



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 17321 OF 2001

BETWEEN:

MWAIWATHU PRIVATE HOSPITAL ..... PLAINTIFF

AND

MRS M. MUHEYA ..... DEFENDANT

**CORAM: S.A. KALEMBERA, REGISTRAR**  
Tukula, Counsel for the Plaintiff

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**ORDER**

This is an order on the plaintiff's application for Summary Judgement. The application is brought under Order 14 of the rules of the Supreme Court and is supported by an affidavit sworn by Masauko Timothy Msungama and which affidavit has duly been adopted by Mr. Tukula who appeared for the plaintiff, as counsel.

It is averred in the said affidavit that by agreement, the plaintiff agreed to provide medical aid to the defendant's daughter, Ella Matiya, who was admitted to the plaintiff's hospital (Ref Ex '*MTMI*'). The defendant's daughter was admitted and supplied with medical treatment from the 12<sup>th</sup> day of October, 2000 and the total cost for the treatment totaled K602,834.30. The defendant paid a total of K273,938.94 to the plaintiff leaving a total balance of K288,895.36.

Mr Tukula has therefore submitted that copies of invoice and part payments receipts exhibited herein clearly show that the defendant is admitting her indebtedness to the plaintiff.

The plaintiff therefore prays that summary judgement be entered against the defendant less the amount paid by the defendant so far.

I am very mindful that before an application for summary judgement under O.14 can be entertained certain requirements or conditions precedent ought to be satisfied namely: the defendant must have given notice of intention to defend, and a statement of claim must have been served by the plaintiff on the defendant.

Furthermore the application must be supported by an affidavit, which must fulfill the following two requirements:

- i. It must verify the facts on which the claim or part of a claim to which the application relates is based; and
- ii. It must state the deponents' belief that there is no defense to that claim or part, or no defense expect as to the amount of any damages claimed.

In the matter at hand I am satisfied that these requirements have been fulfilled. There is a notice of intention to defend as well as a defence which shows that the statement of claim was indeed served on the defendant. The affidavit in support of this application has verified the facts upon which this action arose (Ref. paragraphs 3-7). The plaintiff's belief that the defendant has no defense is contained in paragraph 8 of the said affidavit.

This court therefore need only determine whether this is proper case where summary judgement ought to be entered for the plaintiff. Parker, L.J. in *Home and Overseas Insurance Company Ltd -v- Mentor Insurance (UK) Ltd* [1990] IWLR 153 at 158 said that the purpose of Order 14 is to enable the plaintiff to obtain a quick judgement where there is plainly no defense to the claim. If the defendant's only suggested defense, be continued, is a point of law and the court can see at once that the point is misconceived the plaintiff is entitled to judgement. If at first sight the point appears arguable hut with a relatively short argument can be shown to be plainly unsustainable, the plaintiff is also entitled to judgement.

It must be borne in mind though that the courts' summary jurisdiction under Order 14 ought to be used carefully so that a defendant was not prevented from defending unless it was very clear that he had no case. It was not necessary for a defendant to show a complete defense but to merely show that there were arguable issues (Ref. *Bouri -v- Mudalliar* 11 MLR 345)

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In the instant case there is a defense filed by the defendant. In essence the defendant, is denying ever being indebted to the plaintiff, or being medically treated by the plaintiff or even making a memorandum of agreement with the plaintiff whereby the defendant would be responsible for medical bills. The defense therefore is a general denial of any liability whatsoever. It is surprising though that considering the exhibits exhibited by the plaintiff the defendant denies any liabilities. Exhibit '*MTM 2*' shows the defendant as the person responsible for paying of account and as the medical aid member.

Furthermore Tax Invoice and Statement were sent to the defendant for settlement and copies of the same have been exhibited as exhibits '*MTM 3* and '*MTM 4*'. Part payments were made to the plaintiff as shown by exhibits '*MTM 5*' '*MTM 6*' and '*MTM 7*'.

I am convinced and satisfied that the defendant is responsible for payment of the hospital bills on behalf of her daughter. The defendant has therefore failed to show cause why summary judgement ought not to be entered in favour of the plaintiff. The defendant has not raised any triable issues. I therefore enter summary judgement for the plaintiff as prayed for in the sum of K288,895.36 and 15% legal collection charges plus interest at the ruling bank rate to be assessed if not agreed. Costs are for the plaintiff.

**MADE IN CHAMBERS** this 18<sup>th</sup> day of June, 2008 at Blantyre.

  
S.A. Kalembera  
**REGISTRAR**