

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 495 OF 2003**

BETWEEN:

CAPITAL INVESTMENT LTD PLAINTIFF

AND

DR C.K. MAKADIA DEFENDANT

CORAM: His Honour T.R. Ligowe : Assistant Registrar

Makawa	:	Counsel for Plaintiff
Chulu	:	Court Official

RULING

By a lease made between the plaintiff and the defendant dated 19th July 1993, the plaintiff demised to the plaintiff premises in Plaza House at City Centre in the city of Lilongwe. By schedule 2 of the said lease the defendant agreed to be paying service charges to the plaintiff. Clause 3.1 of the lease provides for re-entry in the event among others that rent or any part of it or service charges or any part of them is 21 days or more in arrears whether formally demanded or not. In their statement of claim the plaintiffs aver that the lease was renewed several times by mutual consent of both parties and the last renewal was for a term of one year from 15th March 2003 at a rent of K38500 payable quarterly in advance. That by 31st March 2003 the defendant had accumulated K791,693.45 arrears in rent and service charges. That the defendant has only paid K100000 leaving a balance of K691,693.45. The plaintiff wrote the defendant twice demanding payment of the remainder at first by 10th July 2003 and then by 22nd July 2003 but the defendant failed to pay.

So the plaintiff claims;

- (a) K691,693.45 rent and service charge arrears

- (b) Interest on K691,693.45 at the base lending rate of 46 percent per annum from the date of the claim, 24th July 2003, to the date of payment
- (c) Legal practitioner's collection fees amounting to K94,169.35
- (d) Possession of the demised premises
- (e) Mesne profits from the date of service of the writ of summons in this case to the date possession is yielded; and
- (f) Costs of the action

This is the plaintiffs summons for judgment on admissions under Order 27 rule 3 of the Rules of Supreme Court and for summary judgment under order 14 rule 1 of the Rules of the Supreme Court.

The plaintiff applies that judgment on admissions be entered against the defendant for the sum of K869,783.30 with costs on the ground that the defendant has admitted the fact that he owes the plaintiff rent and service charge arrears; and that final judgment be entered against the defendant for the total amount claimed in the statement of claim with interest at the rate of 46 percent per annum, the demised premises.

Let me deal with the application for judgment on admissions first.

Order 27 rule 3 of the Rules of the Supreme Court provides that where admissions of fact or part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the court may give such judgment or make such order, on the application as it thinks just. In **Ellis vs Allen [1914] 1 ch 904 at 909** it was held that the admissions may be express or implied but they must be clear.

In the affidavit in support of this application Pempho Likongwe, Legal Practitioner for the plaintiff deposes that the defendant admitted owing the plaintiff rent arrears and service charge arrears in his letters addressed to the plaintiff dated 24th June 2003 and 5th July 2003. The letters have been exhibited and marked "**PL 12**" and "**PL 13**" respectively. In "**PL 12**" the defendant enclosed a cheque No. 470335 for K100000 as part payment for the arrears for rent. The defendant also agreed to pay remaining arrears but after the differences between the parties are amicably resolved through arbitration. Paragraph 2 of the letter is in the following terms:

"It is specially agreed that whatsoever remaining arrears will be paid only after difference between two parties are resolved amicable with

arbitration, and Capital Investments Limited will not close the office during this period.” (sic)

In **PL 13** the defendant lists matters that require arbitration and in the last but one paragraph he writes:

“Once more I reconfirm to settle whatsoever outstanding after amicable arbitration as agreed in my letter of 24th July 2003 and the Capital Investments Limited will not close the office during this period.” (sic)

From the reading of the two letters it is clear that the defendant admits owing the plaintiff a certain sum of arrears in rent and service charges. It is only the amount that is in dispute. The issue of the amount the defendant demands to be resolved through arbitration. This is in accordance with clause 3 (4) of the lease which is an arbitration agreement between the parties.

This court is mindful that where there is an arbitration agreement between parties arbitration proceedings take precedent over court proceedings under section 6 (1) of the Arbitration Act (Cap 6:03) of the Laws of Malawi that court proceedings may be stayed. But this must be on application to the court by the other party any time after appearance (acknowledgement of service) and before delivering any pleadings or taking any other steps in the proceedings. If the court is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

No such application was made by the defendant in this case. The defendant proceeded to acknowledge service and give his notice of his intention to defend and then served his defence. Thus the matter is properly proceeding in court.

The plaintiff has exhibited a statement of Account between the plaintiff and the defendant marked **“PL 15”**. The statement of account shows the defendant is indebted to the plaintiff in the sum of K869,783.30 as at the end of September 2003.

The defendant did not appear on the hearing of this application neither did he serve and file an affidavit in opposition.

This court having read the affidavit in support of the application and having Heard counsel for the plaintiff gives judgment on admissions in favour of the Plaintiff against the defendant for the sum of K691,693.45 claimed, Legal practitioner’s collection fees amounting to K94,169.35 and costs of the action.

The other application is for summary judgment against the defendant under Order 14 rule 1 of the Rules of the Supreme Court for the total amount claimed in the statement of claim with interest at the rate of 46 percent per annum, mense profits and possession of the demised premises.

The defendant in this case gave his notice of intention to defend, the statement of claim was served on him and the plaintiff's affidavit in support of the application compliers with the requirements of order 14 rule 2 of the Rules of the supreme Court. Having satisfied these preliminary requirements for proceedings under order 14 of the Rules of the Supreme Court the plaintiff has established a prima-facie case and has become entitled to judgment.

Under Order 14 rule 3 of the Rules of the Supreme Court the court may give judgment for the plaintiff against the defendant on the claim unless on the hearing the court dismisses the application or the defendant satisfies the court with respect to the claim to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim.

In the present case neither has the court dismissed the application nor has the defendant satisfied the court that there ought to be a trial of the claim. This court therefore gives judgment for the plaintiff against the defendant with costs.

Made in Chambers this day of 2004 at Lilongwe.

T.R. Ligowe
ASSISTANT REGISTRAR