

Registrar

20th July 1990

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO.216 OF 1989

BETWEEN:

DR. ABDUL HAMID GATRAD (MALE) 1ST PLAINTIFF
MRS. ROSEMIN GATRAD (FEMALE) 2ND PLAINTIFF
AND
STERLING INTERNATIONAL LIMITED 1ST DEFENDANT
SANDERSON A.L. SANGWA (MALE) 2ND DEFENDANT

CORAM: MTEGHA, J.

Msisha, Counsel for the Appellants
Maulidi, Counsel for the Respondents
Kholowa, Court Clerk



RULING

This is an appeal from the Deputy Registrar's ruling which he delivered on 9th May, 1990. I am aware that an appeal to this court from the Deputy Registrar is by way of a rehearing.

The brief facts of the case are that on 18th March, 1986 the plaintiffs were involved in a road accident when their vehicle collided with the first defendant's vehicle driven by the second defendant. According to S.4(1) of the Limitation Act, in cases of personal injury claims, a writ must be issued within three years from the date when the cause of action arose. In the present case, the cause of action therefore accrued from the 18th of March, 1986. Then the following episodes happened. On 17th March, 1989 a writ was brought to the High Court for issuing with the relevant fee. It was marked "The High Court of Malawi, Blantyre, ORIGINAL, fee paid K6.00 date 17th March, 1989". Then it was stamped: "Registrar of the High Court, 20th March 1989, P.O. Box 30244, CHICHIRI, BLANTYRE 3. General Receipt 530176". The then Registrar signed the writ on 29th March, 1989.

The question which I have to determine is when was the writ issued. Was it issued when a seal was placed on it on 17th March, 1989 or when a receipt for the prescribed fee was issued on 20th March or when the Registrar signed the writ on 29th March, 1989?

Mr. Msisha has submitted that O.6 r.7 of RSC paragraph 3 a writ is said to have been issued if it is sealed by an officer of the court. The Registrar does not have to sign the writ. This is the position in England. But, Mr. Msisha submits, in Malawi this provision has to be read in conjunction with S.3 of

the Courts Act. Section 3(1) of the Courts Act stipulates: "All summons, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal shall -(a) if issued or made by the High Court, be signed by the Registrar..."

Therefore, Mr. Msisha argues, the placing of a seal only does not amount to the issuing of a writ in Malawi. The effective date of issue therefore is 29th March 1989 when the Registrar signed the writ. The mere presence of a document within the precincts of the court does not suffice. He went on further to submit that in our courts, a writ cannot be issued until the prescribed fee has been paid and evidenced by a general receipt. In the case at hand the general receipt was issued on 20th March, 1989 and that date should be the effective date if not the 29th March 1989 when the Registrar signed the writ. Therefore this action is frivolous and vexatious and should be dismissed since the writ was issued out of time.

Mr. Maulidi, on behalf of the plaintiffs, has submitted that the critical date of issue is when a seal is placed on the writ and revenue is left with the court. The issuing of a general receipt and the signing of the writ by the Registrar comes later.

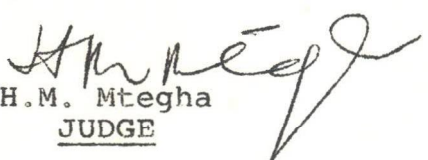
I do appreciate the formidable arguments put forward by both learned counsel. The clear facts that emerge and are undisputed are that the writ was in the hands of an officer of the court on 17th March, 1989. The requisite fee was also in the hands of an officer of the court. An officer of the court did place the seal on the writ on 17th March, 1989 and the receipt for the relevant fee was issued on 20th March, 1989 and the writ was signed by the Registrar on 29th March, 1989.

In my considered opinion, the relevant date of issue is when the seal was placed on the writ. What followed thereafter was an administrative procedure. The writ and the relevant fee was already in the hands of a court officer on 17th June 1989, when a seal was placed on it. In the case of United Transport (Malawi) Ltd. v. L.L.B. Munthali, Civil Appeal No.3 of 1974, Makuta Ag. J. as he was then had a similar problem before him. In that case judgment in the lower court was delivered on 18th November. Notice of Appeal was prepared on 30th November and, together with a cheque of K1.50, was received by the trial court on the same date, but a receipt for the cheque was issued on 5th December. It was contended that the notice of appeal was issued on 5th December, the date when the receipt was issued therefore it was barred in that 14 days had elapsed from the date the judgment was delivered. Makuta, Ag.J. as he was then declined to accept this submission in the following words:

"Although the receipt was issued on 5th December 1972, I am of the view that the appellant satisfied the Statutory requirement. As already stated the notice of Appeal was received on 30th November and this was accompanied by the prescribed fee. The issuing of the receipt was in my opinion an administrative matter in the Resident Magistrate's registry and cannot affect the date of receipt....."

I concur with these observations. The issuing of the receipt on 20th March and the signing of the writ by the Registrar on 29th March, 1989 were acts of an administrative matter and cannot affect the date of the receipt of the writ and the relevant fee on 17th March, when in fact a seal was placed on it. Accordingly this appeal must fail and I dismiss it with costs.

MADE in Chambers this 20th day of July, 1990 at Blantyre.


H.M. Mtegha
JUDGE