M.A Motors Limited v Infracon Limited

Judgment

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause Number 206 of 2021
Date of Judgment:	January 10, 2025
Bar:	F. Mbwana, of counsel for the Claimant, Y. E. Soko, of counsel for the Defendant respondent unrepresented

1. The Claimant, M.A Motors Limited, commenced the present action claiming against the Defendant, Infracon Limited, the sum of K5,040,468.00 being the cost of repairing and servicing the Defendant's motor vehicle, interest thereon at 5% above the commercial bank's lending rate, indemnity for collection costs in the sum of K281,214.00 and costs of the action. The Defendant denies liability on the basis that there was no contract formed between the parties. Alternatively, the Defendant states that if there was such a contract then the same was fundamentally breached by the Claimant on account of its shoddy and incompetent repair services. Consequently, the Defendant counterclaims against the Claimant damages for breach of contract.

2. The facts of this case are fairly straight forward. The Claimant is in the business of motor vehicle spares and services. The Defendant was, at all material times, the owner of motor vehicle Toyota Land Cruiser, registration number NA 3155 that was, at the material time, in need of servicing. The said vehicle was delivered by the Defendant to the Claimant's garage for service sometime between April and June 2020. The Claimant performed the required works on the vehicle for which it charged the Defendant the total sum of K5,040,468.00. The said sum has remained due and outstanding to date. On the other hand, whilst acknowledging that the said vehicle was indeed delivered to the Claimant for repairs, the Defendant states that the parties never agreed on the rates to be used for charging for the said repair works beforehand and therefore, on that account, no contract was formed between the parties capable of being enforced. If there was formed such a contract, which the Defendant denies, the Defendant alleges that the same was breached by the Claimant through its shoddy and incompetent repair services which forced the Defendant to take the vehicle to another garage for repairs as a result of which the Defendant suffered loss and damage. The Claimant denies ever carrying out shoddy work on the vehicle, alleging instead that the vehicle was released to the Defendant after the repair works were completed to the required professional standards.

3. At the hearing of the matter the Claimant called one witness, Mr. Andrew Moya, the Claimant's Managing Director whilst the Defendant called Mr. Trevor Elias Hiwa, the Defendant's Managing Director. The parties also filed with the Court written submissions. It is not our intention to reproduce all the arguments advanced by the parties in this Judgment save to say that all the submissions

and arguments have been thoroughly considered by the Court in coming up with this decision.

4. In brief, Mr. Andrew Moya, testifying on behalf of the Claimant, stated that the Claimant garage has been in business since 1998 and has over 30 employees. Around June 2020, on the strength of a contract, partly in writing and partly oral, the Defendant brought its vehicle to the Claimant's garage for repairs and service. Upon satisfactory completion of the job, the Claimant issued two invoices to the Defendant (Exhibits **AM 1** and **AM 2**) totalling K5,040,468.00 for the work done. The two invoices have remained unsettled from 13th September 2020 to this very day. Mr. Andrew Moya confirmed, in cross examination, however that there was no written agreement between the parties that had been presented in Court. He also confirmed that no quotations for the work that was to be done, which were referred to in the Claimant's job cards were available in Court, even though he stated that the same had been issued to the Defendant. The witness stated further that the agreement between the parties was that the Defendant would pay for the service rendered once the job was done per the quotations that had been issued herein. Mr. Moya confirmed that he did not personally work on the Defendant's car. The job was done by his mechanics and technicians. His role was to oversee the work done by the said mechanics and technicians as the overall in-charge of the garage. At no point, the witness said, did he recommend an engine overhaul for the Defendant's vehicle. He confirmed that whenever a customer is not satisfied with work done on his vehicle, the standard practice is for the customer to bring the vehicle back to the garage to be reworked on, and in the instant case the Defendant's vehicle was never brought back to the garage. As per the invoice issued, the witness said the vehicle underwent major service and body works which were satisfactorily done before the vehicle was

released to the Defendant.

