

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 297 OF 2002**

BETWEEN

BWANA CHOLA LEXON PLAINTIFF

AND

BRIAN HENERIQUES DEFENDANT

CORAM : KAMANGA, SENIOR DEPUTY REGISTRAR

: Nyirongo, Counsel for the defendant.

R U L I N G

This is the defendants summons for stay of proceedings under the rule in *Smith vs Selwyn* (1914 3 K B @ 98). Under this rule, it is a principle of common law that an action for damages based on felonious acts committed against a plaintiff by a defendant is not maintainable until the criminal trial against the defendant is concluded.

In the matter at hand, the plaintiff's claim is for a recovery of K320,000 being the amount that the plaintiff paid to the defendant for the purchase of a motor vehicle from the defendant. The plaintiff also seeks damages for breach of contract and costs of this action.

Supporting the defendant's application for stay of proceedings until determination of criminal proceedings is a Charge Sheet registered as

LL/CR/261/8/2001. Where the accused person is Brian Heneriques of 36 years of age. The accused person is charged with the offence of Theft by Trick contrary to section 321 of the Penal Code. The particulars of the offence indicate that Brian Heneriques on the 2nd day of July 2001, in Lilongwe City, by trick stole K320,000.00 cash, the property of Mr. Bwanachola by tricking the said Bwanachola that he had a motorvehicle for sale.

The rule in Smith vs Selwyn obliges the court to stay civil proceedings until criminal proceedings have come to an end. Alternatively, the civil matter can continue where the plaintiff furnishes the court with reasons as to why he is prosecuting the defendant in a criminal court. The plaintiff in this case has not availed himself in court nor given the reasons for his instituting criminal proceedings against the defendant. In the absence of reasons being given, this court has no choice but to stay the civil proceedings until conclusion of the criminal proceedings.

MADE in Chambers this 31st day of December, 2007 at Lilongwe Registry.

I.C. Kamanga (Mrs)
REGISTRAR