

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)
FAST TRACK COMMERCIAL COURT

BETWEEN:

**GUARANTY TRUST BANK (SL) LTD
SPARTA BUILDING
12 WILBERFORCE STREET
FREETOWN**

-PLAINTIFF/APPLICANT

AND

**URBAN STEVEDORING AND LOGISTICS -DEFENDANTS/RESPONDENTS
& ANOTHER
13 CLINE STREET
FREETOWN**

RULING DELIVERED BY THE HON. JUSTICE M.P. MAMI J.A
DATED THE 22ND DAY OF NOVEMBER, 2023.

COUNSEL

SORIE & BANGURA

- FOR THE PLAINTIFF/APPLICANT

TEDDY KOROMA & ASSOCIATES

- FOR THE DEFENDANTS/RESPONDENTS

There is an application before this court by notice of motion dated 8th May, 2023 filed by Messrs. Sorie & Bangura solicitors for the plaintiff praying for the following reliefs:

- 1) That this Honourable court fix the rate of interest on the judgement sum from the 15th day of January, 2021, to the date of judgement as such rate as the court may deem fit and just pursuant to the provisions of the law Reform (Miscellaneous Provisions) Act of the laws of Sierra Leone 1960
- 2) any other that this Honourable court may think fit and just.
- 3) costs

the application is supported by the affidavit of Mohamed Golfia Esq. pupil barrister of Sorie & Bangura with the following exhibits attached thereto:

exhibit "M.G 1" – a copy of the writ of summons

exhibit "MG2" – a true copy of the said notice & memorandum of appearance.

exhibit "MG3" – a true copy of the said defence

exhibit "MG4"- photostat copies of the correspondences.

Mrs. Sorie counsel for the plaintiff/applicant relies on the entirety of the application as filed and submit entirely to unfettered discretion of this court.

There is also affidavit in opposition filed by Messrs. Teddy Koroma & Associates, sworn to by Mr. John Gbondo Margai the 2nd defendant in the matter with the following exhibits:

'JGM2' – copy of a letter

'JGM3' – part-payment made to the plaintiff

There is an affidavit in reply which is just indicative of been its sworn to by a pupil barrister, with no name, with the following exhibits attached thereto:

exhibit "MG1" – A copy of this letter from the bank of Sierra Leone

exhibit "MG2" – A copy of the said statement of account

Both counsel however, have relied on the totality of the affidavit as filed, and invoke the inherent jurisdiction of this Honourable court.

As this is an interlocutory application both counsel in the application filed before this court have not averted their mind to the Commercial and Admiralty Court Rules 2020 (N0.2) specifically Rule 18(1) to wit:

1. "Where an application is to be made to the court or judge pursuant to these Rules, the application shall
 - (a) be supported by affidavit
 - (b) state under what rule of court or law the application is brought
 - (c) be accompanied by a written address, in support of the relief sought
 - (d) be served immediately after filing

2 "whether the other party intends to oppose the application referred to in subrule (1), he shall within three (3) days after receipt of the application file his affidavit in opposition and written address on point of law.

3 "an applicant may after receipt of the affidavit in opposition referred to in subrule (2) file and serve, and affidavit in reply and a written address in reply on points of law within three (3) days.

this is mandatory, consequently the use of the word shall in 18(1) which enjoins applicant to lay before the court all necessary facts and activities of law they wish to rely on for the speedy expeditious, and efficient disposal of matters.

As it is for speedy dispatch, this court shall in a bid to dispose of this matter seek shelter under order 2 rule (2) of the Fast Track Commercial Court Rules.

"unless otherwise provided for, in these Rules, the High Court Rules shall apply with the necessary modifications, adaptations and exceptions as are necessary to give effect to these Rules

Therefore, recourse to Order 2 Rule 1 of the High Court Rule 2007

"Where in beginning or purporting to begin proceedings or at any stage of the proceedings or at any stage in the course of proceedings, there has, by reason of anything done or undone been a failure to comply with the requirements of the Rules, whether in respect of time, place, manner, form on content, or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any steps taken in the proceedings or any document judgement or order in therein."

Consequently, it is an irregularity as serious as it could be, but not to the extent of nullifying the proceedings, but one that can be cured, and so curable.

The issue before this court is for an assessment of an interest on the judgement sum from the 15th day of January, 2021 to the date of judgement.

