Joana Phiri v Smith Kamwangala

Judgment

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause Number 426 of 2022
Date of Judgment:	May 30, 2025
Bar:	E. Phiri, counsel for the Claimant. T. Nkhata (Mrs), counsel for the defendant

1. The Claimant commenced the present action against the Defendant claiming the sum of K15,750,000.00 due under a promissory note, interest thereon at 1% above the base rate of the note and costs of the action. The Defendant denies issuing a promissory note, alleging instead, that he signed a loan agreement with the Claimant. He denies owing the Claimant the sums claimed or at all. And in his counterclaim, the Defendant prays that the loan transaction between the parties herein be reopened, and for declarations that (i) the Claimant is guilty of operating an unlicensed and unregistered microfinance, (ii) the loan agreement between the parties is illegal and unenforceable and (iii) the Defendant repaid all the monies owed to the Claimant and does not owe the Claimant anything at all.

2. The Claimant's case is that on or about 30th June 2022, the Defendant made and delivered to the Claimant a promissory note by which the Defendant promised to pay the sum of K15,750,000.00 and interest. On 30th July 2022 the Claimant presented the note to the Defendant for payment but it was dishonoured and remains unpaid. As such the Claimant is entitled to the said sum of K15,750,000.00 due under the note, interest thereon pursuant to section **57(a)(i)** and **(ii)** of the **Bills of Exchange Act Cap 48:02** of the **Laws of Malawi** at a rate of 1% above the base rate of the note amounting to K11,340,000.00 at the time of the summons and continuing at a rate of K189,000.00 per day and costs of the action.

3. In order to prove the case two witnesses testified on the Claimant's behalf, to wit, the Claimant herself and one Heatherwick Phanga.

4. In her testimony, the Claimant stated, among other things, that in 2021 the Defendant borrowed from her the sum of K3,000,000.00 which was to be paid back with interest at the rate of 50% by the end of the month. The Defendant only managed to pay back the interest of K1,500,000.00 leaving the principal unpaid. In 2022 the Defendant borrowed from the Claimant another K3,000,000.00 on the same terms. Later in the same year, the Defendant borrowed K1,000,000.00 on similar terms bringing the total amount owed to K7,000,000.00 plus the interest accruing. In around March or April 2022 the Defendant borrowed the sum of K7,000,000.00 which the Claimant sourced from a 'village bank' she belonged to, which sum was to be repaid with interest at

20% by June 2022. The Defendant failed to repay this loan and the Claimant sought the assistance of her brother in law, one Heatherwick Phanga, who, in the company of his cousin Steve Kadammanja, confiscated the Defendant's motor vehicle, registration number DA 8071, Mercedes Benz C Class from the Defendant's home. The vehicle was sold for K5,600,000.00 and the proceeds were used to settle part of the 'village bank' loan. The Claimant used some of her own money to clear the said loan. In July 2022 the Claimant visited the Defendant to demand repayment of the loan of K7,000,000.00 which had now grown to K15,750,000.00 due to the interest charges and the Defendant signed the promissory note, consolidating the loan into one loan attracting interest. By the end of July 2022, the Defendant failed to honour the promissory note. In August 2022 the Defendant made a partial payment of K1,000,000.00 and in September 2022 a further K500,000.00 after the Claimant had impounded another vehicle that the Defendant's wife was using, which turned out to be a hired car. This car, a Toyota Belta, was confiscated by the same brother in law and the Claimant from the Defendant's wife. The Claimant and the brother in law tailed her as she was on her way from dropping her kids at school, overpowered her and relieved her of the car keys. She protested and insisted that they meet her husband, the Defendant. And together, they drove to the Defendant's house. When the Defendant's wife alighted from the car to call the Defendant from the house, the Claimant and her brother in law simply drove off with the Belta. Subsequently the owner of the Belta obtained an order of the Court releasing the vehicle to him. The witness stated that despite the partial payments, the Defendant still owes her the sum of K15,750,000.00 which was due under the promissory note plus interest accruing at the agreed rate. In cross examination, the witness conceded that she has no recording of these money transactions as she lost all her records. She however, contrary to her earlier statement, stated that the total money that was advanced to the Defendant was K9,500,000.00

