

CC. 183/08 2008 S. No.37

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN:

SIERRA LEONE COMMERCIAL
BANK LIMITED

- PLAINTIFF

AND

BINTA MACFOY

- DEFENDANT

Counsels:

W. NICOL Esq. for the Plaintiff

C. F. MARGAI Esq. for the Defendant

JUDGMENT DELIVERED THIS 28th DAY OF March 2012 BY
HONOURABLE MRS JUSTICE V. M. SOLOMON J. A.

JUDGMENT

The action herein commenced by Writ of Summons against the Defendant is for the following reliefs to wit:

1. Payment of the said sum of Le 155,430,538/71
2. Interest on the said sum of Le 155,430,538/71 at the rate of 31% Centum per annum from 10th September 2008 until payment.
3. Any further or other relief
4. Costs.

An Appearance and Defence were filed on behalf of the Defendant. By Motion Paper dated 13th February 2009 the Plaintiff filed an application for Judgment to be entered against the Defendant pursuant to Order 34 Rule 3(1) of the High Court Rules 2007 (hereinafter called "The Rules") for judgment for sum of Le 155,430,538/71; any other orders; and costs. The Defendant opposed the application for judgment; and on the 10th March 2009 judgment was delivered by Honourable Justice A. D. Konoyima J which reads thus:-

1. That the Plaintiff/Applicant herein adduces evidence to prove the quantum of money due and owing to them by the Defendant/Respondent.

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2. No order as to costs.

Pursuant to this order, the witness statement of Cecil Mammah dated 8th February 2011 was filed with attachment thereto. Mr. Cecil Mammah gave oral testimony on behalf of the Plaintiff Bank and was cross examined by C.F. Margai Esq. on behalf of the Defendant. His witness statement was tendered in evidence by application made pursuant to Order 30 Rule 9 (a) of the High Court Rules 2007 (hereinafter called "The Rules").

Upon cross examination, the witness stated that the Defendant was granted an overdraft facility by the Plaintiff which was in writing. He stated that he could not recall the quantum of sum granted as an overdraft but stated that it has not been fully paid up. The witness could not produce the overdraft agreement as it fell within the retention period of 6 years and it has been destroyed. The Defendant did not call any witnesses and the case was closed. Both counsels submitted written synopsis in support of their case.

The Plaintiff's claim is for recovery of sum of le 155,430,538.71 being money payable; interest at 31% and costs. The Plaintiff's Claim is that sum of le 155,430,538/71 is sum owing and due in respect of an overdraft granted to the Defendant whereas the latter states that this sum represents interest paid on an overdraft of Le 40,000,000/00 which said sum has being paid. The Plaintiff has tendered in evidence a statement of the account of the Defendant commencing January 2002 to 30th April 2009 which shows that the Defendant is in debit in the sum of Le 183,180,642.10. It is evident from the aforesaid that the Defendant has not paid any monies into the account from 18th August 2006 and the overdrawn account continues to accrue interest. The Defendant on the other hand has deposed in affidavit of 18th February 2009 which buttresses the defence filed; that the sum loaned to her was Le 40 million and that the principal sum has been paid plus interest of Le 2,500,000/00 as stated in the Defence marked "PL4" at

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paragraph 1 thereof. The Plaintiff on the other hand by the testimony of Cecil Mammah stated that interest accrues on an overdrawn account which is reflected in the statement of account of the Defendant. The Defendant operated an account which runs into overdraft from 2002 and as a result has been charged interest on the overdrawn account. Even if I accept that the original overdraft was Le 40,000,000/00, it is evident that this Defendant has continued to operate the overdrawn account which continues to attract interest. The witness in his testimony stated that the interest charged is 31% per annum.

