



**IN THE HIGH COURT OF MALAWI  
COMMERCIAL DIVISION  
BLANTYRE REGISTRY  
COMMERCIAL CAUSE NO 86 OF 2023**

**BETWEEN:**

**TOF INVESTMENT CO. LTD**

**CLAIMANT**

**-and-**

**THE REGISTERED TRUSTEES OF THE CHURCH OF  
CENTRAL AFRICA PRESBYTERIAN (CCAP)**

**DEFENDANT**

**CORAM: HON. JUSTICE J. ALIDE**

Mr. P. D. Kalanda, of the Counsel for the Claimant  
Mr. I. B. Nyondo, of the Counsel for the Defendant  
Ms. M. Kachimanga, Court Clerk

**RULING**

**Alide, J.**

- 1.0 This is the Defendant's application for an order directing payment of the judgment debt herein by installments. The application was brought pursuant to section 11(x) of the Courts Act and Order 28 rule 59 and 60 of the Courts High Court Civil Procedure rules 2017 ("CPR 2017"). The application was supported by the sworn statement of Jenara Yinika Ngwale, the Defendant's General Treasurer who was responsible for the management and administration of the Defendant's finances. Counsel for the Defendant also filed skeleton arguments accordingly.

- 2.0 The Claimant opposed the application. To this effect, the Claimant elected to file a notice to cross-examine the Defendant's Treasurer General, the deponent of the Defendant's sworn statement in support of the application, as part of his opposition to the application. Despite the Defendant's protestations I granted leave to the Claimant to examine the deponent of the sworn statement in support of the application.
- 3.0 The facts of the matter, very briefly, are that the Defendant contracted the Claimant, a building construction company, to repair a house at the Defendant's premises known as Henry Henderson Institute (HHI) in the city of Blantyre. At the completion of the work the Defendant failed to make full payment for the work done. The Claimant then commenced these proceedings which the Defendant did not contest. As a result, a default judgement in the sum of K68,928,292.49 plus interest and costs to be assessed was entered by the court.
- 4.0 As part of the enforcement of the judgment the Claimant seized the Defendants motor vehicle and sold the same leaving a balance of K60,607,642.49. This prompted the Claimant to obtain another order of seizure and sale. However, the Defendant proceeded and obtained an order suspending the enforcement of the judgment pending the hearing of its application to pay the balance by installments. This is the subject of the current application.
- 5.0 The Defendant has submitted that its current financial standing is such that it cannot practically satisfy the debt herein at once. They have pleaded that they are a non-profit making institution whose main source of income, for their operations, were contributions from its membership, and donations from well-wishers. The Defendant submitted that in the 2024 financial year, it had a deficit of K217 million, yet its liabilities for the year 2024 and 2025 were K246,197,206.64 and K227,902,664.41, respectively.
- 6.0 The Defendant submitted that, apart from the Claimant, it also owed several institutions various sums of money and had arranged payment of those by instruments. Among others, the Defendant owed the Malawi Communications and Regulatory Authority the sum of K16,958,078.71, and had made arrangements to be paying the said sum in monthly installments of K1,541,643.52. The Defendant further submitted that it also owed Rhino Insurance Brokers the sum of K19,000,000 which they were settling through monthly instruments of monthly installments of K1,900,000. The Defendant further stated that they owe Blantyre Adventist Hospital the sum of K6,039,233.33, and the said sum was being paid in monthly instalments of K1,500,000. The Defendant then submitted that, in the circumstances, it can only afford to pay the Claimant monthly sums of K1,500,000 to liquidate the debt.

