

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1197 OF 2003

BETWEEN:

BESTOBELL (MW) LIMITED.....PLAINTIFF

AND

SHIRE LIMITED.....DEFENDANT

CORAM : TEMBO, ASSISTANT REGISTRAR

Chirwa, Counsel for the Plaintiff

Kauka, Counsel for the defendant

ORDER

This is this courts' order on the defendants' application to strike out

the instant action for being frivolous, vexatious and an abuse of the court process made under Order 18 r 19 Rules of Supreme Court. The defendant herein filed an affidavit in support of its application whereas the plaintiff filed an affidavit in opposition.

The plaintiff wrote demand letters to the defendant in September 2002 demanding the

sums claimed herein of K35,808.26, statutory legal collection charges thereon of K5,371.24 plus costs of this action. In January 2003, the defendant paid the sum of claimed of K35,808.26 principal debt leaving out the collection charges and costs claimed herein.

Thereafter the plaintiff on 6th may, 2003 commenced the instant action by a writ of summons claiming the same sum of K35,808.26 that had already been paid. And the defendant prays that this action be dismissed for being frivolous, vexatious and an abuse of the court process. The defendant also asserts that according to the amendment to the Legal Education and Legal Practitioners Act on legal collection charges such legal collection charges ought to be collected from the plaintiff.

The plaintiff though insisted that it is entitled to costs and statutory legal collection costs since the claimed herein was paid upon the demand for the same by the plaintiff. And the plaintiff further seeks this court's order amending its writ of summons to reflect that the only claim is for costs and legal collection costs. The defendant takes the contrary view namely, that such an application ought properly to be made on a summons in terms of Order 20 r 5 Rules of Supreme Court since pleadings are deemed closed now.

The words frivolous and vexatious are meant for cases that are obviously unsustainable see Lindley L.J. in '**Att. – Gen. Of Duchy of Lancaster v L & N.W 'Ry'** [1892] 3 Ch 274 at 277.'

The question for this court is therefore, is the plaintiffs' action obviously unsustainable? In the circumstances of this case this court of the view that the answer to the consideration ought to be in the affirmative for the following reasons.

Firstly, the principal sum claimed was already paid by the date of commencement of the instant action.

Secondly, following on the first ground the plaintiff is not entitled to costs of this action as claimed herein.

Third, and lastly, the plaintiff is not entitled to statutory legal collection costs in terms of the current law on such costs as contained in the relevant part of the legal Education and Legal Practitioners Act.

Since the plaintiff's action is vexatious and an abuse of the court process it is struck out with costs to the defendant to be taxed if not agreed. This court feels that it can not consider the plaintiff's application to amend its writ of summons in the circumstances.

Made in **Chambers** at Blantyre this day of February, 2004.

M A Tembo

ASSISTANT REGISTRAR