The issue for determination is for sum owing and due to the Plaintiff. The Plaintiff has by statement of account of the Defendant shown that the Defendant's account was overdrawn for a number of years and interest continue to be accrued. The Defendant is aware that in the conduct of banking transactions, an overdrawn account does accrue interest; and if an account has been overdrawn since 2002 up to time of action in 2008 interest will be charged on the said account. The Defendant has stated that an overdraft was granted to her in 2002/03 and she has conducted business with the Plaintiff for 30 years. The interest rate charged is specified at 31% and not one to be determined or assessed by this Court. I refer to a previous judgment of this Court FTCC/008/11 INTERNATIONAL COMMERCIAL BANK V IBRAHIM KEITA judgment delivered in February 2012. I do agree with submissions of Counsel for the Plaintiff that the matter of CC:94/07 ROKEL COMMERCIAL BANK (SL) LIMITED V HASSAN NAZZAL relates to an interlocutory application pursuant to Order 13 of the High Court 2007 and is not applicable in instant case. I have considered the statement of account attached to statement of Cecil Mammah. Counsel for the Defendant has not disputed contents in the said statement which covers period from January 2002 to April 2009. The last amount deposited into that account was on 18th August 2006 in the sum of Le 4,500,000/00 leaving a debit balance of Le 79,880,128.46.

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Since that date interest has been charged on a daily basis. It is evident that the Defendant is aware that overdraft facilities do bear interest and other charges. I rely on case of LLOYDS BANK PLC V VOLLER (2000) 2 ALL E R (COMM) 978 in which Wall J stated to wit:

"In my judgment the position is very simple and well established as a matter of banking law and practice. It is this, if a current account is opened by a customer with a Bank with no express agreement as to what the overdraft facility should be, then, in the circumstances where the customer draws a cheque on the account which causes the account to go into overdraft, the customer, by necessary implication, requests the bank to grant the customer an overdraft of the necessary amount on its usual terms as to interest and other charges".

The question is what is interest? This is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another – see case of DUNN TRUST LTD V FEETHAM (1936) 1. K.B. 22. Interest is charged at common law when there is an express agreement to pay interest and/or where the agreement to pay interest can be implied from the course of dealings between the parties – see Re. W. W. DUNCAN & CO (1905) 1. CH. 307 and RE MARQUIS OF ANGLESEY, WILLMOT V. GARDNER (1901) 2. ch. 548; or from the nature of the transaction. The aforesaid has supported the Plaintiff's Claim that interest is paid on overdrawn accounts and as the Defendant has conducted business with the Plaintiff for a period over 30 years, it can be implied from their course of dealings that an overdraft will attract interest. And where the rate of interest is not fixed by statute, agreement or usage, there is no hard and fast rule as to the amount to be allowed and the rate of interest may vary according to the practice of that Court and circumstances of the particular case. The usual practice is to allow five per cent in cases of commercial transactions. Having considered the circumstances of this Court, this overdraft was granted in 2002 and since that time the account ran into

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debit and interest charged thereon. The Defendant continued to operate said account with the knowledge that interest will be charged on overdraft. She made payment into the account up to August 2006. By a letter dated 18th November 2005 marked "PL5" she made a proposal of repayment. She stated in the last paragraph which reads to wit:

"As you may be aware, the initial overdraft sum was Le 40, 000, 000/00 (Forty Million Leones) *which then rose of Le 62,000,000/00 (Sixty Two millions Leones) due to interests.* I made a repayment of Le 20,000,000/00 (Twenty million Leones) of debt. Since then business has been bad". (Emphasis mine)

From the aforesaid and the course of business dealings between the parties, the Defendant was aware that her current account attracted interest. But as the Plaintiff could not produce the written agreement, which is supposed to show the terms of the Parties' agreement and rate of interest, it is implied that due to their course of business interest will be charged on an overdrawn account.

In the premises therefore and considering the circumstance of this matter I hereby give judgment for the Plaintiff and I order as follows:

1. That the Defendant is to pay sum of Le 155,430,538/71 plus interest as per in the second order within six months of the date of this order in six equal installments.
2. Interest on sum of Le 155,430,548/71 at the rate of 5% per Centrum per annum from 7th November 2008 until judgment.
3. Costs of this action to be borne by the Defendant such costs to be taxed if not agreed upon.



HON. JUSTICE V. M. SOLOMON J. A.