

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 298 OF 2002**

BETWEEN

DIMON (MALAWI) LIMITED.....PLAINTIFF

-AND-

B. MUNYOLO.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Mwale for the plaintiff

RULING

This is an application for Summary Judgment brought under Order 14 of the Rules of the Supreme Court. The summons is supported by an affidavit sworn by Innocentia Nkhoma, which affidavit was adopted by George Mwale, who appeared for the plaintiff.

The plaintiff's claim was for the sum of K73 970.00 plus interest thereon, collection costs amounting to K11 095 and costs of this action. It was the plaintiff's contention that at the time of commencement of this action the defendant was indebted to them in the sum of K73, 970.00 being the price for scrap metal supplied to the defendant by the plaintiff company at the defendant's own request. In support of this contention the plaintiff did attach to the affidavit copies of weigh bridge tickets issued at National Seed Company of Malawi as well as two cheques that the defendant used to pay for the scrap metal. The tickets and the two cheques were marked IN1, IN2 and IN3, respectively. The plaintiff averred that when the two cheques were presented to the Bank, they were returned with the words "*payment stopped*" endorsed on them. It is the plaintiff's belief that this was done at the instance of the defendant. The plaintiff's then went on to contend that the dates on the tickets did correspond to the dates on which the cheques were issued and that this is indicative of the fact that the defendant did take delivery of the scrap

metal and that consequently the defendant owes the plaintiff the sum of K73, 970.00, because the same was never collected on account of the stop payments made on the two cheques.

The defendant did not make an appearance and apparently did not file a defence. This is if we consider what is on the record, however Mr. Mwale did inform the court that the defendant did serve them with a defence, which seemed to just deny the fact that the plaintiffs had supplied him with the goods in question. I do not want to go into a lengthy discussion as to why a defence was never filed on the court file, but one possible explanation could be the fact that at some point Lawson and Company had filed a summons to withdraw as Legal practitioners of the defendant. This decision was however reversed because after the application to withdraw as legal practitioners was heard, Mr. Chinoko of Lexon and Lords made an appearance on behalf of the defendant, at which he indicated that he was holding a brief from Lawson and Company. At the end of the day then Lawson and Company remained on the record as representing the defendant. In this regard then, the court took it that Lawson and Company never made an appearance or filed a defence or indeed an affidavit in opposition to the application. This was despite the fact that they were aware of the plaintiff's application. It was thus with this background that the court decided to proceed to hear the application. The court did also consider the fact that this was an old application.

To be entitled to summary judgment under Order 14 of the Rules of the Supreme Court, the plaintiff must prove his/her claim clearly and the defendant must be unable to set a bona fide defence or raise an issue which ought to be tried (see **Roberts v Plant** [1895] 1 QB 597). Indeed Jessel, M.R did state in **Anglo-Italian Bank v Wells** [1878] did state as follows:-

“thus where a judge is satisfied that not only is there no defence, but no fairly arguable point on behalf of the defendant, it his duty to give judgment for the plaintiff.”

I must add that it has always been the policy under Order 14 of the Rules of the Supreme Court to prevent delay in cases where there is no defence. In this case there was not even an attempt to file any defence, despite the defendant showing an intention to defend. In this regard then, it is the belief of this court that the defendant does not have a defence because if he had one, he should been capable of setting it down in some detail. As Lord Blackburn pointed out in **Wallingford v Mutual Society** [1880] 5 A.C. 685 at P. 704, that

“I think that when affidavits are brought forward to raise a defence, they must condescend upon particulars. It is not enough to swear that “I owe the man nothing.....” that is not enough. You must satisfy the judge that there is some reasonable ground for saying so...”

In the instant case, there was no opposition to the application despite the fact the defendant being served and attending to court on occasions prior to the hearing of this application. It is thus on this premise that I give the plaintiff summary judgment in the wording of his statement his claim with costs for this action.

Made in Chambers this.....day of.....2004

K. T. MANDA
SENIOR DEPUTY REGISTRAR