5. Mr. Trevor Elias Hiwa was called to the stand on behalf of the Defendant. He stated that their vehicle was sent to the Claimant's garage for redecoration and repairs to the suspension. The Defendant expected, as was the standard practice, to be given a quotation for the said work for their approval before the works commenced. The quotation was never provided. In the course of following up on the quotation through their driver, the driver was informed that the vehicle had been repaired and was given an invoice instead. Upon inspecting the vehicle, the witness said, the Defendant discovered several defects such that they sent the vehicle back, with a report on the defects noted. After a while the Claimant's garage advised that the vehicle had been worked upon but the Defendant discovered that the vehicle was in an even worse condition than before, totally unusable and requiring an engine overhaul. From the information received from the Claimant's officers, the vehicle had developed engine problems whilst at the garage. The witness stated that subsequently the vehicle was towed to another garage, Juwawo Garage, who confirmed the substantial damage to the vehicle's engine. A second opinion was sought from yet another garage, Mr Land Cruiser in Kanengo, in the city of Lilongwe, who suggested replacing the engine with a completely new one. The Defendant ended up selling the hood of the vehicle for K1,000,000.00 as they did not have the funds to procure a new engine. The witness confirmed that the two invoices received have remained unsettled as the Defendant was never satisfied with the work done by the Claimant, if at all. The two parties, the witness said, had done business before for many years and the Claimant's invoices had always been settled save for these ones owing to the disagreement. Mr Hiwa stated that the vehicle was driven to the garage from one of their project sites but was towed

out completely wrecked.

6. The Court is now called upon to determine two main questions: whether a valid contract was entered into between the parties herein entitling the Claimant to claim the sums claimed for; and, if indeed the parties entered into such a valid contract, whether the Claimant so fundamentally breached it so as not to be entitled to the sums claimed, and by reason of which breach the Defendant is entitled to damages.

7. We quickly remind ourselves, as correctly submitted by the parties, of the burden and standard of proof in proceedings of this nature. It is trite that he who asserts must prove. It is not the duty of the other party to disprove those assertions. The rule being *ei qui affirmat non ei qui incumbit probatio* (proof rests on he who affirms not he who denies). The rule was approved by the House of Lords in **Joseph Constantine Line v Imperial Smelting Corporation [1942] AC 154** where **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."

Kapanda J (as he then was) adopted the rule in **Burco Electronics Systems Limited v City Motors Limited** [2008] MLR (Com) 93 at p111. It is, again, settled that the standard of proof is on a balance of probabilities. (see **Personal Injury Cause Number 902 of 2016 Ernest Alumando v Naming'omba Tea**

Estates Limited (High Court) (unreported) per **Tembo J.** Propositions of law so settled that they now need, in all earnest, no citation of authorities.

8. The Defendant argues, among other things, that at the heart of a contract is the meeting of the minds where the parties willingly and consciously decide to enter into legally binding obligations. The existence of an offer and acceptance on all terms being a must. The parties did not agree on the rate to be used for the charging of the repair service, so the Defendant contends, and therefore no valid contract could ever have existed between the parties. The learned authors of **Cheshire's Contract Law 12th Edition,** as they have stated and restated the law on contracts to us over the years, are cited. But most importantly is the decision by **Dr Mtambo, J** in J**oseph Chidanti Malunga v Fintec Consultants and another, [2008] MLR (Com) 243** in which he says,

"For there to be a valid contract one of the essentials is that there must be an agreement. The agreement is made up of offer and acceptance. An offer is an

expression of willingness by one person the offeror to enter into a relationship with another person the offeree with an intention that the relationship shall

be binding on the offeror as soon as the offer is accepted by the offeree. An acceptance is a final and unqualified assent to all the terms of an offer. It must not

treat the negotiations as still underway otherwise it fails as valid acceptance."

