IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.1129 OF 1992

BETWEEN:

RELIANCE INSURANCE AGENCIES ..... PLAINTIFF

- and -

F.H. RUSTAM ..... DEFENDANT

CORAM: MWAUNGULU, REGISTRAR

Chizumila, Counsel for the Plaintiff
Chiphwanya (Miss), Counsel for the Defendant

O R D E R

Yesterday the 15th December, 1992 I heard an application by the plaintiff for summary judgment. The application is made under Order 14 of the Rules of the Supreme Court. There were arguments from both sides on the merits and demerits of the application. Miss Chiphwanya learned Counsel for the defendant however pointed out that the plaintiff had not served statement of claim a prerequisite for this sort of application. Mr. Chizumila submitted however that the argument is not here and there because he had been served defence inspite of the statement of claim. I took the view that the omission was fatal and dismissed the application.

Order 14 rule 1 makes service of the statement of claim a condition precedent for the application. A statement of claim can be endorsed on the writ. It could be served together with the writ although not endorsed on the writ. It could be served after service of the writ if not endorsed on the writ. However the statement of claim is served, an application under Order 14 rule 1 would be objectionable if the statement of claim has not

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been served. I do not think the fact that defence was served is a reason for ignoring this cardinal requirement. It must be understood that Order 14 is a departure from the normal way in which Courts settle conflicting claims between litigants. The normal way is by pleadings followed by hearing in open Court. This allows the parties to present before the Court all the information pertaining to resolution of the antagonism. The Court should, therefore, be slow to grant summary judgment . Facts are to be before it from which liability would be inferred or concluded. In the absence of hearing, the statement of claim provides albeit in an imperfect way, the factual premise on which the plaintiff is given the right of an immediate judgment and the defendant denied the right of proving his defence by trial. It is in the light of this that Order 14 rule 1 was conceived. Nothing, therefore, short of statement of claim should entitle a plaintiff to summary judgment.

The importance of factual premise is underlined by the fact that under Order 14 rule 2, the applicant's affidavits must verify the facts. These facts are verified by reference to the statement of claim (MAY -vs- CHIDLEY, (1894 1QB 451).

The fact that defence was served does not, in my view, absorb the plaintiff from serving a statement of claim for purposes of Order 14 and the trial. It must be remembered that pleadings are served as a matter of rule. A defendant cannot serve defence before a statement of claim has been served on him. Order 18 rule 2 presupposes that a defence will be served when a statement of claim has been served. The course of the

defendant where a statement of claim has not been served is not to serve defence.but to apply to the Court to dismiss the plaintiff's action for want of prosecution under Order 19 rule 1.

MADE in Chambers this 16th day of December, 1992 at Blantyre.

D.F. MWAUNGULU
REGISTRAR OF THE HIGH COURT