which was attracting 50% interest every two months. The Defendant only repaid the sum of K3,000,000.00 in total. Some of the money that the Claimant advanced to the Defendant was from Anisha and Alicia who are cousin and sister to the Claimant respectively. Out of the K9,500,000.00 advanced to the Defendant, K5,000,000.00 was from Alicia, K3,000,000.00 from the Claimant (Joana) and K1,500,000.00 from Anisha. The Claimant insisted that the K7,000,000.00 from the 'village bank' was not part of the claim herein as she was only claiming the money she had advanced to the Defendant plus interest as agreed. There were no records of the said K7,000,000.00 being transferred from the 'village bank' to the Defendant. There were also no records of the proceeds from the sale of the Mercedes Benz being paid to the 'village bank' nor of the Claimant topping up the sum of K2,400,000.00 to cover the Defendant's alleged loan with the 'village bank'. The promissory note which the Defendant signed was prepared by someone on the Claimant's behalf. All the Defendant needed to do was to sign the document.

5. The second witness for the Claimant was Heatherwick Phanga (otherwise referred to as Heather Phanga). He stated that sometime in 2022, the Claimant, who is her sister in law, informed him that the Defendant owed her K7,000,000.00 with interest accruing at the rate of 20% per month which loan had been taken from a 'village bank' whose cycle was ending in July 2022. The Claimant sought his assistance in recovering the money. He went to the Defendant's house where he confiscated the Mercedes Benz aforementioned. He subsequently sold the car to a Mr Augustine Banda for K3,500,000.00 apparently because the car had mechanical faults that required fixing before use. The witness stated that he did not forcibly enter or raid the Defendant's house when collecting the vehicle. In cross examination the witness stated that he is not a

registered debt collector and does not deal in debt recovery but decided to get involved anyway as he was informed that the debt was overdue. He was alone when he went to collect the vehicle the keys to which were handed over to him by the Defendant and his wife. The car developed a fault after about a kilometre from the Defendant's house and the Defendant's wife confirmed that it had a mechanical problem. Subsequently, he sold the car for K3,500,000.00 which he sent to the Claimant's account. The witness did not have a sale agreement as evidence of this sale. The witness was made aware that some of the money that the Defendant owed was from Alicia, the Claimant's sister.

6. Similarly, two witnesses testified in the Defendant's defence viz. the Defendant himself and Roina Shariff Kamwangala, his wife.

7. The Defendant, Smith Kamwangala, stated that the Claimant is her niece who lends out money at an interest. Sometime in October 2021 the Claimant lent him K3,000,000.00 repayable with 50% interest in two months. He borrowed further sums of K1,000,000.00 and K6,000,000.00 sometime in November 2021 bringing the total owing to K10,000,000.00. There were no records for the transactions. In December 2021 he repaid K1,500,000.00 by cheque and in February 2022 he repaid K4,500,000.00 in cash. Between March and May the Defendant paid the Claimant small amounts of about K100,000.00 on not less than three occasions. In May 2022 the Claimant engaged mercenaries who came to his house to harass him. They found the Defendant's wife and went away with the Mercedes Benz. Sometime in June 2022 he was informed that the car had been sold and he obliged by facilitating a change of ownership of the vehicle to the new owner. He thought the matter was closed then. But he thought wrong. The Claimant

