed so that the bank's right to charge interest – including compound interest where applicable, as here – did not cease. However, when a judgment of the court is given, any principal and interest merge into the judgment debt and the relationship of banker and customer is clearly at an end. It follows from the foregoing that the indebtedness has to be computed as indicated in this judgment. There can be no question of continuing with commercial interest or compounding it after the judgment below. Mr. Hamakando also alluded to penal interest. There was no clear evidence that any penal interest was also levied. If it was, then of course it has to be expunged: See **Southern Province Co-operative Marketing Union v Union Bank Zambia Limited S.C.Z. Judgment No. 7 of 1997.**

In sum, the appeal succeeds to the extent that the judgment below has been reversed and varied on the question of interest. There can be no justification for allowing the charging of compound commercial interest forever by a liquidated bank which is obliged, by law, to stop conducting business: See s.87 of the Banking and Financial Services Act, Cap.387 of the 1995 Edition of the Laws. Costs follow the event and will be taxed if not agreed. Enforcement of the judgment, as varied, is as usual a matter for the High Court.