9. Whilst the position at law on offer and acceptance expressed above is absolutely correct, it is still possible for a valid contract to be entered into by the parties even though not every term of the contract, including a term as to the price, has been agreed upon between the parties. The position is not cast in stone as the Defendant, leaning on the decision by **Dr Mtambo J** above, would seem to suggest. And we look no further than the decision of **Katsala J** (as he then was) in **Commercial Cause Number 89 of 2010 Dhiren Thakrar v Faisal Okhai & Internet Malawi Limited** in which he discussed the **Joseph Chidanti Malunga** case at length such that it may not be necessary for us to reinvent the wheel. He said, and we quote, at length too:

"I do not wish to restate the law on contracts. It is very clear. What my brother judge said about offer and acceptance is correct. I am therefore in total

agreement with the judge on his statement of the principles of law on offer and acceptance. However, I do not seem to be comfortable with the general

statement he makes to the effect that there must be full and complete agreement on all terms for a contract to exist. With the greatest respect, I have serious

doubts that this is a correct statement of the law as it is today. Commercial practice and even the approach of the courts when interpreting agreements do not

seem to support this position. And if the courts were to adopt this view, I bet, the majority of contracts being entered into today in the world of commerce would

be found wanting and unenforceable in our courts. It is not always that parties to a contract sit down and agree on all the terms of a contract. Of course,

it is

desirable that all terms must be agreed upon between the parties, but business practicality has proven that this is not always possible.

There are many instances where the courts have found the existence of a valid contract even where the parties did not agree on all the necessary terms.

Commercial agreements are intended to be binding in principle even though the parties are not at the time able or willing to settle all the terms. A good

example is a contract of insurance which many a time is made "at a premium to be arranged" when immediate cover is needed but there is no time for the

parties to go into all the details. This is a very common practice in the insurance industry. How absurd it would be if the courts were to hold that such

agreements for insurance are not binding because there was no agreement on the premium payable. Wisely, the courts have held that such agreements are

valid and in the absence of agreement on premium, a reasonable premium must be paid, ***Glicksten & Son Ltd v State Assurance Co (1922) 10Ll.L. Rep. 604.***

Further, in sale of goods cases, failure to agree on the price does not render the agreement incomplete and unenforceable. ***Section 10*** *of the* ***Sale of Goods Act***

provides that in such circumstance, a reasonable price must be paid.

Examples abound of cases where the parties did not agree on important terms but the courts have found such agreements contractually binding. In ***Perry v***

Suffields Ltd [1916] 2 Ch. 187 *an offer to sell a house with vacant possession was accepted without qualification. The court held that there was a binding*

*agreement even though the parties did not agree on many important points such as the date of completion and payment of a deposit. Further, in P****agnan SpA v***

Feed Products Ltd [1987] 2 Lloyd's Rep. 601 *a buyer and seller of corn feed pellets reached agreement on many important terms but had no agreement on the*

points of loading port, rate of loading and certain payments (other than the price) which might become payable in certain instances. The agreement was held to

have contractual force. ***Bear Stearns Bank plc v Forum Global Equity Ltd [2007] EWHC 1576*** *offers an even more striking illustration of the courts' approach to*

commercial agreements. The parties reached an oral agreement by telephone for the sale of notes evidencing "distressed debt" of a company that had gone

into liquidation. The agreement identified the subject matter and specified the price but did not specify the settlement date and left many other important

points to be resolved by further agreement. The court held that the agreement was contractually binding.