- 7.0 In its response, the Claimant cross examined the Defendant's General Treasurer on the sworn statement that she had filed with the court in support of the application especially on the financial standing of the institution.
- 8.0 During cross examination, the Defendant's Treasurer General admitted having only disclosed a list of the Defendant's liabilities without showing its current assets. She admitted that when dealing with such matters, the balance sheet was indeed a crucial tool because it shows an institution's assets and liabilities which can then be used to assess its liquidity and solvency, and its ability to pay its debts. The Defendant told the Court that they did not exhibit their balance sheet because they did not have any audited accounts for so many years.
- 9.0 On the deficit of K217 million for 2024, the Defendant admitted that it was possible for a business that had closed with a loss in the previous year like the Defendants to start making profits in the following year or months. The Defendant admitted that it prepares its statements of accounts quarterly and that such statements of account should have shown whether the Defendant was still operating at a loss or not. These were not submitted as part of the application.
- 10.0 During cross examination it came out clear that the Defendant had a range of assets which were sources of income like the Grace Bandawe Conference Center, HHI Secondary School, a guesthouse in Zomba, the premises were Phoenix International School operates from, the whole premises at HHI comprising of several buildings, and also a motor vehicle that they had just acquired a Toyota Fortuna, just to mention a few.
- 11.0 In its submission, the Claimant argued that the Defendant's failure to bring its complete and the current financial position as part of the application fails to satisfy their criteria that the court uses in determining whether to exercise its discretion to allow an application to pay the debt by installment or not. The Claimant argued that in this regard this being a commercial debt the Defendant has not shown any exceptional circumstances to warrant an order to pay the debt by installment.
- 12.0 The Claimant further argued that at the time that the Defendant made an application for stay of execution of the judgment pending the hearing of the present application, they explicitly stated that they wanted to pay the debt by monthly installment K10 million with effect from end of May 2025. The Claimant expressed surprise that having obtained that order from the court, the Defendant has turned around and now wants to pay much reduced installment in the sum of K1,500,000 per month. The Claimant submitted that the foregoing clearly showed that the Defendant's application was not brought in good faith.

- 13.0 The Claimant further argued that allowing the Defendant to pay the debt by installments as proposed would take 40 months, which is at least three years and months, in order for the Defendant to finish the paying their debt. This was not practical bearing in mind that the Claimant has been pushing for the payment of this debt since 2022 and that three years had elapsed. The Claimant further submitted that there was also interest as well as legal costs which were to be assessed and paid once the principal debt is paid in full. In their view the proposed payment was unreasonable and goes against the principle that the Claimant must reap the fruits of this litigation.
- 14.0 I have heard both parties in this matter. The issue before me is whether or not the Defendant's application to pay the debt by installments as proposed be allowed in the manner submitted or otherwise or be declined in its entirety having considered the submissions presented by the Claimant.
- 15.0 Under section 11 (x) of the Courts Act, this Court has jurisdiction to direct payment of any judgement debt by instalments. Order 28 Rule 59 to 66 of the CPR 2017 compliments this provision. Under Rule 62(1), several considerations that the Court must bear in mind when dealing and determining applications to pay a debt by instalments have been laid down. Rule 62(2) provides that the court may also have other considerations that it feels relevant.
- 16.0 Further, in *Kansawa Investments v. Blantyre International University Company Limited*, Commercial Case Number 288 of 2018, the court stated as follows:
- In *Leasing and Finance Company Limited v. Maltraco* [1997] 2 MLR 250 the court laid down several issues that it ought to consider in an application to pay a debt by installments as follows:
- (a) it must balance the interest of a judgment creditor and his unfettered right to recover the debt at once, against a genuine failure by the judgment debtor to settle the debt at once upon full factual frank and honest disclosure of his means;
  - (b) it ought to be more cautious and the more reluctant to allow installments in a trading debt;
  - (c) a prayer by a judgment debtor to pay a debt by instalments is in essence a prayer for the court's discretion, and most importantly it is a prayer for sympathy; and
  - (d) a judgment debtor ought to approach the court with clean hands and must disclose all of the material facts in respect to his financial standing."
- 19.0 In *Stansfield Motors v National Bus Company Limited*, Commercial Case Number 15 of 2014 several considerations which would help a court to determine whether it must decline an application to pay a debt by instalments were also laid down. Some of the considerations

were whether the judgment debtor can manage to pay the debt in full having considered its or his financial means, whether the judgment debtor would be able to comply with the order to pay the debt by instalments, whether the proposed time for payment of the debt is reasonable. The court also ought to consider of the proposed instalments will not result in a net reduction of the judgement debt because of the amount of interest that continues to accrue on the judgement debt. In *Patrick Zachepa v. Leyland DAF Malawi Limited* Civil Cause No. 3797 of 2001 the court refused to grant an order to pay a debt by instalments because the 20-month period that the applicant requested was deemed too long.

