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IN THE HIGH COURT OF MALAWI

7-11-92

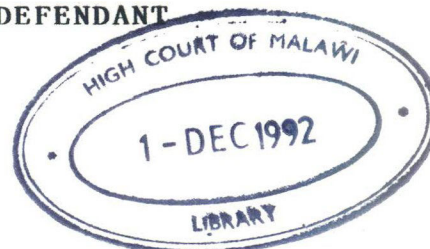
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 403 OF 1990

BETWEEN:

CASALEE.CARGO LIMITED.....PLAINTIFF
and
THE ATTORNEYDEFENDANT

CORAM: D F MWAUNGULU REGISTRAR
Kadwa for the plaintiff



RULING

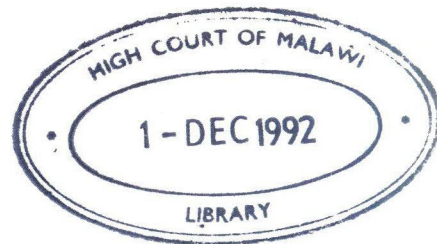
This an application by Casalee Cargo Limited, the plaintiff, for an order from this court to the defendant, the Attorney General, to specify time within when the defendant must satisfy the Judgement debt in this action. Judgement was obtained in default of notice of intention to defend. The plaintiff application is made under section 8 of the Civil Procedure (suits by or against the Government) act. The Attorney General wanted to oppose the application He filed an affidavit in opposition. The Attorney General however did not appear on the hearing of the summons. I reserved ruling because, in my views section 8 of the Civil Procedure (Suits by or against the Government or public officers) Act does not deal with satisfication of orders against Government generally.

Section 8 of the Civil Procedure (suits by or against Government or public officers) Act is as follows:

"When the decree is against the Government, or against a public officer in respect of such act, neglect or default as afore said, a time shall be specified in the decree within which it shall be satisfied; and if the dcree is not satisfied within the time specified the court shall report the case for the orders of the Government. Execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of the report."

The section presupposes that there is a decree. This section follows four sections. Section 7 follows section 6. Both section 6 and 7 deal with suits against public officers. Section 6(1) is the first instant where execution by decree is mentioned. It protects a public officer from attachment of his property except by decree from the court. Section 7 offers further protection for the public officer. In sub section 2 the public officer, where Attorney General has made an application under sub section 1, protects his property of being attached except by decree.





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The wording of section 8, in my view, deals with the situation under section 7 (1). I do not think it applies to all suits against the Government because of the operative words of section 8 to wit "when the decree is against the Government", to distinguish the situation where a decree is against a public officer.

There is further limitation even if my association of section 8 to section 6 and 7 is erroneous. Section 8 does not deal with satisfaction of orders against Government generally. Section 4, 5, 6, 7 and 8 follows on the general provisions under Government or public officer generally. This is directed to suits in respect of acts or omissions carried out by Government or a public officer in pursuance of execution or intended execution of statutory duties or public duties. This is very clear from section 4. If for example, Government or any public officer is carrying out duties under an Act of Parliament a suit emanating from there, section 4 and 7 apply. The requirement that act or omissions should be in pursuance of execution or intended execution of an Act of Parliament or other law is underlined in section 8. However section 8 does not deal with all suits against Government generally but only those related to act or omissions in pursuance of or public or statutory duty.

This raises a question how judgements or orders or decree against Government should be satisfied. It is important to state that section 3 (1) of the Civil Procedure (suits by or against the Government or public officer) Act only provides for institution and trial of suits by or against Government. It does not deal with execution of judgements, orders, or decree. Execution is covered by section 29 of the courts act which provides:

"Save as otherwise provided in this Act, the practice and procedure of the High Court shall, so far as local circumstances admit, be the practice and procedure (including the practice and procedure relating to execution) provided in the Rules of the Supreme Court:

(a) the Rules of the Supreme Court may at any time be varied, supplemented, revoked or replaced by rules of court made under this Act;

(b) any of the Rules of the Supreme Court which refer solely to procedure under Acts of the United Kingdom Parliament other than statutes of general application in force in England on the eleventh day of August, 1902, and any such Acts as have been applied to or are from time to time in force in Malawi shall not have any application in Malawi;

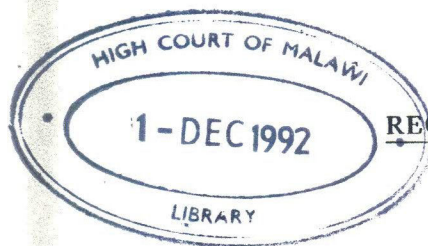
(c) if any provisions of the Rules of the Supreme Court is inconsistent with any provision of any rules of court, the latter shall prevail and the Rules of the Supreme Court shall, to the extent of such inconsistency, be void."

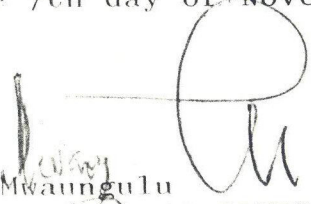
Order 77 Rule 15 of the Rules of the Supreme Court provides that warrants of execution do not apply in respect of Government. Order 77 Rule 15 (2) provides that satisfaction of orders against Crown should be in accordance with section 25 of the Crown Proceedings Act 1947. This act has not been applied to Malawi. Section 29 follows however closely under sections 13 and 16 of the Petition Of Rights Act 1860. This is a Statute of General Application before 1902. It is part of our law. Section 13 provides:

"Whenever, upon any such petition of rights, a judgement, order, or decree shall be given or made that the suppliant is entitled to relief, and there shall be no rehearing appeal or a writ of error, or in case of an appeal or proceedings in error a judgement, order or decree shall have been affirmed, given or made that the suppliant is entitled to relief, or upon any rule or order being made entitling the suppliant to costs anyone of the judges of the court in which such petition shall have been prosecuted shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving or affirming of such judgement or decree, rule or order, certify to the commissioners of her majesty's treasury, or to the treasurer of her majesty's household, as the case may require, the tenor and purport of the same, in the form in the schedule (No. 5) to this act annexed, or to the like effect; and such certificate may sent to or left at the office of the commissioners of her majesty's treasury, or of the treasurer of her majesty's household, as the case may be."

The judgement creditor in this action therefore should issue certificate accordingly which should be served on the Secretary to the Treasury.

Made this in Chambers on the 7th day of November 1992.




D F Mwaungulu
REGISTRAR OF THE HIGH COURT