continued to demand more money even though she never indicated how much the vehicle was sold for and how much was still outstanding. The Defendant gave her K500,000.00 on one occasion and K400,000.00 on two separate occasions. In July 2022 the Claimant again sent mercenaries to his house to squeeze him and it was then that he was informed that his debt was K15,750,000.00. He was not told how this figure was arrived at but was made to sign the loan agreement. The men refused to leave the house until he signed and committed to settle the said sum. It was humiliating. He had no choice but to sign the agreement so that the men could go away. In August 2022 the Defendant paid K1,000,000.00 (K600,000.00 through the bank and K400,000.00 cash). Again, the Claimant hired mercenaries who followed his wife on her way to drop kids off at school and seized the car she was using even though it was a hired vehicle. On the day of the release of this vehicle by the order of the Court, on 8th September 2022, the Defendant paid K500,000.00 to the Claimant's account as well as K125,000.00 to the owner of the car for the period that the Claimant had held on to the car. On 26th September 2022 the Defendant paid K500,000.00 to the Claimant's account. In total the Defendant has paid to the Claimant in excess of K9,300,000.00. The lowest the seized vehicle could fetch on the market was K9,000,000.00 and consequently the Defendant had fully discharged the debt owed and interest herein. In cross examination the Defendant said he never got the K7,000,000.00 from the 'village bank'. He also said that of the men that came to harass him at his house, he was able to recognise Kadammanja and Flint from Mchesi. He valued the Mercedes Benz at over K4,000,000.00.

8. Roina Shariff Kamwangala stated, among other things, that although she didn't have sufficient details of the transaction between the Claimant and the Defendant herein, she was made aware that the Defendant had borrowed money

from the Claimant. On one occasion the Claimant and Alicia came to her home to demand for the money and she gave them K400,000.00 on the Defendant's instruction. The next time the Claimant came to the house she was in the company of Alicia's boyfriend, one Heatherwick Phanga and some 6 or 7 bouncers in black cargo pants, boots, t-shirts and berets. After a heated conversation the witness offered her Mercedes Benz for them to sell and offset the debt which was said to be at K4,000,000.00 upon which the people left. The witness never heard anything at all and was of the belief that the debt had thereby been fully settled only to be waylaid by the Claimant and the said Heather Phanga and another heavily built man when she was dropping off kids at school. They demanded the keys to the vehicle she was driving. Although she informed them that it was a hired vehicle, they couldn't hear any of that. Heather Phanga managed to pull the car keys from her "bra" at which point she insisted that they all come home so that they could inform the Defendant about this. They agreed and drove to the Defendant's house whilst shouting, yelling and spewing insults at the Defendant, asking how he could afford to hire a car at K30,000.00 per day when their debt remained unpaid. When they got home, she dropped off and went into the house to call her husband, the Defendant. No sooner had she gone into the house that the crew sped off with the car leaving her scared and humiliated at this treatment she was subjected to by her very own niece. In cross examination, the witness conceded that whilst the fracas during which Heather Phanga snatched the car keys from her was a heated one, he did not get into her 'bra'.

9. We took the liberty to reproduce the evidence at length as above upon noticing the significant amount of discrepancies in the version of events as narrated by the two parties to this case. As can be observed, the monetary

transactions leading to these proceedings were largely done and concluded between the Claimant and the Defendant. No one else was privy to the transactions. There are basically no written records to support or prove the transactions. The Court is left with the task of reconstructing the events as they unfolded and making findings of fact as to what really happened herein from the evidence presented in Court. The parties, Joana Phiri and Smith Kamwangala, know exactly what happened. The exact truth. Between the two of them, they have elected to shy away from that unshakable truth deferring instead to the Court the task of determining the facts herein. We shall not shy away from that responsibility. On a balance of probabilities, we shall decide for the parties, what the truth of this matter is. It is a responsibility that is placed on us by the law.

10. We sadly note that the parties herein are family. The Defendant, Smith Kamwangala is married to Roina Shariff Kamwangala, his other witness. The Claimant, Joana Phiri, is the daughter of Roina Kamwangala's cousin. She is Roina Kamwangala's niece. The Defendant is therefore the Claimant's uncle. The Alicia that is mentioned in the testimony is Joana's sister. Just as to Joana, so are the Defendant and his wife, an Uncle and Aunt to Alicia. Uncle Smith and Aunt Roina. Heather Phanga, the enforcer, is Alicia's husband and therefore brother in law to Joana, the Claimant. To the aforementioned Heather, Uncle Smith and Aunt Roina are, for all intents and purposes, his *Apongozi.* On any day these should be his wife's marriage advocates really (*ankhoswe* as we say), sorting out domestic issues in his marriage with Alicia. But no, here they are, feeling the full weight of his 15″ biceps and admirably built torso. Anisha, who also gets an honorary mention in the evidence is cousins to Joana and Alicia, and thereby a 'cousin in law' to Heather and a niece to Uncle Smith and Aunt Roina. It's a full family web. We find it a shame that the pursuit of profithood has superseded familyhood.

