

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1585 OF 1993

BETWEEN:

IQBAL, BASHIR AND RAFIK A. K. MUSSA PLAINTIFF

AND

ALTAF GANI DEFENDANT

CORAM: D F MWAUNGULU, REGISTRAR
Mhone, Counsel for the Plaintiff
Chirwa, Counsel for the Defendant

ORDER

This morning I dismissed the defendant's application to strike out the Plaintiff's statement of claim. The application was under order 18, rule 19 of the Rules of the Supreme Court and on the ground that the statement of claim did not disclose a reasonable cause of action. I thought it disclosed a reasonable cause of action.

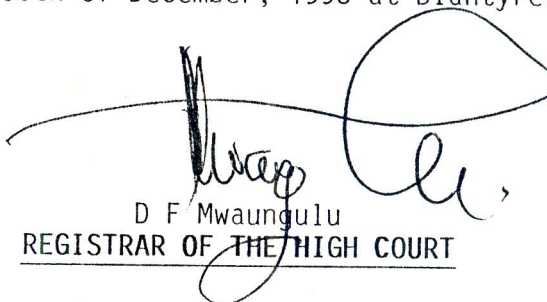
According to the statement of claim, by a contract dated 1st April, 1987 renewed several times thereafter, the Plaintiff leased plot Numbers 27A and 27B in the Municipality of Zomba. The defendant was using it as a filling station. It is averred in the statement of claim that the tenancy was terminated on 31st March, 1993. The defendant, however, it is alleged, held over the premises till 30th September, 1993. Before the expiry of the tenancy, it is further averred, the Plaintiff had informed the defendant of the change in rent. In paragraph 4 it is pleaded, "the defendant still owes the Plaintiff the sum of K32,381.50." The relief sought is a claim for this money.

What I have recounted in the preceding paragraph is what is contained in the statement of claim. I must confess I had considerable problems appreciating the defendant's argument. When proceeding under order 18, rule 19 (a) evidence is inadmissible (Order 18, rule 19 (2); Attorney General of Duchy of Lancaster vs. London of North Western Railway (1892) 3 Chapter 278). For this reason no affidavit was proffered. But when the defendant, for example, began to argue that the amount claimed was not the agreed rent under the agreement, he was delving in the area of evidence. When deciding whether the statement of claim discloses a cause of action the whole statement of claim must be looked at.

When formulating pleadings there are bound to be as many styles as there are drafters. A Court may prefer a certain style. A Court is not to be a connoisseur of pleadings. Of course there are pleadings that are notoriously ill-drafted. I do envisage a badly done pleading that by itself does not disclose a cause of action. A Court will not, however, throw out a writ or a pleading, however amateurish, if it discloses a reasonable cause of action.

In the present case the Plaintiff held over the premises. The claim, as I understand it, is for the rent flowing from the tenancy. It could be that the Plaintiff should have been more precise to show whether the claim is for arrears of rent or mesne profits. Imprecision per se does not entail absence of a reasonable cause of action. The Plaintiff does state that the money is owing from tenancy. The tenancy is not denied. It must always be remembered that a party has an inchoate right to amend his pleadings even at the trial. This right is justified on the fact that accuracy in pleadings cannot be perfectly achieved. The pleadings could be amended as a result of new evidence at the trial. In this particular case, even though the statement of claim leaves a lot to be desired, and the Plaintiff may have to consider to rephrase it, it does disclose a reasonable cause of action. The application cannot stand, it is dismissed with costs.

Made in Chambers this 30th of December, 1993 at Blantyre.



D F Mwaungulu
REGISTRAR OF THE HIGH COURT