

Mwalwanda v Sipedi [1990] 13 MLR 278

Summary

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| Court: | High Court of Malawi |
| Registry: | Civil Division |
| Bench: | His Honourable Justice L Unyolo |
| Cause Number: | (Civil Cause Number 140 of 1989) |
| Date of Judgment: | April 06, 1990 |
| Bar: | For the Applicant: Mzunda For the Respondent: Mhone |

The Applicant sought relief by originating motion under the Loans Recovery Act, Cap. 6:04, against the Respondent concerning a money-lending transaction. The Applicant contended she borrowed K200.00 in March 1988, which attracted excessive interest, reaching K4,320.00 by December of the same year, and that the Respondent took her bottle cooler as security. The Respondent's position was that she loaned K3,160.00, not K200.00, in March 1987, and that the transaction was a simple bailment, not a money-lending transaction under the Act.

The principal questions for the Court were to determine the credibility of the parties and whether the transaction fell within the scope of the Loans Recovery

Act. The Court found the Applicant's evidence more credible, noting the Respondent's numerous contradictions between her affidavit and viva voce testimony, as well as an exhibited document that was conveniently torn. The Court rejected the submission that the Loans Recovery Act was limited to professional moneylenders, holding instead that the Act applied generally to all money-lending transactions. The Court concluded that the interest charged by the Respondent was excessive, and the transaction was harsh and unconscionable. The Court reopened the transaction and took an account between the parties. The appeal was allowed. The Court held that the Respondent was entitled only to the principal sum of K200.00 plus interest at the prevailing bank rate, given that the Respondent had benefited from using the Applicant's bottle cooler which she held as security. The Court awarded interest at 19% per annum from 1 March 1988 to the date of payment.