

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 371 OF 1992



BETWEEN:

J MANYOZO PLAINTIFF

and

F MAGANIZO MCHAWA DEFENDANT

Coram: D F MWAUNGULU, REGISTRAR
Mandala, Counsel for the Plaintiff
Tembenu, Counsel for the Defendant

ORDER

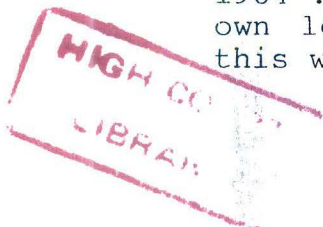
This is an application by the plaintiff to transfer this case to a subordinate court. The application is made under Section 11(a)(vii) of the Courts Act.

The application immediately raises the question of the Registrar's jurisdiction since the application is made pursuant to a provision in an Act of Parliament. The words "the Court" or "the High Court" in an Act of Parliament mean the court sitting in banc, that is a Judge or Judges in open court. (Baker vs. Oakes (1877) 2 Q.B.D. 171, Re Davison etc. Co. (1894) 2 Q.B.D. 332. Consequently, if used in a statute, the words do not include a Master or Registrar (per Lord Denning M.R. in Firman vs. Ellis (1978) Q.B. 886. I have no jurisdiction in this matter in so far as the application is made directly under a statute.

In the United Kingdom this application is made to a Registrar, Master or District Registrar in chambers. This is because of Order 107, Rules 1 & 2 of the Rules of the Supreme Court.

Consequently a Registrar in chambers can transfer proceedings to a county court under Section 40 of the County Courts Act 1984.

In the absence of express provision, it is doubtful whether Order 107, Rules 1 & 2 confer on a Registrar in Malawi jurisdiction to transfer proceedings from the High Court to a subordinate court. Enabling legislation should be had as soon as possible. There are reasons for this uncertainty. First, the Order itself is titled "The County Courts Act 1984". The Statute has not, and it could not in view of our own legislation, been applied to Malawi. The way out of this would be to look for the equivalent statute. This

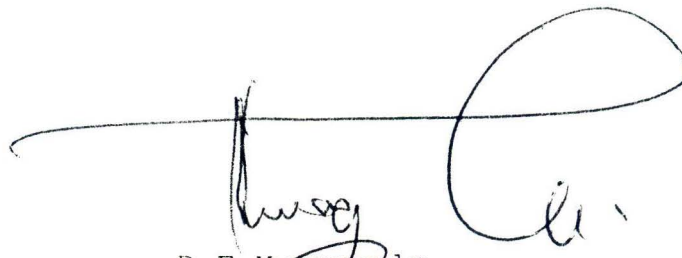


would be the statute governing subordinate courts. This leads us to the second problem. We do not have a subordinate court Act as such. In UK there are separate statutes for the Supreme Court of Appeal and High Court on the one hand and County Courts on the other. In Malawi the two jurisdictional courts have been included in one Act, the Courts Act. Order 107, Rules 1 and 2 cannot be used pervasively for jurisdiction given to the High Court or Judge under the Courts Act. This would be to confer on a Registrar more powers (See Section 11) than envisaged under Order 107 under the County Courts Act. Maybe, Order 107 should be restricted to that part of the Courts Act which deals with Subordinate Courts, namely part IV. Unfortunately, this part does not give a Judge or the High Court power to transfer proceedings to a Subordinate Court as does Section 40 of the County Courts Act.

The provision, therefore, which deals with transfer of proceedings to Subordinate Court is Section 11(a)(iii) of the Courts Act. It is contained in part III which deals with the High Court. This part does not emanate from the part dealing with Subordinate Courts. Transfer of proceedings to Subordinate Courts from the High Court will be governed by the Practice in the High Court. This is covered by Section 29 of the Courts Act.

The practice in the United Kingdom is based on the County Courts Act 1984 which has not been applied to Malawi. The 1984 Act is based on the 1959 Act. The 1959 Act is based on the County Courts Act 1946 as extended in 1888, 1903 and 1919. County Courts are creatures of Statute in the United Kingdom. I have grave doubts whether an Act creating Local Courts in the United Kingdom is a Statute of General Application in terms of Section 29 of our Courts Act. Even if it is, a Statute of general application would be superceded by a Statute of Malawi Parliament. The County Courts Act seized to be a Statute application to Malawi when in 1958 our Courts Act was passed. In the absence of express provision the Registrar has no jurisdiction to transfer proceedings to a Subordinate Court. The application being made on a direct statutory provision can only be handled by a Judge. Under Order 32, Rule 12 remit the summons to a Judge.

Made in Chambers this 24th day of March 1993.



D F Mwaungulu
REGISTRAR OF THE HIGH COURT