Therefore, it is apt in the circumstances give a cursory glance at the brief background of this matter and events leading up to the filing of this application.

Brief Background

the plaintiff/applicant initiated this action by writ of summons intituled FTCC 050/22 2022 c. No.13 with the following facts:

this is as contained in the writ of summons to wit:

That the plaintiff is and was at all material times to this action registered as a limited liability company carrying on business as a banking institution with its registered address at No.12 Wilberforce Street Freetown in the Western Area of the Republic of Sierra Leone, while the defendant is a limited liability company and a customer of the plaintiff holding account number 202/3204000/1/10 which was established in 2019, and the 2nd defendant is the managing director of the 1st defendant and one of the signatories to the account held, by the 1st defendant with the plaintiff.

That on the 15th day of January, 2021 prior to any cash withdrawal on the account, the balance on the 1st defendant's accounts were Le40,023,958.54 (Forty Million and Twenty-three Thousand Nine Hundred and Fifty-eight Leones and fifty-four Cents) being the equivalent of Nle40,023.96 (Forty Thousand and Twenty-three Leones and Ninety-six Cents)

That further to the above, there were multiple transaction on the account on the date aforementioned and several days thereafter for the benefit of the defendants which resulted in the account being in an overdrawn position.

That at the time of the transaction mentioned, as aforesaid the account was not funded and it was later discovered that the defendants did not follow due-process before accessing the monies which caused the account to be in overdrawn position, this was done in connivance with certain employees of the plaintiff who flouted the plaintiff's internal mandate with respect to the overdraft facilities prior to the defendants accessing the funds.

That by the 14th day of May, 2021 after a series of unauthorized transaction on the account, the 1st defendant's account stood overdrawn in the sum of Le282,461,406.87 (Two Hundred and eight-two Million Four Hundred and Six Leones and Eighty-seven Cents) being equivalent to Nle282,461.41 (Two Hundred and Eighty-two Thousand Four Hundred and Sixty-one Leones Forty-one Cents)

That from the records, the defendants made several deposits into the account to offset their indebtedness but these deposits were not sufficient to offset the overdrawn amount and they even continued the act of unlawfully overdrawing funds from the said account which was not properly funded.

That the defendants have since applied the funds to their benefit but failed to repay the overdrawn account, that when the plaintiff discovered the unauthorised activities on the account, the defendants were contacted and summoned to a meeting held between the parties to present the issues to the defendants.

That subsequent to the meeting, the plaintiff wrote a letter addressed to the defendants for the costs and if the amount claimed be paid to the plaintiff of his solicitor for service thereof further proceedings will be stayed, dated 23rd September, 2021 outlining the basis of the meeting and demanded full payment of the outstanding amount aforesaid plus interest at the rate of 21% plus 2% facility fee, the said letter was acknowledged by the defendants solicitor, who demanded further details on the activated of the defendant's accounts.

That further to the above, a special offer letter dated the 31st December, 2021 was drawn up reflecting the terms proposed by the plaintiff for repayment by the defendants, which the defendants failed to sign.

That after the letter from the plaintiff stated above, the defendant by their solicitors made a counter proposal contained in a letter dated 14th January, 2022 which the plaintiff claimed the defendant did not honour.

That by the 29th April, 2022 the account stood overdrawn in the sum of Le325,295,776.61 (Three Hundred and Twenty-five Million and Two Hundred and Ninety-five Thousand and Seven Hundred and Seventy-six Leones and Sixty-one Cents) being the equivalent of Nle325,290.78, inclusive of interest.

That when the defendants reneged on their promise to make payment, the plaintiff caused its solicitors- Messrs. Sorie & Bangura to write a letter addressed to the defendants demanding payment of the overdrawn amount on the 1st defendant's account.

following the aforesaid the defendants deposited the sum of Le50,000,000.00 (Fifty Million Leones) into the account to bring down the balance on the account.

That since then no additional payment was made.