Profitability has come at the expense of family values. Humanity has taken a back seat, compassion is out of the window and human values have been cast aside. It is full bloodied cannibalism out there. Brother eat brother. Luckily, as we quickly remind ourselves, we are not a Court of morals. We are not a church. We are a Court of law. Tasked with the Constitutional duty to interpret, protect and enforce the Constitution and all laws of the land in an independent and impartial manner and to do so only with regard to legally relevant facts and the applicable law. And in that manner, we proceed to pronounce judgment.

11. The burden of proof in civil matters lies upon the party who substantially asserts the affirmative of the issue. (**Robbins v National Trust Company (1927) AC 5115, @520**). The burden is fixed at the beginning of the trial by the state of the pleadings and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleadings place it, and never shifting in any circumstance whatsoever. (see **Limbe Leaf Tobacco Ltd v. Chikwawa and others [1996] MLR 480, Commercial Bank of Malawi v Mhango [2002-2003] MLR 43).** In **Joseph Constantine Steamship Lime Ltd v. Imperial Smelting Corporations Ltd. [1942] AC 154) Lord Maugham** said at page 174:

"The burden of proof in any particular case depends on the circumstances in which the claim arises. In general, the rule which applies is **ei qui affirmat**

non ei qui incumbit probatio. It is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons."

12. The standard of proof in civil matters is on a balance of probabilities. If the evidence is such that the tribunal can say, ‘we think it more probable that not’, the burden is discharged, but if the probabilities are equal, it is not. The degree of probability which must be established will vary from case to case per **Denning J** (as he then was) in **Miller v Minister of Pensions (1947) 2ALLER 372**. See also **Commercial Cause Number 352 of 2021 Gerald Mponda t/a Everest Printing Press v National Bank of Malawi Nominees Limited and I.I. Mahomed Settlement Trust**, a decision of my brother Judge **Msungama, J.**

13. **Section 89** of the **Bills of Exchange Act Cap 48:02** of the **Laws of Malawi** defines what a promissory note is. It provides as follows:

89. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at

a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker’s order is not a note within the meaning of this section unless and until it is indorsed by

the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Malaŵi is an inland note. Any other note is a foreign note.

For a note to be complete it must be delivered to the payee or bearer. **Section 90** is couched in the following terms:

90. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Presentment of the note is key. Where the note is made payable at a particular place, it must be presented at that place. **Section 93** covers presentment when it provides:

93.(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render

the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

14. Any note that purports to be a promissory note must conform to **section 89** of the Act. That is the measure. An unconditional promise in writing **made** by one person. We highlight the word **made** deliberately. What purports to be the promissory note herein was exhibited by both parties. It is marked exhibit **JP1** as well as **SM2**. Whether the Defendant **made** this unconditional promise in writing is the first question. The Claimant confirmed in evidence that the actual physical document was done for her by someone else. All the Defendant had to do was sign it. In our view, the actual making of the physical document is of little consequence. If one appends their signature to it, they adopt the document as

their own. It is as good as physically drafting it. However, “making” denotes the exercise of one’s free will. If it be a signature it must be affixed to a document of one’s own accord. Acting independently, without coercion or force. The Defendant stated in evidence that, at the Claimant’s behest, mercenaries descended on his house to squeeze him. They would not leave unless he signed the document. It was a scene witnessed by the Defendant’s wife, children and neighbours. On the totality of the evidence herein, we are inclined to agree that this signing ceremony was anything but peaceful. There were no hugs and kisses and handshakes and huge beaming smiles. The Defendant was bullied into signing this document. He had no choice. In order for peace to reign he had to sign. A document signed in these circumstances cannot be said to have been made by the person so signing. The Defendant did not make this document. On that account the claim that the Defendant made a promissory note herein must fail. We so hold.

