

Mussa v. Electricity Supply Corporation of Malawi (ESCOM) Civil Cause Number 360 of 2011

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice R.S. Sikwese
Cause Number:	Civil Cause Number 360 of 2011
Date of Judgment:	November 30, 2015
Bar:	Mwala/Chayekha, for the Plaintiff Chibwe/Mtambo, Counsel for the Defendants

The Plaintiff, a banker and businessman, brought an action against the Defendant, a statutory body that supplies electricity, for damages for breach of contract, lost revenue, and a refund of interest paid on a loan. The dispute arose after the Defendant failed to connect the Plaintiff's maize mill business to electricity in a timely manner, despite the Plaintiff having paid the required fees. The Plaintiff had taken out a loan to finance the business and alleged that the Defendant's delay in providing electricity prevented him from generating revenue and servicing the loan, resulting in a loss of income and the

accumulation of interest payments. The Defendant did not dispute the existence of the contract but argued that time was not of the essence and that the alleged losses were not reasonably foreseeable.

The principal legal questions for the Court were whether the Defendant had breached the contract and, if so, whether the Defendant was liable for the claims of lost revenue and loan interest. The Court found that the contract, specifically a document advising the Plaintiff of the connection requirements, had explicitly warned of potential delays due to material shortages. As such, time was not of the essence, and the Plaintiff's expectation of immediate connection had no legal basis. The Court held that the Plaintiff failed to prove that the delay was unreasonable or caused by an act or omission on the Defendant's part. It noted that the Plaintiff had been "reckless" to incur debt without a "water tight" contract specifying a firm timeline for the service. The Court, therefore, found that the claim for breach of contract must fail. Given that the main claim was dismissed, all ancillary claims for lost revenue and loan interest were also dismissed. The Court dismissed the action in its entirety.