

Joana Phiri v Smith Kamwangala

Summary

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

The Claimant sought an order in the High Court for the payment of **K15,750,000.00**, along with interest and costs, under a promissory note allegedly issued by the Defendant. The Defendant, who is the Claimant's uncle, denied the claim, asserting that the transaction was a loan agreement. The Defendant counterclaimed for the loan transaction to be reopened, seeking a declaration that the Claimant was operating an unlicensed microfinance business, that the agreement was illegal and unenforceable, and that all monies owed to the Claimant had been repaid. The background of the dispute involved the Claimant advancing several loans to the Defendant, which added up to **K10,000,000.00** with a significant interest rate of **50%** per month. The Defendant managed to repay back **K9,300,000.00** in cash and **K5,600,000.00**

through the confiscation and sale of his Mercedes Benz vehicle by the Claimant. All of this happened within a period of about 12 months. Nonetheless, the outstanding loan eventually accumulated to **K15,750,000.00** due to the compound interest rate. He was not told how this figure was arrived at. Despite having paid the Claimant the sums amounting to **K14,900,000.00**, the Defendant was coerced to sign the loan agreement confirming of the outstanding loan of **K15,750,000.00** herein. Further, in the efforts to recover the above-mentioned outstanding loan, the Claimant seized by force a hired motor vehicle which was being used by the Defendant's wife. However, the same was released to the owner through a Court order. The Defendant argued that the debt had been fully repaid through cash payments and the confiscation and sale of his Mercedes Benz vehicle.

The Court was called upon to determine whether the transaction was a valid promissory note or a usury (*katapila*) loan agreement and whether the Defendant was still indebted to the Claimant. The Court also had to consider the legality of the Claimant's debt collection methods.

The Court found that the transaction did not meet the requirements of a promissory note under Sections 89, 90 and 93 of the Bills of Exchange Act. It held that the transaction herein was rather a loan agreement with excessive, harsh, and unconscionable interest terms, constituting usury per Section 3 of Loans Recovery Act. The Court further noted that at the end of a 12 months period using the bank lending rates, the total due and payable by the Defendant would be **K13,233,000.00**. Therefore, it was concluded that the Defendant had paid back all that was due, since he had paid the Claimant **K14,900,000.00**, he

owed nothing to the Claimant. The Court strongly condemned the Claimant's extra-judicial debt collection as 'thuggery' and emphasised that the proper procedure for debt collection is done by Legal Practitioners through the courts, culminating in execution by the Sheriff of Malawi per the Legal Education and Legal Practitioners Act. The Court, exercising its discretion, ordered each party to bear their own costs, citing the peculiar nature of the case in terms of the familial relationship between the parties.