In ***Hillas & Co. Ltd v Arcos Ltd [1932] All ER Rep 494****, (also in* ***(1932) 147 LT 503****) a contract for the sale of timber containing an option clause did not specify*

what kinds or sizes or quantities were to be supplied, nor did it define the dates and ports of shipment or discharge. The agreement was held binding on the

ground that in the circumstances (the contract was made between persons well acquainted with timber trade), the standard of reasonableness could be applied

to give sufficient certainty to an otherwise vague phrase. But what is important about this case in my view is the dictum of ***Lord Wright*** *where he defined the*

approach that courts need to adopt when dealing with commercial agreements. At p503 ***Lord Wright*** *said:*

"Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of

their business may appear to those unfamiliar with the business far from complete or precise. It is, accordingly, the duty of the court to construe such

documents fairly and broadly, without being too astute or subtle in finding defects; but on the contrary, the court should seek to apply the old maxim of

English law, verba ita sunt intelligenda ut res magis valeat quam pereat. That maxim, however, does not mean that the court has to make a contract for

the parties, or to go outside the words they have used, except in so far as there are appropriate implications of law, as, for instance, the implication of what

is just and reasonable to be ascertained by the court as a matter of machinery where the contractual intention is clear but the contract is silent on some

detail."

10. There is more. But the above suffices. We had to quote the Judge at length so that the point is forcefully made. As the Judge observed, the Court should not adopt an academic or what others *may call a "theoretical" approach to commercial agreements. It must take a practical approach with the sole objective of implementing the apparent intention of the parties.* The Judge **(Katsala J** (as he then was)) thus, to this extent, respectfully differed with the statement of the principle of law made by **Dr Mtambo J** in the **Joseph Chidanti Malunga** case. We are of the same opinion.

11. It is agreed by the parties in the instant case, that the Defendant delivered its motor vehicle to the Claimant, a garage. We are left in no doubt in our mind

that the delivery of the motor vehicle was for the purpose that it be repaired and/or serviced by the Claimant. Whilst it may be true that the rates to be used for charging of the repair works may not have been agreed in advance by the parties at the time the vehicle was delivered on the evidence before the Court, we disagree that no contract capable of enforcement had been entered into between the parties. On the authorities cited above a contract is quite capable of being entered into even though the parties to the contract have not agreed on each and every term of the contract. This is more so in contracts of this nature, where by practice, a motor vehicle owner would deliver his vehicle to the garage with the express intention of having it fixed. The exact cost of the service would not be known immediately at the time of delivery. It can be immediately ascertained, of course, with some degree of certainty, if the parties so wish. In which case a quotation may be prepared by the garage owner, listing down the spares required for the work and the cost thereof, including the labour cost. The parties can expressly agree that no works shall be executed unless the motor vehicle owner nods to the cost as contained in the quotation. However, that is not the only way in which a valid contract for repairs can be entered into. It is possible, and not uncommon, for a motor vehicle owner to deliver his motor vehicle to the garage and settle the bill after the works are completed. The invoice when raised will usually itemise the materials and the spare parts used and the type of works carried out which would then be costed. Both ways would create a perfectly binding contract between the parties in our view. The Defendant’s witness allege that no quotation was prepared herein. On the other hand, the Claimant alleges the exact opposite, that a quotation was in fact prepared and submitted to the Defendant. What is clear, though, is that no quotation was exhibited in Court. The quotation would have ultimately answered the question as to the scope of the works envisaged by the parties herein but its absence alone would not invalidate the contract that the parties entered into

herein. We do not find its absence to be fatal to the contract between the parties. And most importantly, the evidence does not suggest that it was the agreement of the parties herein that no work was to be carried out by the Claimant unless and until the Defendant approved the quotation.

12. We note from the evidence that the parties had done business many times before. The Claimant's invoices for motor vehicle services had been settled by the Defendant before. We are convinced that the non-settlement of these particular invoices in the instant case was, as the Defendant confirms, on account of the issues that the Defendant allegedly had with the service provided rather than the absence of a quotation. The invoice that the Claimant issued herein is suggestive of major engine service over and above the body works, contrary to the assertions by the Defendant that the work expected was simple touch up on the suspension and redecoration. The invoice suggests work on the inner and outer hub bearings, universal joints, spring bundle and bushes, swivel bearings, front and rear shock absorbers, swinging shackle plates, radiator and even ignition keys. The scope of the work, as gleaned from the invoice, doesn't give the picture of a car that was running properly. On the contrary, this appears to have been a car in need of major service. We are not satisfied from the evidence herein that the Defendant specifically requested for a costing of the repair works before they were carried out and that the works were dependent on the Defendant giving a thumbs up to an itemized and costed quotation. That would be something different. From the evidence, the Defendant was actually worried that for a while the Claimant kept the vehicle in its yard and never appeared to do any work on it. Clearly, the Defendant expected repair works on the vehicle, even when, as they allege, no quotation had been given to them. The Defendant were obviously aware that the repairs would have a cost. They

