IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.195 OF 1987

BETWEEN:

ELECTRICITY SUPPLY COMMISSION OF MALAWI.....PLAINTIFF

- and -

MALAWI RAILWAYS LIMITED.....DEFENDANT

Coram: MTEGHA, J.

Mbendera, Counsel for the appellant
Makhalira, Counsel for the respondent
Kadyakale, Law Clerk

RULING

This is an appeal by the defendant against a ruling made by the Acting Deputy Registrar on 5th September, 1988. In that ruling the Acting Deputy Registrar entered judgment for the plaintiff on admissions.

Briefly, the facts of the case are these: the plaintiff brought an action against the defendant in the tort of negligence. The third paragraph of the statement of claim stated: "On or about the 30th August, 1986 the defendant's agents and or servants negligently drove, managed and controlled the defendant's crane .... that they caused or permitted the same to get out of control whereby it collided or struck the plaintiff's two power lines." The particulars of negligence were, as usual, itemised.

In paragraph 1 of the defendant's defence, the defendant pleaded as follows:

> "For the purposes of this action only but not otherwise, the defendant admits that the collision referred to in the statement of claim was caused by the negligence of its servants and/ or agents".

Further in their defence the defendant denied that the plaintiff had suffered any damage. Because of the plea in paragraph 1 of the defence, Mr. Makhalira, on behalf of the plaintiff, took out a summons to enter judgment on admissions under O.27, r.3.

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It was argued by Mr. Makhalira, on behalf of the plaintiff, at the hearing before the Acting Deputy Registrar that the defendant's admission is so clear, and expressly so clear that the defendant did not have any real defence, so that the only question that remains is as to damages. In this way, the Court's time will not be wasted and that costs and energy would be saved.

On the other hand, Mr. Mbendera, on behalf of the defendant, had submitted that an admission of liability for negligence, coupled with a denial of damage does not entitle the plaintiff to enter judgment in terms of O.27, rule 3. After hearing both counsel the Acting Deputy Registrar entered judgment for the plaintiff and left the question of damages to be determined. Substantially the same arguments have been advanced before me.

It is well established that an admission of negligence does not necessarily imply an admission in damage. The reasons were amply elucidated by Lord Reading as far back as 1916 in the case of J.R. Munday v. London County Council (1916), 2 K.B. 331. In that case the plaintiff claimed damages for injury to their house caused through the negligence of the defendants. The defendants paid money into Court, and the payment was accompanied by a notice in this form:

> "Take notice that the defendants admit that the accident was caused through their negligence, but that they deny the alleged damage ....."

It was held that the notice was proper and although it admitted negligence it put in issue the question of damages. Lord Reading, C.J. said, at p.334:

> "Negligence alone does not give a cause of action; damage alone does not give a cause of action; the two must co-exist."

In Blundell v. Rimmer (1971) All E.R. 1072 the plaintiff brought an action for damages against the defendant in negligence. The defendant, while paying money into Court notified the plaintiff that negligence was admitted, but denied that the plaintiff had suffered any damage. An interlocutory judgment on admission of negligence was obtained. The defendant appealed. It was held by Payne J. that there was no admission of facts on which the plaintiff could have obtained judgment under O.27 rule 3 because a cause of action in negligence had two elements, i.e. negligence itself, and damage suffered by the plaintiff, and until damage was proved, the plaintiff was not entitled to judgment.

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Similarly, in Rankine v. Garton Sons & Co. Ltd. (1979) 2 All E.R. 1185, Stevenson L.J. refused to enter judgment on admission of negligence only while denying damage. The case of Blundell was cited with approval in this case. Mr. Makhalira says all these authorities relate to personal injury cases, and that they are distinguishable with the present one. This is not correct. One has just to look at the Munday's case which I have cited above.

The Acting Deputy Registrar purported to use his discretion to distinguish the case of Blundell. I am afraid, that discretion was not properly exercised. There were authorities which clearly guided the Court. A close look at the defendant's defence clearly showed that the defendant was denying damage. Damage being an essential ingredient to establish the tort of negligence, it must be proved or admitted before judgment can be entered. For these reasons I would allow the appeal; judgment entered on admissions is hereby set aside. The plaintiff is condemned in costs for this application.

Made in Chambers this 17th day of January, 1989 at Blantyre.

H.M. Mtegha
JUDGE