

Mehmet Salih Bayrakday v Mohammed Abdul Mennan

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause Number 162 of 2025
Date of Judgment:	November 05, 2025
Bar:	appellant unrepresented respondent unrepresented

The **Claimant** applied for summary judgment in the High Court of Malawi, Commercial Division, against the **Defendant** for the payment of **\$110,000.00**. The **Claimant** instituted proceedings seeking the sum advanced, compound interest, damages for breach of agreement, contractual debt collection costs, and costs of the action. The **Claimant** based their application on an **Acknowledgement of Debt** executed by both parties on 29th November 2024, in which the **Defendant** admitted being truly and lawfully indebted to the **Claimant** for the stated sum arising from a loan, which was to be repaid within six months. The debt remained unpaid. The Defendant filed a Defence denying

that any money was advanced and pleaded *non est factum*, alleging that the Acknowledgment of Debt was signed under a mistaken belief as to its nature, possibly due to fraudulent misrepresentation or undue influence by the Claimant.

The principal legal question before the Court was whether the Defendant's pleaded defence of *non est factum*, mistake, and fraudulent misrepresentation raised a triable issue sufficient to defeat the application for summary judgment as required by **Order 12 rule 23(1)** of the **Courts (High Court) (Civil Procedure) Rules 2017**.

The Court held that it is established legal requirement that matters such as duress, fraud, misrepresentation, or *non est factum* must be **specifically and carefully pleaded with full particulars** as to where, when, by whom, and in what way the duress, mistake, or fraud was exercised. Examining the Defendant's statement of case, the Court found a complete absence of such particulars. Furthermore, the Court held that the language of the Acknowledgement of Debt was "clear and unambiguous," its purpose "bare for all to see," and that the Defendant "unequivocally acknowledge[d] his indebtedness". Given the clear nature of the document and the lack of requisite particulars for the defence, the Court was inclined to hold that the defence raised no triable issues and had no prospect of success at trial. The application was allowed, and **summary judgment was entered for the Claimant**. The Court awarded the Claimant the sum of **US\$110,000.00**. The Court also ordered the Defendant to pay interest at **5% above the National Bank of Malawi commercial lending rate** from 29th May 2025 (six months after the

agreement) until full settlement, and ordered the Defendant to pay **contractual debt collection costs** in terms of the *Legal Practitioners (Scale and Minimum Charges) Rules*. The Claimant was also awarded costs of the action.