were not to be performed gratuitously. From the evidence, the Defendant did not ask for the rate to be used for charging for the works at the time they delivered the vehicle. We are convinced that the parties proceeded on the understanding that the charging would be based on the cost of the materials and spares used plus labour costs. In our view, it must mean that the Defendant were content to allow the Claimant to repair the vehicle on the understanding that they would pay the cost thereof after the job was done. The Defendant kept sending their officer (driver) to check on the progress of the works on the car. They clearly were aware that the vehicle was being worked upon after which a bill would follow. On the evidence before us we are satisfied that a valid contract for the servicing/repairing of the motor vehicle was entered into between the parties for which the sum of K5,040,468.00 was later invoiced. That Defendant has not paid that sum to date. On a preponderance of probabilities, the Claimant has proved its claim against the Defendant for the payment of the sum of K5,040,468.00 and we so hold.

13. In their counterclaim, the Defendant contended that the Claimant were in fundamental breach of the contract which we have found to have existed between the parties by reason of which the Claimant is not entitled to the sum claimed. But on the contrary, that the Defendant is entitled to damages for the loss suffered on the authority of **Sumpter v Hedges (1891) 1QB 673** (sic) and **Gombwa v City Motors Limited (1996) MLR 390**, among others. We note that **Sumpter v Hedges** that was initially cited in the Defendant's skeleton arguments as authority for the proposition, was omitted in the final submissions. We think it was for a good reason that the authority was dropped. We found Sumpter to be an 1898 Court of Appeal decision on substantial performance of contract and restitution for unjust enrichment and not really on the proposition

the Defendant makes. In **Sumpter,** a builder had abandoned construction work which Hedges finished using materials left on site. The question was whether **Sumpter** could then recover for the work done on a *quantum meruit* basis. The Court of Appeal held that unless there was evidence of a fresh contract to pay for the work done Mr. Sumpter could recover nothing. He could although, be paid for the value of the materials on site. On the other hand, in **Gombwa v City Motors Limited** the Plaintiff claimed a refund of the money paid to the Defendant for repairs to his vehicle on the basis that the Defendant had failed to properly repair the vehicle. The Court held, among others, that the Plaintiff expected the Defendant to exercise their professional competence and skill in carrying out the repairs and that the Defendant's work had fallen short of the standard of a reasonably competent mechanic. The Plaintiff was therefore entitled to be reimbursed the expenses incurred to another garage to repair the vehicle and general damages for loss of use.

14. We note that the Defendant's witness in the present case does not suggest to have personally dealt with the Claimant's mechanics. It is in evidence that an officer (the driver, a Mr. Kondwani Lumbe) was sent to firstly drop the vehicle, chase for quotations (on more than one occasion it would appear) and pick up the vehicle after the repairs were done etc. It was also stated in evidence that the Claimant's officers suggested an engine overhaul to the officer sent, we can only surmise, who was the driver. Among other arguments, the Defendant has forcefully submitted on the question of materiality of witnesses. We would have thought that the Defendant, on the strength of that submission, would have called this officer (the driver) to testify. He was not called. The Defendant's witness further stated that they had to engage the services of another garage (Juwawo Garage) to tow the vehicle from the Claimant's garage contrary to the