Wherefore the plaintiff claims:

1. Immediate recovery of the sum of Le281,097.630 (Two Hundred and Eighty-one Million and Ninety-seven Thousand and Six Hundred and Thirty Leones) being the equivalent of Nle281,097.63 (Two Hundred and Eighty-one Million and Ninety-seven Thousand and Six Hundred and Thirty Leones) being the equivalent of Nle281.097.63 being the amount at which the defendant stood overdrawn as of the 8th of July, 2022.
2. interest on the said sum at the default rate of 37% per annum in line with the prevailing money-market conditions
3. any other or further reliefs that this Honourable court may deem fit and just.
4. costs`

A Memorandum and Notice of appearance filed and appearance was entered by Messrs. Teddy Koroma & Associates on the 16th day of November, 2022.

a defence was filed on the 30th day of November, 2022, with 15 paragraphs therewith.

that the parties through their solicitors reached an agreement and also intimated this court on the various issues raised, and were ad-idem to reaching a consent settlement, save that there is contention in one (1) area.

Issues in Contention

- Interest on the said sum at the default rate of 37% per annum in line with the prevailing money market conditions.
- it is this very interest that the parties have contention with and have subsequently come before this court to fix and or assess.

- it is from the contention of counsel for the 2nd defendant that this court ought to take into consideration in fixing and or assessing interest averments contained in paragraphs 6 to 14 of their defence, which I will repeat herein to form the basis of my analysis hereafter to wit:

Paragraph "7" – "that the plaintiff claims conspiracy to commit fraud with its own staff as agents participating in the transaction which the defendants claim they never consented to."

Paragraph 8 – "That between April 2021 and May 2021, the defendants received payments into the account from their customers but could not access the monies, thus alerting them that something was going wrong with their account, for which the defendants inquired from the bank, only to realise the fraud"

Paragraph 9 – "That on the 23rd September, 2021 the defendants received a letter from the plaintiff stating that they had utilized unauthorized overdraft in excess of Le500,000,000 (Five Hundred Million Old Leones), for which a complaint had been lodged to the Financial Intelligence Unit (FIU) for investigations.

Paragraph 10 – "The defendant replied through their solicitors that they were not aware of the transaction at any point, which resulted into negotiation with the FIU"

Paragraph 11 – "The plaintiff claimed that the account stood at Le233,637,859.43 (Two Hundred and Thirty-three Million Six Hundred and Thirty-seven Thousand Eight Hundred and Fifty-nine Old Leones Forty-three Cents) as at 30th day of September 2021, with interest capitalized."

Interest is the price paid by a borrower for the use of a lender's money. In RICHARDS V. WELLMINISTER BANK LTD (1947) AC 390 at 398 where Viscount Simon distinguished between interest and capital and he described interest as

"the accumulated fruit of a tree which the tree produces regularly until payment."

Interest is payable under Common Law by agreement between parties, by trade usage, on damages awarded by the court or by statutory provisions.

This position was summed up in the Ghanaian case of Delle & Delle V. Owusu Afriyie (2005-2006) SCGLR 60 (holding) as follows:

“Whilst it is true that at Common Law interest was not payable on a debt or a loan in the absence of express agreement or a cause of dealing or custom to that effect, under existing statutory regime in Ghana, the courts have the power to award interest on sums claimed and found to be due. such interest is payable from the date on which the claim arose.”

I must reiterate that as a general rule, interest is payable when the parties agree in their financial dealings that interest should be paid.

Parties are aware, that it is the policy of the law to give effect to contracts genuinely and freely entered into by parties, the party's intention on interest is usually embodied in the contract giving rise to the sum claimed, the agreement maybe express or implied

Section 4 of the law reform (Miscellaneous provisions) Cap. 19 of the laws of Sierra Leone provides:

“In any proceedings tried in any court of record for the recovery of any debt or damages, the court may if it thinks fit, order that there shall be included in the sum for which judgement is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the causes of action arose and the date of the judgement:

Provided that nothing in this section-

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which, interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonor of a bill of exchange

Sections 28 and 29 of the Civil Procedure Act, 1933 shall cease to have effect.

This as could be seen squarely falls into the discretion of the court.

I will also refer both counsel to E.P. Ellinger's et al "Ellingers Modern Banking Law" 2011 5th Edition Oxford University Publishers at 773.

As it as an overdraft it provides that it is an excess of the amount credited to the drawer, it is the amount overdrawn. it also involves the extension of credit to a customer for a relatively short period of time.

A fee is usually charged for the facility, and where such an agreement exists, the customer is giving a ceiling defining the maximum amount he is allowed to overdraw on his account at any given time.

A bank is not obliged to allow its customer to overdraw an account unless it contractually committed to do so. (Cauliffe Brooks & Co. V. Blackburn & District Benefit Building Society (1884).

