

MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.18 OF 2007

BETWEEN:

KARL SEYDEL.....PLAINTIFF

and

MICK ROYLE.....DEFENDANT

CORAM: THE HON. MR JUSTICE F.E. KAPANDA

Miss purshotam, of Counsel for the Plaintiff

Mr. majamanda, of Counsel for the Defendant

Mr. Mchacha, Court Clerk

Place and Date of Hearing: Blantyre 5th October,2007

Date of Ruling : 19th October 2007

RULING

Kapanda, J:

Factual Background

The Plaintiff commenced this action by way of Writ of summons against the defendant claiming from the defendant the sum of US\$11,000, interest thereon and costs. The sum of US\$11,000 was part payment made by the plaintiff to the defendant for the purchase of a motor vehicle. The defendant however, did not deliver the motor vehicle despite repeated requests by the plaintiff. The defendant also refused to reimburse the plaintiff's money.

The plaintiff filed an application for summary judgment herein and an affidavit and skeleton arguments in support. The defendant has filed an affidavit in opposition to the plaintiff's claim. The plaintiff has filed an affidavit in reply and these skeleton arguments which are supplementary to those filed on the 28th day of September 2007.

In its defence the defendant denies the claim in its entirety with the defendant denying all particulars under circumstances of which the defendant could be said to be liable to pay the plaintiff the sum of US\$11,000 or any sum at all.

ISSUES FOR DETERMINATION

As I see it there is principally one issue to be considered by this court at this stage. The issue for the determination of the Court is whether the defendant has a bona fide defence to the

plaintiff's claim or whether the defence raises a triable issue fit to go for full trial.

LAW AND DISCUSSION

It is trite law that a plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, apply to court for judgment against the defendant.¹ Further, it is common place that the purpose of an application for summary judgment is to enable a plaintiff to obtain quick judgment without trial, if he can prove his claim clearly, and if the defendant is unable to set up a bona fide defence or raise an issue against the claim which ought to be tried.²

As I further understand it, the position at law is that if the Defendant has to successfully defend an application for summary judgment then the defendant's defence, or affidavit in opposition, must as far as possible deal specifically with the plaintiff's claim and state concisely what the defence is, and what facts are relied on to support it. Accordingly, a mere denial that the defendant is indebted will not suffice, unless the grounds on which the Defendant relies as showing that he is not indebted are stated.³

The Court has had the occasion to go through the affidavits and skeleton arguments filed in this matter. Further, the court has considered the submissions. It has formed the opinion that, the Defendant's defence although appearing to be good, there is still doubt about the Defendant's good faith. The Defendant's defence, as it currently stands, is a mere denial. I make this observation whilst appreciating that that the Defendant intends to file and serve an amended defence. Further, I am alive to the fact that the Defendant wanted this court to believe that the service of the writ was irregular. The Court became suspicious considering that there was apparently his signature on the writ and it is really incredible that a Writ of Summons that was not properly served would have his signature on it. Indeed, the Court became suspicious of the Defendant's story as regards the manner of service of the writ on him. This notwithstanding I

¹Order 7 r1 -High Court (Commercial Division) Rules,2007

²Roberts vs Plant [1895] 1 QB 597.

³ Blantyre Hotels Ltd vs Kawamba t/a Marketforce 14MLR 31.

have noted that the Defendant intends to raise a defence of as a set off or a counterclaim. I do not know what sort of defence he might raise since the Legal Practitioner is yet to file and serve a full defence later in due course. This is the case because he told this Court that the defence that is in record is only a holding defence.

As matters stand I would have been prepared to enter summary judgment for the Plaintiff but for the matter raised in the affidavit to the effect that he has the said set off or counterclaim. Now faced with the above, it is only proper that the Defendant be allowed to defend the action commenced by the Plaintiff. However, this **Error! Hyperlink reference not valid.** feels suspicious of the Defendant's manner of proceeding with the matter. Accordingly, the leave to defend will be conditional.

CONCLUSION AND DISPOSITION

For this reason, the Court orders that the Defendant will be allowed to defend the claim by the Plaintiff on condition that be paying into the equivalent of US\$7,300. The said sum of US\$7,300 must be paid within 7 days of this Order. Further, I order that the Defendant shall file the necessary application to amend the defence herein within the said period of 7 days and 7 days thereafter must cause the said application to be heard by this Court.

Pronounced in chambers at the High Court, Commercial Division this 19th day of October, 2007.

F.E. KAPANDA
JUDGE