



IN THE SUPREME COURT OF NAURU
YAREN DISTRICT
CIVIL JURISDICTION

Civil Suit No 36 of 2013

BETWEEN

CONAK MAAKI

APPELLANT

AND

KYOMA MENKE

RESPONDENT

Before: Khan ACJ

Date of Hearing: 5 May 2017

Date of Judgement: 7 June 2017

Case may be cited as: Maaki v Menke

CATCHWORDS:

Money lender is defined by the Moneylenders Act, 1900 of England - whether 20% interest is excessive and unreasonable - whether the defence of laches will apply in delay in filing the claim - whether the respondent is entitled to claim from date of the lending or from date of the judgment.

Appeal dismissed

APPEARANCES:

Counsel for the Appellant: Mr V Detenamo (pleader)

Counsel for the Respondent: Mr V Clodumar (pleader)

JUDGMENT

BACKGROUND

1. On 20 January 2017, the Registrar delivered a judgment against the appellant and made the following orders:

- a) That the defendant pay the plaintiff the sum of \$190.00 being the principal plus 10% compound interest per fortnight with effect from 10 October, 2011;
 - b) That the defendant pay the plaintiff the sum of \$240.00 as part payment of his costs, such payment to be made within 14 days;
 - c) That the other costs, including legal fees, be awarded to the plaintiff to be taxed if not agreed.
2. The appellant filed an appeal against the judgment and orders of the Registrar.
3. An appeal against the decision of the Registrar is governed by Order 39 of the Civil Procedure Rules and Order 39 Rule 1(1) states that an appeal shall lie to a judge in chambers from any order or decision of the Registrar.
4. The Registrar's judgment fully sets out the facts of the case and for the sake of completeness I will briefly set out the salient facts which are:
- a) The respondent filed his claim on 26 July 2013;
 - b) The respondent obtained a business licence to operate a money lending business on 16 August 2011 from the premises in Aiwo District;
 - c) On 10 October 2011 the appellant borrowed a sum of \$478 at 20% compound interest and signed a receipt;
 - d) There was no written agreement setting out the terms or conditions of the borrowing;
 - e) The claim filed by the respondent on 26 July 2013 was for a sum of \$4,278 which included interest at the rate of 20% per fortnight;
 - f) The appellant only admitted owing a sum of \$190;
 - g) The appellant admitted that he signed the receipt dated 10 October 2011 acknowledging that he borrowed a sum of \$478, but stated that he only received the sum of \$100 as a new loan; and at that time, he was in a very desperate financial position, and had no choice but to sign the memorandum;
 - h) The appellant raised the issue that the 20% interest per fortnight was excessive and exorbitant;
 - i) The Registrar made a finding that the respondent carried on a business of money lending and the appellant borrowed money from the respondent from time to time;

- j) The appellant raised the doctrine of laches as a defence in that the defendant purposely delayed filing the claim so that he could claim the sum of \$ 4278.00;
- k) The Registrar found that the 20% was unreasonable and exorbitant and instead chose a rate of 10% to be paid as compound interest from 10 October 2011. The defence of laches was dismissed.
- l) In the final analysis, the Registrar made orders as mentioned in paragraph 1 above.

THIS APPEAL

5. The grounds of appeal are:

- 1) The respondent's refusal to provide the appellant's statement of account tantamount to a denial of natural justice which we wish to reaffirm;
- 2) The respondent at all material times was not a licensed money lender when he attached monies to the appellant's loan account.

GROUND 1

6. The appellant submits that he is entitled to an account as to how the sum of \$478 was arrived at. Order 55 Rule 3 of the Civil Procedure Rules provides:

- 3. Every statement of claim in a moneylender's suit, whether indorsed on the writ or not, must state –
 - a) the date on which the loan was made;
 - b) the amount actually lent to the borrower;
 - c) the rate per cent per annum of interest charged;
 - d) the date when the contract for repayment was made;
 - e) the fact that a note or a memorandum of contract was made and was signed by the borrower;
 - f) the date when a copy of the note or memorandum was delivered or sent to the borrower;
 - g) the amount repaid;
 - h) the amount due but unpaid;
 - i) the date upon which such unpaid sum became due; and
 - j) the amount of interest accrued and unpaid on every such sum.

7. In this matter, the appellant signed the receipt which falls within the ambit of Order 55, Rule 3(e), and therefore there was no need for the respondent to provide an account. Further, on the basis of the admission by the appellant that he only owed

\$190, the Registrar accepted that amount and reduced the sum of \$478 to \$190. So, I fail to understand as to what the appellant is complaining about. This ground of appeal has no merit and is dismissed.

GROUND 2

8. The appellant is raising the issue that the respondent is not a licensed money lender. He did not raise this issue at the trial before the Registrar and is now precluded from raising it. However, the Registrar made the following findings that:

The plaintiff carries on a money lending business on the island. It is a perfectly legitimate concern under the laws of the land and for which a business license is issued by the authorities.

9. This ground of appeal has no merit and is also dismissed.
10. The appellant raises as an additional issue, not as a ground of appeal but by submissions, which I will still deal with. The appellant submits that the sum of \$190 should commence from 20 January 2017 (the date of the judgment), instead of 10 October 2011, the date when the loan was given. I fail to understand the basis of this contention. It is very clear that the loan of \$190 was given on 10 October 2011 which remains unpaid to date so the respondent is entitled to recover the loan with effect from 10 October 2011.

CONCLUSION

11. This appeal has no merit and is dismissed.

Dated this 7th day of June 2017



Mohammed Shafiullah Khan
Acting Chief Justice

