

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**CIVIL CAUSE NO. 650 OF 1997**

**BETWEEN:**

**LOUIS LIWAZA .....PLAINTIFF**

**-AND-**

**EMMA KASOPA ..... DEFENDANT**

**CORAM: HON. HANJAHANJA J.**

Mhango of Counsel for the plaintiff

Ching'ande of Counsel for the defendant

A. Machika Official Interpreter

**RULING**

This is an application by the plaintiff inquiring why the Deputy Registry after making a ruling in favour of the plaintiff referred this matter to a judge. Mr. Mhango for the plaintiff is puzzled with the procedure employed by the Deputy Registrar. He maintains that having decided for the plaintiff the matter could only have come to a judge by way of an appeal.

Mr. Ching'ande for the defendant agrees with the position taken by Mr. Mhango. He accuses the court for making this error. He pleads that the costs of this application should not be paid by the defendant as the defendant was not responsible for the error of the court. Mr. Mhango does not agree. He informs court that attempts were made with defendants lawyers court that attempts were made with defendant's lawyers to prepare a

consent order to correct this error. Mr. Ching'ande agrees to only on such meeting before this application on the grounds that the application ..... and abuse of the process on the basis that the matter was statute barred. Having held that O 18/19 did not apply.....vexation abuse of court process and having held that the defendants application failed she would have ended the ruling at that.

We are here because of the orbiter in the ruling which ..... to the matter to be referred to a judge. O 113/1A. The matter could only have come by way of appeal. Having dismissed, she could not have referred the matter to a judge. Matter is final.

Mr. Ching'ande to a large extent do agree with the position taken by counsel for the plaintiff in that she should have conclusively made a decision. The way I understand this ruling is that she made a ruling and ..... make. In once stretch. I totally agree that the registrar should have made a decision and gave it to the parties to decide to appeal or made no decision and refer in my ruling I hold that there was a ..... mistake of practice in the Deputy Registrar's ruling. Having found for the plaintiff it was not proper to refer the matter to a judge when the matter was not appealed against. It would have been proper to refer the matter where there was no ruling or no decision. Once a decision or ruling is made, it is the business of the parties to bring the matter to a judge by way of ea appeal. I, therefore hold that the ruling made by the Deputy Registrar for the plaintiff stands. Costs for those proceedings to the plaintiff should not be born out by the defendant. The error made was not of her making but that of the court. Each party to pay its own costs to today's proceedings. Liberty is granted to defendant to appeal if she wish in accordance with the practice in appeal.

**Made** in chambers this day 4<sup>th</sup> of February 2002.

W.H.Hanjahanja

**JUDGE**