Claimant’s assertion that the vehicle was released to the Defendant after the repairs were satisfactorily carried out. Again, we would have thought that the Defendant would bring witnesses from Juwawo Garage to render credence to the story. Juwawo Garage would obviously have spoken to the state of the vehicle and its engine at the time of the alleged towing. We never had the benefit of hearing from them. There was nothing in evidence to prove their engagement. No contract. No invoice for the alleged towing services. No proof of payment for the said services. Similarly, Mr. Land Cruiser, who are said to have provided a second opinion on the state of the vehicle did not testify. The Court would obviously have benefitted from the testimony of the two independent garages on the mechanical state of the vehicle after the alleged repair works had been carried out. These would have proved the alleged shoddiness of the work that the Claimant had done. Again, the witness said, the vehicle was eventually sold off for a meagre K1,000,000.00. This was a whole Land Cruiser that is said to have been driven to the Claimant’s garage from one of the Defendant’s project sites just a couple of months earlier. Of course we never saw the sale agreement by which the vehicle was so disposed of.

15. Clearly, the Defendant’s story as to the state of the vehicle after the works had been carried out was incredible. It sounded like a super story. It definitely required the evidence of those that directly dealt with the vehicle (i.e. the driver, the mechanics, Juwawo Garage, Mr. Land Cruiser, or indeed the ultimate buyer of the hood) for credibility. Unfortunately, none of these were called to testify. We find it difficult to hold that the vehicle was in the state that the Defendant’s witness alleges it was. The Defendant’s story is simply unbelievable. We are being invited to believe that this vehicle was a proper runner coming straight from a project site to the Claimant’s garage. And came out a couple of months

later a complete wreck. Towed out by some third parties. We form the view that a little bit more was needed to tilt the scales of justice the Defendant's way herein. A little bit more weights. How about the testimony of the driver who says I drove this vehicle to the Claimant's garage and the following were its only problems? How about the testimony of the officer who was sent to the garage to chase for quotations (could very well have been the same driver) and who testifies on what the mechanics told him about the state of the engine of the vehicle whilst it was in the Claimant's custody? How about the testimony of the mechanics from Juwawo Garage who towed the vehicle out of the Claimant's garage and who come to Court and testifies on the wrecked state of the vehicle's engine to the extent of requiring an engine overhaul? Or indeed the testimony of Mr. Land Cruiser who provided the second opinion on the state of the vehicle? What about the ultimate buyer who confirms to the Court that the vehicle was but a mere shell for which he paid a pittance? Any of these weights added to the scales of justice would have them tipping the Defendant's way, without a doubt. Since we do not have any of this testimony, we can only work with what we have. And what we have is not enough to sway us to decide in the Defendant's favour. We are unable to say that it is more probable than not that the Defendant's Land Cruiser was completely wrecked by the Claimant by reason of which the Defendant has suffered loss and damage. We are not satisfied that the vehicle was in such a poor condition as the Defendant would want us to believe. This does sound more like an excuse by the Defendant to evade paying for the repair services. We are unable to hold that the Claimant's work on the vehicle was shoddy. We are unable to find that the Claimant breached the contract between the parties herein and consequently hereby dismiss the Defendant's counterclaim.

16. The Claimant's invoices herein were issued on 12th August 2020. They were to be paid within 30 days or else they would attract interest. They have remained outstanding to this day. The Claimant has been deprived of this money for over 4 years now. The relationship between the parties was of a commercial nature. It is only fair that the Claimant be compensated by way of interest. We noted in **Commercial Cause Number 83 of 2023: Jean Marc Yav t/a Language Training and Consultancy Solution v Gift Banda** the guidance that **Potani J** (as he then was) sought in **Civil Appeal Cause Number 23 of 2011: Malawi Posts Corporation v Milton Macheso** from **Jefford and another v Gee [1970] 1 Lloyd's Rep. 107** on the question of interest. **Lord Denning** in the **Jefford case** was quoted where he said:

"interest should not be awarded as compensation for the damage done. It should only be awarded to a plaintiff for being kept out of money which

ought to have been paid to him"

We believe a deliberate deprivation of the money due to the Claimant by the Defendant is a ground for awarding interest at or above the commercial bank lending rate. See generally **Commercial Cause Number 269 of 2015: Einstein Construction Company Limited v Mota Engil Engenharia eConstrucao SA** and **Commercial Cause Number 2 of 2016: Nserebo v Waterstone** per **Sikwese J**. We therefore exercise our discretion and award interest on the said sum of K5,040,468.00 at 5% above the bank lending rate from the 13th September 2020 until date of full payment.