- 20.0 In summary, in addition to the things that the court ought to look at under Order 28 Rule 62(1) when considering and determining applications for payment of judgement debt by instalments, the court also needs to look at a lot more other issues and balance the same accordingly.
- 21.0 In the present matter it is not in dispute that having sought the services of the Claimant to repair its house in 2020, the Defendant did not pay the Claimant the full costs of the repairs upon completion in 2022. A debt to the tune of K68,928,292.49 accumulated which the Defendant never settled. The Claimant commenced proceedings in this court for the recovery of the same. The Defendant never contested the same and the Claimant obtained judgement against the Defendant. After exercising the initial execution on the Defendant, a motor vehicle was impounded and sold leaving a balance of K60,607,642.49.. The Defendant now prays to this court to have this sum settled by installments of K1,500,000 per month.
- 22.0 Looking at the present application, it is clear that the Defendant did not come before this court fully prepared for this kind of application. The application has failed to satisfy certain requirements that are especially important and helps the court in its determination. Crucial among these things is the presentation of the Defendants' full and complete financial statements, which includes the balance sheet. In the absence of a balance sheet, it becomes difficult to determine the financial standing of a company and to assess whether it is able to meets its liabilities or not.
- 23.0 As admitted by the Defendant, the complete set of accounts including the balance sheet could have helped the Court and the Claimant understand the extent of the Defendant's financial predicament. In the absence of this information the Court has been left guessing as to the true nature of the Defendant's financial state. I observe that while the Defendant presented some figures to the Court, these were only one sided and were only aimed at showing that the Defendant was in dire straits. The picture presented by the Defendants on its sources of funds was all but gloomy. However, during cross examination it was clear that the Defendant has some assets which were generating income in form of rentals or funds from constituent institutions. The Defendant sought to dispute that it was making money from these and claimed that it had consistently made losses since the institutions


have not remitted any funds to the Defendant. I take the same with a pinch of salt as no disclosures were made in Court about the existence of these in the first place. The fact that the Defendant was not making any money from these institutions, or from rentals, was not substantiated in Court.

- 24.0 Looking at the monthly sum of K1,500,000 that has been proposed by the Defendant, it appears that it is a figure that has just been plucked from the air without any financial backing. To me, the Defendant has been influenced by the sums of money that they were allegedly paying to the debtors and want to drag the same sort of figures to this matter. Otherwise, in the absence of financial statements I failed to appreciate the basis of the Defendant's proposal. Apart from being a small sum in relation to the total judgment debt, the time it would take to pay the amount if full, coupled with the fact that the Defendant will have to also pay interest, and costs after full payment of the principal sum, makes it difficult to justify. At that amount, the payments to the Claimant have potential to extend for another five or six years. This cannot be acceptable.
- 25.0 The Claimant commenced these proceedings two years ago. For them to wait for another three years, and a further few years, waiting for the settlement of the full principal sum, and then interest and costs will indeed go against the Claimant's right to enjoy the full benefits of its litigation. Accordingly, the Defendant's proposal to settle the claim through monthly instalments in the sum of K1,500,000 per month is declined. This is then left to this Court to determine the appropriate monthly instalments that would make meaningful sense in the circumstances.
- 26.0 I take note that paragraph 3.3 of the sworn statement by one Martin Chirwa that was earlier filed in this Court on behalf of the Defendant in support of an application for an order for suspension of enforcement of judgment pending the filing of the current application, it was stated as follows:
- "The Defendant has conducted a thorough review of its financial obligations and has determined that it can feasibly remit monthly installments of MK10,000,000 over a period of six months, with the final installment being MK10,607,642.49, Thereby settling the total outstanding amount."
- 27.0 And under paragraph number 4 of the same application the Defendant unequivocally proposed to commence monthly payments of K10,000,000 starting from 30th of May 2025 with subsequent payments on the same date of each following month. The Defendant further stated that the final payment was going to be made in the sixth month thereby fully settling the judgment debt. This position was among the factors that the court considered when it stayed the execution of the judgment herein pending the current application.
- 28.0 With the foregoing background it was very strange during hearing of the current application that the Defendant sought to distance itself from the above position. I entirely agree with

the Claimant that the Defendant is being very economical with the truth in the current application. is very clearly presented position captured in the sworn statement at the time that the Defendant was applying for stay of execution of the judgment pending this

- 29.0 Having considered the two contrasting positions presented by the Defendant in the previous application and the current application, and having considered the provisions of Order 28 Rule 59 to 66 of the CPR and the presented case authorities, it is my view that the monthly sum of K10,000,000, which the Defendant undertook to pay at the time they made an application for stay of execution, represents a fair and reasonable amount under the circumstances. This will ensure that the principal debt is paid within a reasonable time and that the Claimant ultimately enjoys the fruits of his litigation.
- 30.0 Accordingly, it is hereby ordered that the Defendant do liquidate the judgment debt herein with monthly instalments of K10,000,000, with the first payment due by 30<sup>th</sup> of August 2025, and the subsequent payments by the same date of each of the following months. The final payment shall be in the sum of K10,607,642.49 to be made on or before the 30<sup>th</sup> January 2026.
- 31.0 I award costs of this application to the Claimant.

Dated this 11<sup>th</sup> day of August 2025.

  
Jabbar A. de  
**JUDGE**