15. Again, in order for an indorser of a note to be liable presentment for payment is necessary. The note must have been presented for payment and dishonoured. The evidence herein does not prove presentment at all. Instead we have rough necks being called in to squeeze a payment out of the Defendant. At no point does it appear to us that the promissory note was presented in the sense of the law.

16. Further, we note that the purported promissory note exhibited herein is a two-page document. It has the Claimant’s name at the top of each of the 2 pages. Then a heading on the front page. It says **“LOAN AGREEMENT FORM”**. In bold and upper case. It contains loan information, the amount to be repaid and

is signed by the Defendant at a space provided for **“Borrowers Name”.** Somewhere within the document it has a section titled “Promise to Pay” which is couched in the following terms:

In return of me agreeing to lend you the principal sum shown in the loan information section. You agree to this promissory note and promise to pay me

the total sum together with interest as set in the payment plan and any additional charges owing by you to me. When you have paid me the full amount

of the loan, this agreement will come to an end. You agree that the additional provisions below are part of this promissory note. You acknowledge that

you have read and understand the Additional provision and agree to comply with them.

17. This is the passage, we think, on which the claim that this document is a promissory note is founded. In our opinion, however, quite apart from the fact that the above passage refers to the document as a promissory note, it clearly is not. The document is what it says it is. A Loan Agreement Form. Complete with a loan amount, loan interest percentages and loan repayment modes. The Defendant is clearly marked as a Borrower. The Claimant purports to agree to lend the Defendant a sum shown in the document. This is not an unconditional promise to pay on demand or at a fixed determinable future a sum certain in money as envisaged under **section 89(1)** of the Act. The sum expected herein is not certain. The sum in the document is in addition to interest as well as other additional charges owing by the Defendant to the Claimant. Those additional sums are unknown. The sum is not made payable on demand or at a fixed

determinable future. It only says “first payment month end of July of 5 million.” There is no date in July. There is certainly no mention of when the rest of it will be payable. On these grounds too, the note would fail to pass the **section 89** test for a promissory note.

18. The Claimant alleged that there was a promissory note made by the Defendant in her favour on the basis of which she is entitled to the sum of K15,750,000.00. The burden to prove the existence of such a note was on her. She has failed to discharge that burden. On a balance of probabilities, we find that there was in fact no promissory note herein. End of story.

19. The above conclusion notwithstanding, we feel compelled to say something about the “loan” between the parties herein. We cannot be pussyfooting around this issue. Clearly this is usury. *Katapila* as we call it. The evidence clearly points to the practice of lending money at excessive, predatory or unlawfully high interest rates. Whilst there is generally no law preventing an individual from lending money to his friend, but doing so at predatory interests is illegal. We see it in this Court every day. *Katapila* clothed in fine linen to avoid detection. Many a time we are unable to see the transaction for what it really is. This particular one was dressed in a promissory note three-piece suit. Complete with a matching pocket square and silk necktie. That suit having fallen off the *Katapila* has been exposed. With nowhere to hide. The **Loans Recovery Act, Cap 6:04** of the **Laws of Malawi** provides, in **section 3** as follows:

3.—(1) Where proceedings are taken in any court for the recovery of any money lent after the commencement of this Act, or the enforcement of any

agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this

Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts

charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, are excessive, and that, in either case, the transaction is harsh

and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction, and take an account between

the lender and the person sued, and may, notwithstanding any statement or settlement of the account or any agreement purporting to close

previous dealings and create a new obligation, reopen any account already taken between them, and relieve the person sued from payment of any

sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges, as the court having regard to the

risk and all the circumstances, may adjudge to be reasonable; and, if any such excess has been paid, or allowed in account, by the debtor, may order

the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by

the lender, and if the lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a lender shall have and may, at the instance of the borrower or

surety or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money

lent; and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the

borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalments thereof, may not have arrived.

