

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT

BETWEEN:

MACKIE BUILDING MATERIALS (SL) LIMITED - PLAINTIFF/APPLICANT

AND

COMMERCE & MORTGAGE BANK (SL) PLC - DEFENDANT/RESPONDENT

REPRESENTATION

P. LAMBERT ESQ - PLAINTIFF/APPLICANT
P. FOFANAH ESQ

B. JONES ESQ - DEFENDANT/RESPONDENT

BEFORE THE HON. LADY JUSTICE F. BINTU ALHADI J.

RULING DELIVERED ON THE 16th DAY OF OCTOBER 2019

This is an application that commenced by Notice of Motion dated the 6th day of May 2019 by Mackie Building Materials Limited, the Plaintiff/Applicant against Commerce & Mortgage Bank (SL) Plc, the Defendant/Respondent seeking the following Orders:

1. an assessment of the interest to be paid by the Defendant/Respondent to the Plaintiff pursuant to Order 2 of the Judgment in Default of Defence dated the 14th day of March 2019;
2. that the court grants any further or other relief that may be necessary in this application;
3. that the costs of this application be paid by the Defendant to the Plaintiff/Applicant.

The application was supported by an affidavit sworn to on the 6th day of May 2019 by Ahmad Mackie, a Businessman and Managing Director of the Plaintiff/Applicant.

Counsel for the Plaintiff/Applicant, Mr. Lambert, on the 19th of June 2019 told the court that he relied entirely on the said affidavit; with particular emphasis on Order 2 of the Judgment in Default of Defence made on the 14th day of March 2019, which states that 'payment of interest on the sum of Le 2,500,000,000 from the Defendant to the Plaintiff to be assessed.' He referred the court to section 4 (1) of the Law Reform (Miscellaneous Provisions) Act Cap 19 of the Laws of Sierra Leone 1960 on the award of interest; and urged the court to apply the commercial borrowing bank rate in its assessment.

In summary, Counsel for the Defendant/Respondent, Mr. Jones, in his address to the court, submitted that the court should exercise its discretion in its assessment of the interest.

Assessment and Award of Interest

In the assessment and award of interest, the common law power to award was stated in Page v Newman (1829) 9 B&C 378, where Lord Tenterden MR stated that "the long established rule that interest is not due on money secured by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid, or unless it be implied from the usage of trade, as in the case of mercantile instruments."

As a consequence to the limited power at common law to award interest, Parliament enacted a limited statutory power to award simple interest on judgment debts or awards of damages and the limitations on this power were strictly applied by the courts; s28 of Civil Procedure Act 1833.

From the facts of the case, not only is there a court order asking that interest is to be assessed on a judgment debt; but it is also clear that, the Plaintiff/Applicant utilised banking facilities as in overdrafts and loans, to which payment of interest on the amounts borrowed were paid/or are being paid. Therefore, there is no doubt that money was secured on a written instrument in which interest was charged.

The court's discretion as to rate and period

In B.P. Exploration Co (Libya) Limited v Hunt (No 2) [1979] 1 WLR 783, Robert Goff J at page 845G expressed the "fundamental principle that interest is not awarded as a punishment, but simply because the plaintiff has been deprived of the use of money which was due to him." At page 846 C (supra), he stated that "interest will generally run from the date of accrual of the cause of action in respect of money then due or loss which then accrues; and in respect of loss which accrues at a date between accrual of the cause of action and judgment, from such date."

Also, at page 846 E (supra), he stated that "the power to award interest is discretionary and there is certainly no rule that interest will invariably run from the date of loss; and it is no part of my task to attempt to define the circumstances in which the court will depart from the fundamental principle; indeed, since the discretion to award interest is unfettered, it would be improper to do so."

In the premises therefore, after due consideration of the circumstances, the affidavit and its exhibits as filed and the submissions of Counsel on behalf of the parties; and given that the power to award interest is discretionary, I hereby order as follows to wit:-

1. The interest payable by the Defendant/Respondent is hereby assessed and fixed at 10% from 18th December 2018 to 10th October 2019.
2. Costs of the application is awarded at Le 50,000,000 (Fifty Million Leones).


Signed: Lady Justice F. Bintu Alhadi, J.

Dated: ...10th October 2019