

IN THE HIGH COURT OF MALAWI, BLANTYRE
PRINCIPAL REGISTRY

CIVIL CAUSE NO.371 OF 1987

BETWEEN:

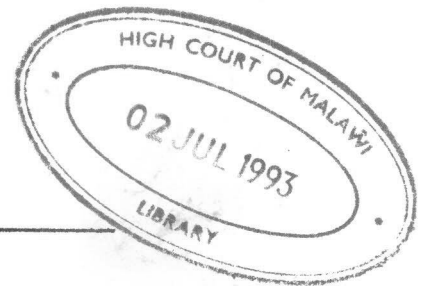
MALAWI RAILWAYS LIMITED APPELLANT

AND

A.H. BHADURKHAN
t/a A.H.B. ENTERPRISES RESPONDENT

CORAM: MTEGHA, J.

Chizumila, Counsel for the Appellant
Msisha, Counsel for the Respondent
Kadyakale, Law Clerk



JUDGMENT

This is an appeal by the appellant against an order which the learned Registrar made on 19th November, 1987 in which he dismissed the appellant's application for summary judgment.

The brief history of the case appears to be this. By a specially endorsed writ dated 16th June, 1987 the appellant claimed for possession of premises popularly known as Road Motor Service off Chilambula Road in the City of Lilongwe. In the statement of claim the appellant alleged that by an agreement dated 25th June 1982 the appellant let these premises to the respondent on a monthly tenancy and the rent, which was stipulated in the agreement would be increased by mutual agreement. On 23rd April, 1987 the appellant, in accordance with terms of the agreement, gave notice to the respondent to quit, but the respondent still holds possession of the same premises. Further the statement of claim alleges that the respondent, by the time the writ was issued, had not paid the rent for 10 months, which the appellant also claimed.

In his defence the respondent admitted all these allegations except the arrears of rent and further states there is the same case pending on the same issue in this court, and therefore this case is an abuse of the court.

The appellant, on these facts, applied to court for summary judgment; the respondent denied that he entered in any lease with the plaintiff because the lease was transferred to A.H.B. Enterprises Ltd. and not himself.

It was Mr. Msisha's submission, before the learned Registrar, that the respondent, having admitted the tenancy and the due notice to quit, he has no defence and therefore judgment should be entered for the appellant. In the affidavit deposed by the respondent he denied to have entered into any lease agreement. I have looked at the pleadings and indeed, as the learned Registrar pointed out, the respondent contradicts himself. It was the Registrar's view that although there are some admissions, the respondent denied arrears of rent. On that basis he dismissed the application.

It was Mr. Msisha's submission before me that once the respondent admitted, on the pleadings, the existence of the tenancy and notice to quit, the appellant was entitled to possession of the premises, and the only issue to go for trial is that of rent, and the respondent must show a prima facie defence.

On the other hand Mr. Chizumila takes the view that since the appellant is asking for judgment, including the arrears of rent, which are disputed, the case is not a proper one for summary judgment and must go to trial. In any case, Mr. Chizumila submits, there is already an earlier case between the parties on the same issues, and therefore this is an abuse of the court process - a fact which Mr. Msisha denies.

I first wish to dispose of the last point; and that is that there is another case pending. That case is between the appellant and A.H.B. Enterprises Ltd., the present case is between A.H. Bhadurkhan t/a A.H.B. Enterprises. Prima facie the defendant in the former case is a limited company, while in the present the defendant is an individual. The lease agreement is between the appellant and A.H.B. Enterprises, a trading name of the respondent who even signed the lease. In my considered view the cases appear to be different.


I will now turn to the main appeal. Summary judgment is governed by O.14 R.1 states:

"Where in an action to which this rule applies or statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to such a claim or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of damages claimed, apply to the court for judgment against the defendant."

This order clearly contemplates that the plaintiff has the option to seek judgment on only part of the claim. The reasons given by the Registrar that the case is not a proper

one for a summary judgment is that the defendant disputes arrears of rent. I do not think this approach was correct. The appellant's application, and indeed Mr. Msisha's submission, is that of possession. I would therefore allow this appeal and order that possession of the premises be delivered up to the appellant, and the only question which should go for trial is that of arrears of rent.

MADE in Chambers this 22nd day of January, 1988 at Blantyre.


H.M. Mtegha
JUDGE