NYATI BAKERY LIMITED AND FOUR OTHERS AND PRUDENCE BANK LIMITED

SUPREME COURT
NGULUBE, C.J.
6TH JUNE AND 5TH SEPTEMBER, 2000
S.C.Z. JUDGMENT NO. 31 OF 2000
Appeal NO. 47 OF 2000

Flynote

Company Law - liquidation of bank - payment of debts by creditors - question of whether a bank in liquidation should continue to charge interest.

Headnote

The appellants owed money to the respondent bank. The bank was placed under a curator who later went on to be appointed as the receiver and eventually as the liquidation manager when the bank finally, collapsed. The bank while in receivership launched proceedings in the High Court to recover sums of money. Judgment was entered for the bank on its claims. On appeal it was alleged that the court below did not properly address the issue of compound interest and penalties. It was also argued that the bank having become insolvent should have stopped charging any interest at all.

Held:

Once there has been a judgement, the relationship becomes that of a judgment creditor and a judgment debtor. The debt itself (that is, principal plus interest) becomes a judgment debt carrying such interest if any as may lawfully be ordered by the court in terms of the judgments Act. The argument that a bank in receivership cannot charge interest, including compound interest where applicable, is rejected. Appeal dismissed.

Cases referred to:

(i) Union Bank Zambia Ltd. v Southern Province Co-operative Marketing Union Ltd. S.C.Z Judgement No. 7 of 1997, now (1995-97) Z.R. 207.

(ii) Yonnah Shimonde and Another v Meridien BIAO Bank (Z) Ltd. S.C.Z. Judgment No. 7 of 1999.

For the Appellants J. M. Kapasa, Kapasa and Company.
For the Respondent I.C.T. Chali, Chali, Chama and Company.

Judgment

NGULUBE, C.J., delivered the judgment of the court.

The appellants owed money to the respondent bank. In due course, the bank was placed under a curator who later went on to be appointed as the receiver and eventually as the liquidation manager when the bank finally collapsed. The bank while in receivership launched proceedings in the High Court to recover various sums of money, which had been taken as loans or as advances by four related companies and which were guaranteed by a director, who was cited as the fifth defendant in the action. The defence pleaded was that the plaintiff bank had a propensity to exaggerate the state of the accounts. The learned trial judge heard the evidence and came to the conclusion that the defendants had no defence. The judge dealt with a request that a recalculation be ordered and found on the evidence presented that this had already been done by the parties at a meeting which they held in Luanshya at which the penal interest was expunged and the state of accounts restated. The mode of repayment was agreed as was the charging and the rate of interest. Judgment was entered for the bank on its claims.

The first ground of appeal taken up alleged that the court below erred by failing to properly address the issue of compound interest and penalties. It was said that the bank had failed to adhere to the agreement made at Luanshya when the account was stated so that the rates of interest actually applied (58% in the event of default in paying an instalment and then 40%)

were erroneous. It was submitted that the court should have directed a more acceptable computation or recalculation of the figures properly due. The agreement reached at Luanshya is on record and was signed by both sides. It speaks for itself and the difficulties canvassed by the appellants are not there. In this respect, we agree with Mr. Chali that there is in fact no further need for a fresh recalculation.

There was a submission that penalty charges should have been disallowed, in accordance with our decision in *UNION BANK ZAMBIA LTD. v SOUTHERN PROVINCE CO-OPERATIVE MARKETING UNION LTD. S.C.Z.* Judgment No. 7 of 1997, now (1995-97) Z.R. 207. This submission flew into the teeth of the document on record which embodied the signed agreement concluded at Luanshya and which clearly showed that penalties amounting to slightly over K292 million had already been expunged and deducted from the indebtedness.

The second ground of appeal made the startling proposition that the bank having become insolvent should have stopped charging any interest at all and that the judge was wrong not to have said so. It was said that once the bank had closed its doors to the public in September 1997 and once it went through a process of receivership, it should have stopped charging any interest. It was claimed that this was the effect of the sentence in our judgment in *Yonnah Shimonde and Another v Meridien BIAO Bank (Z) LTD. S.C.Z.* Judgment No. 7 of 1999 which said -

> "There can be no justification for allowing the charging of compound commercial interest forever by a liquidated bank which is obliged, by law, to stop conducting business".

This was one of those times when it was wrong and misleading to pluck a sentence out of its context when that case in fact supported the very opposite of Mr. Kapasa's submission. In its correct, proper and full context, we specifically rejected an argument that a bank in receivership can not charge interest, including compound interest where applicable. As the following quotation from the preceding part of the *SHIMONDE* judgment will show, that case decided only that once there has been a court judgment, the relationship of customer and banker is at an end and the judgment debt (consisting of the principal merged with any interest) can not continue being treated as a commercial debt which can continue being compounded in the usual prejudgment way. We put it this way and we quote:

> "There was also a ground of appeal urged by Mr. Hamakando that, as from the date of receivership and subsequently, the bank should not have charged any interest at all. As Miss Kunda countered, the relationship of banker and customer does not terminate merely upon a receiver to run the bank being appointed so that the bank's right to charge interest - including compound interest where applicable, as here - did not cease. However, when a judgment of the court is given, any principal and interest merge into the judgment debt and the relationship of banker and customer is clearly at an end … … … … … There can be no question of continuing with commercial interest or compounding it after the judgment below."

The foregoing passage speaks for itself. Once there has been a judgment, the relationship becomes that of a judgment creditor and a judgment debtor. The debt itself (that is, principal plus interest) becomes a judgment debt carrying such interest if any as may lawfully be ordered by the court in terms of Judgments Act.

The third ground of appeal contended that it was wrong to award the sums endorsed on the writ and that the court should have directed a recalculation of the proper balances due. There was in fact no error in the way the learned trial judge handled this issue which the parties had already resolved and reduced to a signed document after their meeting in Luanshya to which we have already alluded. In truth, there was no merit in this appeal. The appeal fails, with costs to the respondent to be taxed if riot agreed.