

IN THE HIGH COURT OF MALAWI

CIVIL CAUSE NO. 408 OF 1979

BETWEEN:

FERNANDO DA SILVA CARDOSO ..... PLAINTIFF

and

M. M. CHIMBENDE ..... DEFENDANT

Coram: Skinner, Chief Justice  
For the Applicant: Fachi of Counsel  
For the Respondent: Msisya of Counsel  
Official Interpreter: Nsandu  
Court Reporter: Brown

ORDER

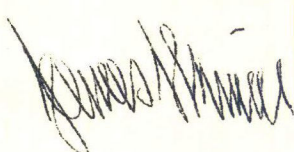
This is an application to pay a debt by instalments. It has been brought on behalf of one M. M. Chimbende, erroneously described as the defendant, and Fernando da Silva Cardoso who is described as the plaintiff.

There is an affidavit by the applicant in which he admits owing the plaintiff the sum of K22,500, but no writ has been issued by the plaintiff nor is there any other form of originating proceedings issued on his behalf.

The High Court has jurisdiction to order the payment of a debt by instalments but only in the case of a judgment debt. This is not a judgment debt. Mr. Fachi who appears for the applicant relies on Order 20 rule 5 of the Subordinate Courts Rules. I do not think that that rule is applicable to proceedings in the High Court other than proceedings by way of appeal from a magistrate's court, but even if the rule was applicable Mr. Fachi's client does not fall within it because it speaks of a debtor against whom judgment has been or is about to be given. In the instant case judgment has not been given. It can hardly be said that it is about to be given because no proceedings have been commenced.

I dismiss the application with costs to the respondent, such costs to be taxed or agreed.

Pronounced in open court this 4th day of September, 1979, at Blantyre.

  
J. J. SKINNER  
CHIEF JUSTICE

