

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 379 OF 2004**

BETWEEN

ADDEN JANNAT MBOWANI.....PLAINTIFF

-AND-

SHABANI KADANGO.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Katuya for the plaintiff

RULING

This is an application for Summary Judgment brought under Order 14 of the Rules of the Supreme Court. The summons is supported by an affidavit sworn by Andrews Katuya, who appears for the plaintiff.

The plaintiff's claim was for the delivery up of a motor vehicle registration number KK 871, Toyota Carina, which the plaintiff stated was snatched by the defendant from one Mr. Abdul Kawaye, the plaintiff's elections officer/representative. These events, according to the plaintiff, took place on or about the 21st day of May, this year and that at that material time the plaintiff was a parliamentary candidate for Nkhotakota North Constituency. It was the plaintiff's contention that at the time the vehicle was taken by the defendant there was inside; cash amounting to K120 000, which was said to have been intended for the plaintiff's Election Monitors as subsistence allowances. In addition to the money the plaintiff also informed the court that the vehicle also contained a cooler box, five plastic plates, five bottles of soft drinks, one cooking pot, a list of names of the plaintiff's election monitors and election results sheets collected from the plaintiff's monitors in the various polling centres. The plaintiff continued to state that after taking the vehicle the defendant, unlawfully and without his consent, changed the registration number of the vehicle to BH 6774. The plaintiff further averred that at the time the defendant took the vehicle, it was worth K650 000, alternatively therefore the plaintiff claimed to be paid the sum of K650 000 as value for the car.

This was in addition to the claim for the K120 000 cash and the items that were in the vehicle at the material time. The plaintiff also claimed for damages for conversion and interest at the ruling bank lending rate.

The defendant, who did not make an appearance, did file a defence which was a general traverse. He simply states that he denies every allegation in the statement of claim.

In the affidavit in support of the application, Mr. Katuya deposes that that the defendant admitted before the station officer at Lilongwe Police that he did indeed unlawfully change the registration number of the motor vehicle from KK 871 to BH 6774. This was apparently after the vehicle had been seized, following a report which the plaintiff had made to Traffic Police after the plaintiff found the vehicle being driven by a third party acting on behalf of the defendant. Finally, Mr. Katuya deposed that the vehicle, the cash and the other items are still in the possession of the defendant.

To be entitled to summary judgment under Order 14 of the Rules of the Supreme Court, the plaintiff must prove his/her claim clearly and the defendant must be unable to set a bona fide defence or raise an issue which ought to be tried (see **Roberts v Plant** [1895] 1 QB 597). Indeed Jessel, M.R did state in **Anglo-Italian Bank v Wells** [1878] did state as follows:-

“thus where a judge is satisfied that not only is there no defence, but no fairly arguable point on behalf of the defendant, it his duty to give judgment for the plaintiff.”

Indeed I must add that it has always been the policy under Order 14 of the Rules of the Supreme Court to prevent delay in cases where there is no defence.

While the plaintiff must prove his claim early to be entitled to summary judgment, under Order 14, the defendant must simply show cause against the application by affidavit or otherwise to the satisfaction of the court. He can show cause on a preliminary technicality or by showing that there is a serious issue of fact to be tried or by showing an arguable defence or in certain cases by raising a prima facie set-off or counterclaim or by showing to the court that for some other reason there ought to be a trial.

Where the defendant intends to base his opposition solely on a technicality, there is strictly no need for him to file an affidavit in opposition. However, if he intends raise other grounds of opposition on

merits, he must file an affidavit dealing with the merits. In this instance the defendant filed no affidavit in opposition. As I pointed out earlier, he just filed a defence which is a general traverse. Indeed it is the view of this court that when establishing a defence, especially where the statement of claim has been particularized, it is inadequate for a defendant to restrict himself to a general denial. A general denial has always been regarded as one which arouses suspicion that the defendant does not have a defence. Indeed in such circumstances there is always that if the defendant has a defence, he should be capable of setting it down in some detail. As Lord Blackburn pointed out in **Wallingford v Mutual Society** [1880] 5 A.C. 685 at P. 704, that

“I think that when affidavits are brought forward to raise a defence, they must condescend upon particulars. It is not enough to swear that “I owe the man nothing.....” that is not enough. You must satisfy the judge that there is some reasonable ground for saying so...”

In the instant case, there was no opposition to the application despite the fact the defendant being served. The defence just raised a general denial which raises no material on which I was satisfied that there is some reasonable ground for his denial. If the defendant had a defence to the plaintiff's claim, he would in my view have set it down in some detail. It is thus the finding of this court that the defendant has not shown any cause for him to be given leave to defend this action. It is thus on this premise that I give the plaintiff summary judgment for his entire claim with costs for this action.

Made in Chambers this.....day of.....2004

K. T. MANDA
SENIOR DEPUTY REGISTRAR