17. Ordinarily the question of collection costs ought to be an easy and straight forward matter to deal with. After all, we have a Table to guide us, don't we?

However, the reality on the ground is totally different. As we again observed in the **Jean Marc Yav** case there has been some considerable amount of confusion on when collection charges are payable, from who and at what scale. One gets the full sense of it when one examines all decisions on the subject matter, including **Commercial Cause Number 160 of 2010: BP Malawi Limited v Riaz Muhammed t/a Ninkawa Bulk Logistics**, per **Katsala J** (as he then was), **Civil Cause Number 437 of 2012: Shire Limited v City Building Contractors,** per **Tembo J**, **Civil Cause Number 434 of 2013: Ecobank Malawi Limited v Harvey Kalamula,** per **Tembo J** and **Preferential Trade Area Bank v Electricity Supply Commission of Malawi and others 2002 – 2003 MLR 204**, per **Mwaungulu J** (as he then was). We observed further that by its decision handed down on 13th February 2023 in **MSCA Civil Appeal Number 4 of 2017: Barrow Investment Limited v Mpico Malls Limited,** the Supreme Court seem to have put this matter to bed. After a thorough examination of the rather confusing history around the Legal Practitioners (Scale and Minimum Charges) Rules, and previous decisions of the same Court on the subject matter including **MSCA Civil Appeal Number 34 of 2004: Mbendera Chibambo and Associates v Electricity Supply Commission of Malawi and others** and **MSCA Civil Appeal Number 4 of 2003: Kankhwangwa and others v Liquidator of Import and Export (Malawi) Limited** the Court concluded thus:

"The law therefore is that no collection charges can be heard (sic) or charged on client or account after commencement of proceedings. The upshot of this is

that the Plaintiff in an action for collection of money has no power or basis for including collection charges under Table 6 of the Legal Practitioners (Scale and

Minimum Charges) Rules,1955 either in the originating process or the pleadings. Collection charges are not payable after commencement of proceedings.

The opposite party will be ordered, whether costs were claimed or not to pay party to party costs in the court's discretion. A claim for party to party costs will

include solicitor's own client costs. Those solicitor own client costs should not include collection charges under Table 6 of the Legal Practitioners (Scale and

Minimum Charges) Rules, 1955. The collecting party cannot claim them after commencement of proceedings; the opposing party cannot be ordered to pay

them."

18. It follows, from our understanding of this decision, therefore, that the Claimant's claim for indemnity on collection costs herein has no legs to stand on. Table 6 is about solicitor and own client charges on collecting monies on behalf of the client to be charged on receipt of the money. Not before. They are chargeable by the solicitor against his client. The client may seek reimbursement of these charges when claiming party and party costs where he has been awarded costs of the proceedings but he cannot claim them in his pleadings against the Defendant. The claim is consequently dismissed.

19. In conclusion therefore we find and hold that the Claimant's claim for the sum of K5,040,468.00 against the Defendant has, on a balance of probabilities,

been made out. Consequently, we enter judgment in the Claimant's favour for that sum. Further, we order that the Claimant be paid interest on that sum at 5% above the base lending rate from 13th September 2020 until date of full payment. The claim for indemnity on collection costs is dismissed. So too is the Defendant's counterclaim against the Claimant.

20. We hereby exercise our discretion and award the costs of this action to the Claimant, the Claimant having substantially succeeded in its claims against the Defendant in this this action.

21. It is so decided.

Pronounced in open Court at Lilongwe this **10th** day of **January 2025.**