Infact in Rokel Commercial Bank (SL) Ltd) and Christian Ogoo. before the Hon. Justice F. Bintu Alhadi J. which said judgement delivered on July, 2019 she referred to Lloyds Bank Plc Voller (2000) 2 All ER, same of which this court will adopt same, wherein the court noted 'where the customer's account becomes overdrawn or exceeds its overdraft limit without the bank prior consent, the bank may charge the customer a higher rate of interest and potentially additional bank charges (Lloyd's Bank PLC V. Voller (2000) 2 All ER Comm.

Where an account is overdrawn, or where the bank lends money to a customer, the relationship is that of debtor and creditor and the bank is entitled to be repaid the debt in full (subject to contrary provision)

Where the overdraft facility document stipulates for interest to be payable, this is usually based upon variable market rates. the validity of banks rights to charge variable interest rates as affirmed in Yourell V. Hiberan Bank Limited (1918) AC 372 (HL) where the House of Lords recognised that this method of charging interest rates was legitimate as between banker and customer despite the compounding involved. the House regarded the debt accrued on the basis of the interest charge as accrued on the day it was debited to the account.

This was brought out clearly in National Bank of Greece S.A. V. Pinios Shipping Co. (No.1) (1990) 1 AC 637 Lord Goff of Chieveley held that the usage in question prevailed generally as between bankers and customers who borrow from them, and do not pay the interest as it accrues. He said that a bank could continue to compound interest even after a bank had demanded repayment. His Lordship also pronounced that 'if it is equitable that a banker should be entitled to capitalize interest at, for e.g. yearly or half yearly because of its customer has failed to pay interest on the due date, there appears to be

appears to be no basis in justice or logic for terminating that night simply because the bank, has demanded payment of the sum outstanding in the customer account.'

for the purposes of determining the contention, I will refer to paragraphs 8,9 & 10 of the affidavit in support same of which I will set out herein

paragraph 8 "The defendant/respondents have since paid the sum of Nle100,000/00 to set off the overdrawn balance with the current balance currently being Nle181,097.63

paragraph 9 "The defendant/respondents however prefer not to pay any interest on the overdrawn amount whereas the plaintiff/applicant has proposed interest at the rate of 1% per annum on the overdrawn amount

paragraph 10 "That interest was part of the plaintiff/applicant claim at the rate of 37% being penalty interest which has been negotiated down to 18% but which the defendant/respondents has rejected."

I will also repeat paragraphs 5 and 6 of the affidavit in opposition, sworn to by Mr. John Gbondo Margai the chief executive officer of the 1st defendant.

Paragraph 5 thereof:

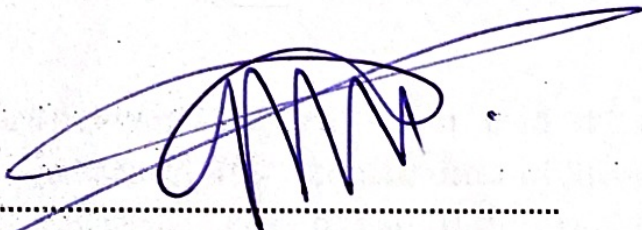
"That we further as part of the statement request that the plaintiff waves his right to extra interest as the Nle281,097,63 (Two Hundred and Eight-one Thousand and Ninety-seven New Leones, Sixty-three Cents) includes a huge interest"

Paragraph 6 "That we preferred a payment plan for the payment of the Nle281,097.63 (Two Hundred and Eight-one Thousand and Ninety-seven New Leones, Sixty-three Cents) includes a huge interest"

Paragraph 6 "That we proffered a payment plan a payment plan for the payment of Nle281,097.63 which we are complying with, as part payment of Nle100,000 has been paid to the plaintiff to show commitment (Marked as exhibited (JGM3))"

Consequently, this court will be mindful of the acclaimed mitigation circumstances so vociferously weighed upon by counsel for the defendant, which in the considered opinion of this court, which does not whittle down the net effect of the wrong of the defendant.

1. Interest is therefore amend at 24% per annum from the 15th day of January, 2021 to the date of judgement.
2. solicitors cost of Nle40,000 (Forty Thousand New Leones)

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by several vertical strokes, positioned above a dotted line.

THE HON. JUSTICE M.P. MAMI J.A.