

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1469 OF 1992

BETWEEN:

ALPINE ENTERPRISE.....PLAINTIFF

and

HARUN HASSAN SACRANIE T/A PLASTICHEM INDUSTRIES.....DEFENDANT

CORAM: JANE MAYEMU ANSAH (MRS) ACTING DEPUTY REGISTRAR

C.C. Chizumila of counsel for the plaintiff

Maulidi of Counsel for the defendant

RULING

This is an application by the plaintiff for summary judgement, made under order 14 of the Rules of the Supreme Court. The application is supported by an affidavit. The defendant has also filed an affidavit in opposition. There are arguments from both sides of the merits and demerits of the application. However the purpose of summary judgement is laid out clearly in order 14 rule 3-4 sub rule 1, that it enables a plaintiff to obtain, judgement without going through the intricacies of a trial, if only the plaintiff can prove his claim clearly and if the defendant is not able to come up with a bonafide defence or raise up triable issues against the claim to be tried.

The facts of case are as follows; the defendant is the registered owner of a business known as Plastichem Industries Limited and he operates a Bank account at Commercial Bank Livingstone Avenue Branch, Limbe. By a power of Attorney dated 16th May 1989, the defendant authorised his brother one Yunus Sacranie to operate his bank account. The defendant left for the United Kingdom and his brother Yunus Sacranie operated his bank account, and also run the business of Plastichem with the full knowledge and approval of the defendant. It is the plaintiff's contention that they sold goods to the defendant under several invoices worth K1482,740 through the said Yunus Sacranie who made various payments, and then issued post dated cheques drawn on the defendant's account at Commercial Bank in full payment of particular invoices. This is invoice number 1568 and the cheque

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numbers are 62071- 62076. The first cheque number 62071 worth K65,000 was dishonoured by the bank with the words "payment stopped". It is the plaintiff's prayer therefore that since cheques which are bills of exchange are to be treated as cash, the defendant has no defence therefore judgement should be entered against the defendant.

not Mr Maulidi counsel for the defendant has argued vigorously that there are triable issues therefore judgement should be entered rather the defendant should be given leave to defend the case. He has argued that there is uncertainty with regard to the actual amount of claim. Mr Chizumila has explained that the differences are due to certain payments which Yunus Sacranie made to the plaintiffs. However he explains that the cheques worth a total sum of K381,140 were issued on the defendant's account for goods supplied by the plaintiffs. The defendant has not denied or refuted that the cheques were ever issued. I therefore believe that the cheques worth K381,140 were issued by the defendant's brother. Mr Chizumila has argued that a cheque for all purposes is considered cash and it ought to be paid. He further stated that if a cheque is issued and it is not honoured, one cannot even raise a defence of want of consideration. The stand taken by the courts regarding cheques is well known and well established in Fielding and Platt Limited vs Najor (1969) All E.R. Lord Denning said:

"We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary."

Whereas a cheque, bill of exchange or promissory note is taken to be cash, it is clear that there should be consideration otherwise there is no justification for obtaining cash.

The defendant in his affidavit in opposition has asserted that there was no consideration, and he never had any dealings with the plaintiff. It is the plaintiff's contention which is not denied by the defendant that since the defendant left to live in the United Kingdom he has visited Malawi on several occasions. During those visits the defendant lived with his brother Yunus Sacranie and the defendant was aware of all business deals for that Yunus Sacranie entered on behalf of the company. It is also the plaintiff's contention that the said Yunus Sacranie is in the country, he is the one who entered into these business transactions on behalf of the company Plasticchem and therefore the one who is in a position to know what exactly transpired. Yet the said Yunus even though he is in Malawi and in Blantyre to be specific the defendant has not requested him to swear an affidavit. Yunus Sacranie is the man who would know the deliveries and exactly what he received on behalf of the company.



The defendant's failure to provide an affidavit sworn by Yunus Sacranie is taken to be an admission that the goods were received and then he issued the cheques to cover the cost thereof. Even if the defendant says that he never bought goods from the plaintiff, that cannot be a triable issue because although the defendant personally never had any business dealings with the plaintiff, his agent Yunus Sacranie did with defendant's knowledge

Mr Maulidi has argued the point of uncertainty, with regard to the plaintiff's claim. The amounts shown on the writ and the statement of claim are indeed different but the difference is clearly shown by the fact that the defendant made some payments which reduced the original figure shown on the writ to the figure on the statement of claim.

The invoices which were exhibited are also clear. I am convinced that the amount the plaintiff is claiming is certain. Therefore the argument cannot stand.

The total amount of dishonoured cheques is K381,140. I find that this money is due to the plaintiff in the sum of K381,140 being the sum on the bills of exchange. The balance of the total claim is to go for trial.

Made in Chambers this 8th day of July 1993

  
Jane Mayemu Ansah (Mrs)  
ACTING DEPUTY REGISTRAR

Maulidi: I apply for a stay of execution I intend to appeal to a Judge in Chambers.

Court: Order as prayed execution stayed pending appeal to be lodged within seven days.

  
Jane Mayemu Ansah (Mrs)