20. A loan transaction can be reopened where the Court is of the view that the interest charged on the loan is excessive, harsh or unconscionable. In **Mwalwanda v Sipedi [1990] 13 MLR 278 Unyolo, J** (as he then was) held, among other things, that the **Loans Recovery Act** applied to all money-lending transactions generally, and not only to the professional moneylenders or katapila and that the interest accrued in that case (a claim of K4,120.00 on a debt of K200 over 10 months) was excessive and the transaction was harsh and unconscionable. In **Mapanga Furniture Limited and another v Finance Bank Malawi Limited (in voluntary liquidation) [2008] MLR (Comm) 191, Kapanda J** (as he then was) stated at 212;

"As I understand it, this Court has jurisdiction to relieve a debtor from excessive or harsh interest on money lent. In point of fact, this Court has

statutory jurisdiction to re open a money-lending transaction with a view to relieving a debtor from harsh, unconscionable and excessive terms.

Actually, in saying thus, I am guided by section 3 of the Loans Recovery Act....”

21. In the instant case, the Claimant stated that the loans advanced herein were subject to 50% interest compounded every month. The Defendant stated that the interest was 50% to be compounded every two months. Whichever way you look at it, the interest was harsh, excessive and unconscionable. This is a proper case in which the transaction ought to be revisited so as to relieve the Defendant from these harsh and unconscionable terms, in line with the provisions of the **Loans Recovery Act.**

22. As observed earlier, there are no records to support which amounts were advanced to the Defendant or all the amounts that are said to have been paid back to the Claimant. The matter is dependent on the Claimant’s word as weighed against the Defendant’s. Had there been no admission on the part of the Defendant that indeed the sums of money were advanced to him, the claim would have been extremely difficult to prove. Again, we hold the view that the sums advanced were from the Claimant to the Defendant. Irrespective of where she got the money from, be it a ‘village bank’, Alicia or Anisha. There were no separate money lending agreements that were created between the aforementioned ‘village bank’, Alicia or Anisha with the Defendant. The agreement was always between the Claimant and the Defendant. If it were otherwise, then the Claimant would not have the right to sue the Defendant on

the sum claimed as she did herein. She would lack standing. It would have to be the ‘village bank’ or Alicia or Anisha suing, as the case may be. It is our finding that the money advanced was from the Claimant and the money paid back by the Defendant was towards this debt that the Defendant had with the Claimant. The other mentioned parties were the Claimant’s responsibility to sort out. By his own admission, the total that had been advanced to the Defendant amounted to K10,000,000.00. We found the Defendant a credible witness and are inclined to hold that that was the total amount loaned out. As against this sum, the total sum of K9,300,000.00 had been paid back. In addition to this the Claimant impounded and sold the Defendant’s motor vehicle, a Mercedes Benz C Class. In his testimony, Heather Phanga said the vehicle was sold to a Mr Augustine Banda for K3,500,000.00. There was no sale agreement. There was no evidence of this selling price. There was no deposit slip of this amount being deposited into the Claimant’s account as he alleged it was. It was just his word. The Claimant on the other hand said the vehicle was sold for K5,600,000.00 which money she paid to her ‘village bank’. Again, this payment to the ‘village bank’ was unsupported by any documentary evidence. She was the one owed money. She probably remembers what she received for the vehicle more than Heather Phanga. This may not have been the actual market value of the vehicle then, as the Defendant has tried to demonstrate. However, going with the Claimant’s word, the vehicle fetched K5,600,000.00. When this is added to the K9,300,000.00 that was paid to the Claimant, the total received is K14,900,000.00. From the time the first chunk of the loan was advanced to the Defendant to the time the last part payment was made by the Defendant, a period of 12 months had elapsed. In between, payments were being made towards the loan which the Claimant decided not to take into account. Ordinarily the sum due ought to have been reduced with each payment made on account. On top of that a prestigious motor vehicle (whichever way you look at it) was seized and sold off on account of the same loan. From

2021 the bank lending rates steadily moved from around 12.2% per annum to around 17.3% per annum by 2022 before sky rocketing to around 32.33% per annum. Using the “worst” interest rate as a guide, for illustration purposes, simple interest on a loan of K10,000,000.00 at the rate of 32.33% per annum should be around K3,233,000.00 after 12 months. This would mean that at the end of a 12 months period the total due and payable would be K13,233,000.00. As found the Defendant herein has paid back a total of K14,900,000.00. On this account, it is our finding that the Defendant fully discharged the obligations he had with the Claimant and does not now owe the Claimant any further sums at all. We so hold.

