

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 811 OF 1993

BETWEEN:

APEX PARTS & ACCESSORIES PLAINTIFF

and

MANGULA TRANSPORT & SALES LTD. DEFENDANT

Coram: Jane Mayemu Ansah (Mrs); Acting Deputy Registrar
Msisha; of Counsel for the Plaintiff
Kaliwo; of Counsel for the Defendant.

O R D E R

This is the plaintiff's application for an order to strike off the defendant's defence, and enter judgement for the plaintiff. The application is made under Order 18 and it is supported by an affidavit.

By a specially endorsed writ the plaintiff took out this action to recover the sum of K42,710.73 being the sum owing by the defendant to the plaintiff for goods sold and delivered at the defendant's own request. The defendant put in a statement of defence containing two paragraphs. He stated that he did not admit that the plaintiff sold or delivered any goods worth the amount claimed as alleged by the plaintiff or at all.

The court has an inherent power to step or prevent the abuse of the legal machinery. The learned Judge in the case of Remington vs Scales (1897) A C p.5 quoted the case of Willis v Earl Beanchap, said:

"Undoubtedly, therefore, the court has power to strike out a statement of claim; but the power of the court is not confined to that. It applies also to a statement of defence which is frivolous and vexatious and an abuse of the procedure."

Mr Msisha for the plaintiff is contending that the defence be strike off on the basis that; on 25th June, 1993 the time the summon was taken out, and eventually served on the defendant, the amount owing was K42,710.13. After the summon was served on the defendant he paid K10,000 leaving a balance of K32,710.13. For the defendant to say that no goods were supplied is false. The defence is frivolous and an abuse of the court process. He

further argued that there is no chance of success on the side of the defendant. The defence does not raise any presumption that the case will succeed. In reply Mr Kaliwo for the defence had very little to say. He referred the court to Order 18 rule 19 sub-rule 12 where actions, that were not strike out were cited. With respect to Mr Kaliwo, this action does not come within the purview of those actions cited. This case is different in that the defendant has simply refused to admit the plaintiff's claim en bloc; it is obvious that such refutation is for same reason. Since the defendant has no defence he even made a payment towards the claim. The only reason why he served this type of defence after he had paid something towards the claim is that he has no real defence whatever. He only did it for the purpose of delay. Hopes L.J. in the case of Remington vs Scoles (1897) 2 Ch p. 7 had this to say:

"We are entitled thus to deal with it on account of the inherent jurisdiction in every court of justice to prevent an abuse of its procedure, and I think if this defence was permitted to remain on the file, would be an abuse of the procedure."

The defendant's defence in this case is a mere sham designed to delay the court process. I therefore strike it off and enter judgement for the plaintiff in the sum of K32,710.13. I further award the costs of this action to the plaintiff.

MADE in Chambers this 21st Day of Dec 1993.


Jane Mayemu Ansah (Mrs)
ACTING DEPUTY REGISTRAR