

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

(CIVIL CASE NUMBER 323 OF 2003)

BETWEEN

BISNO PROPERTIES LIMITED ----- PLAINTIFF

AND

BP MALAWI LIMITED ----- DEFENDANT

CORAM : SINGINI, J

: Theu, of counsel for the Plaintiff
: Katundu, of counsel for the Defendant
: Mrs. Kabaghe, Court Reporter
: Mrs. Nakweya, Court Interpreter

RULING

On 2nd August, 2007, I adjourned continuation of the hearing in this case for me to make a ruling on the objections raised by counsel for the plaintiff to the admission in evidence of written statements of defence witnesses that counsel for the defendant was seeking to introduce at that late stage of the trial. I thought at the time that I needed to make a considered ruling as the grounds for the objection appeared technical, having been argued on the basis of legal principles under rules of civil procedure.

I have given my consideration to the very strong and eloquent submissions by counsel for plaintiff in raising his objections. While I respect counsel's submissions and do not condone the conduct of the defence on the matter, I have come to the conclusion that the justice of

the matter will not be better served by shutting out the written statements of defence witnesses. In giving due attention to rules of procedure, the courts ought to allow the fullest latitude to the parties to present to court what they consider to be the full scope of their case. It is with that consideration that I will allow the written statements of defence witnesses to be admitted in evidence at this stage of the trial.

Counsel for the plaintiff also attacked the skeleton arguments filed by counsel for the defendant which he characterised as having been developed along the lines of the evidence as presented in court. He objected to the court accepting those skeleton arguments, submitting that as a rule of procedure skeleton arguments by a party ought to be presented and filed in advance of the commencement of the trial to inform the court and the other party as to the merits of the party's case. He argued that the approach taken by the defendant was liable to surprise and to prejudice the other party in the case. On this point, I bear in mind that the court may itself at any point as the trial proceeds request the parties to address the court on any point of law that arises, and indeed at the end of the trial the parties have the right to address the court and make any or further submissions on matters that arose during trial. I accordingly exercise my judicial discretion in this case to allow the defendant's skeleton arguments as filed to stand and I overrule the plaintiff's objection.

Made in chambers at Lilongwe District Registry this 10th day of January, 2008.

E.M. SNGINI, SC.
JUDGE