23. Finally, we take judicial notice of the growing tendency of people hiring muscle men as debt collectors to harass debtors and squeeze them of every drop of blood. This practice appears to be going on unabated. It has surfaced in this Court in a number of cases. We cannot let it continue without a judicial pronouncement. It is in evidence in the instant case that the Claimant hired her brother in law, the said Heather Phanga, to collect the debt on her behalf. He, in the company of at least Steve Kadammanja and Flint, known muscle men from Mchesi, descended on the Defendant to carry out the instruction. They confiscated the Mercedes Benz. They pounced on the Defendant’s wife whilst on an errand as innocent as dropping kids to school. Harassed her by the road side. Overpowered her and took control of the Belta she was driving. Tricked her into believing they were going together with her to her house to meet and discuss the issue with her husband, the Defendant herein. She didn’t owe them anything. Whatever issues there might have been were with the husband. The moment she alighted from the vehicle into her house they decamped. With the Belta. This is mob (in)justice. It is illegal. Debt collection is the preserve of legal practitioners.

In dealing with restrictions to practice by legal practitioners, **Section 31 (1) (c)** of the **Legal Education and Legal Practitioners Act Cap 3:04** of the **Laws of Malawi** provides as follows:

(1) Any person who is not, or who has ceased to be, entitled to practise as a legal practitioner before the courts of Malawi by virtue of this Act or any

other written law, and who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly,

does any of the following acts

(c) does any other work in respect of which scale or minimum charges are laid down by the Legal Practitioners (Scale and Minimum Charges)

Rules, or by any other rules for the time being in force prescribing or relating to charges for any services to be performed by a legal

practitioner, shall be liable to a fine of five million kwacha and imprisonment for ten years.

Debt collection fees are regulated under **Table 6** of the **Legal Practitioners (Scale and Minimum Charges) Rules.** In our view, someone who is not a legal practitioner may not, therefore, collect debts for a fee, a gain or a reward. If he does so, he commits an offence, for which he may suffer a long prison term. The Law Commission, in its work on the liberalisation of the debt collection regime and its development of a Bill on the same remarked on page 117 of its Report on the review of the Legal Education and Legal Practitioners Act, as follows:

Firstly, upon examination of section 24 (1) (c) [of the Legal Education and Legal Practitioners Act], the commission was of the view that debt collection

is a

preserve of legal practitioners only and it is an offence for a non-legal practitioner to conduct debt collection.

This remark would surely not have been necessary were it that debt collection was for everyone. However, even the lawyers do not just go about seizing other people's property in their debt collection exercise. The lawyer would almost always write a letter of demand. And if the debtor does not accede to it, they invariably resort to the Courts for help. A summons would be taken out, kick starting debt collection proceedings, all the way to execution by the Sheriff of Malawi in the event of judgment. That is the way the law works. Anything else is pure thuggery and should, in all appropriate cases, be visited with the necessary sanctions permitted by law.

24. In conclusion therefore the Claimant's claim for the sum of K15,750,000.00 under a promissory note is hereby dismissed. The transaction between the parties was usury. The interest terms on that transaction were excessive, harsh and unconscionable. And on a true account of the transaction the Defendant paid back to the Claimant all that was due from him and does not owe the Claimant any money at all.

25. Considering the peculiar nature of this case, in particular, the relationship between the parties herein, we hereby exercise our discretion and order each party to pay their own costs for these proceedings. It is so decided.

Pronounced in open Court at Lilongwe this **30th** day of **May 2025.**