



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 30 OF 2012**

BETWEEN

EDWARD PEMBA PLAINTIFF

-AND-

RAB PROCESSORS LIMITED DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Kapoto, of Counsel, for the Plaintiff Mr.

Jere, of Counsel, for the Defendant Mr. O.

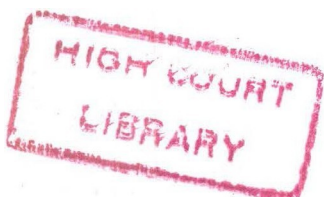
Chitatu, Court Clerk

ORDER

Kenyatta Nyirenda, J

This is the Plaintiff's summons for further directions regarding the conduct of this case.

The background information is refreshingly simple. The Plaintiff commenced the action herein against the Defendant claiming damages for breach of statutory duties having suffered various injuries in the course of his employment. On the set hearing date, that is, 3rd December, 2015, the Plaintiff adopted his witness statement and sought to rely upon a photocopy of the original Medical Report issued to him at Queen Elizabeth Central Hospital. At this point, the trial Judge, Justice Nyakaunda Kamanga, directed and ordered the production of the Original Medical Report or a certified true copy thereof.



The summons is supported by an affidavit sworn by Mr. Lemucha and it reads, in part, as follows:

- "7. **THAT** *I have been informed by the plaintiff that he does not have the original copy of his Medical Report since the said Medical Report was surrendered to the Defendant at its own request in an attempt to have the matter herein settled out of court.*
8. **THAT** *the plaintiffs merely kept a copy of the said medical report which was later surrendered to his lawyers for purposes of the present proceedings.*
9. **THAT** *based on the court order herein, the plaintiff has tried to follow up on the original Medical Report with the Defendant and he has been informed by the Defendants Human Resource Manager that the original medical report was handed over to the defendant's lawyers.*
10. **THAT** *I have been informed by Counsel for the Defendant herein that he has no custody of the said original Medical Report.*
11. **THAT** *desirous of complying with the court order herein, the plaintiff personally visited the hospital which initially issues the Medical Report herein in an effort of obtaining its replacement.*
12. **THAT** *despite hard efforts, the plaintiff had failed to obtain any replacement for the said original medical report since the medical officer who issued the Medical Report herein is reportedly dead in accordance with the information supplied to the plaintiff by the Hospital Director.*
13. **THAT** *on the basis of the foregoing, it would be impossible for the plaintiff to comply with the order of this Honourable Court requiring him to produce and tender in court the original copy or a certified true copy of the original Medical Report.*
14. **THAT** *we believe that it would be in the interest of justice for the plaintiff to be allowed to tender the available copy of the original medical report there being no objection from the defendant during the previous hearing of the matter. "*

The Defendant is opposed to the application and there is, to this end, an affidavit in opposition sworn by Mr. Victor Jere. The substantive part of the affidavit is brief and it reads as follows:

3. **THAT** the defendant denies having ever being engaged in out of court settlement talks with the plaintiff or taken custody of the plaintiff's original medical report as alleged in paragraph 7 of the affidavit in support of the summons.
4. **THAT** in any event, the plaintiff's medical report/certificate that is alleged to have been surrendered to the defendant is the same one that according to the plaintiff's list of documents herein the plaintiffs indicated that he has the original copy.
5. **THAT** with particular reference to paragraph 12 and 13 of the affidavit in support, I verily believe that the alleged death of the medical officer who issued the plaintiffs medical report cannot be an impediment for the hospital to issue a certified copy of the original as surely the hospital records are kept by the hospital and not individuals. "

What comes out of the affidavit evidence is that despite concerted efforts by the Plaintiff, it has not been possible to get the original Medical Report or a replacement thereof. In the premises, and there being no potential for prejudice to the Defendant, I am inclined to believe that the interest of justice would be best served by allowing the Plaintiff to tender the only copy of the original medical report that is available. I so order. I further direct that the continued hearing shall take place on the 9th day of February 2017 at 10 o'clock in the forenoon.

Before resting, I wish to make the following observation. Courts loath the perdition of cases through technicalities. The easiest way to avoid justice is to dwell on technicalities. This, to attain justice, the Court must avoid. The Court must take care not to sacrifice justice on the altar of technicalities. In **Harman Singh v. Jamal Pribhai [1951] AC 608**, Lord Radcliffe showed that time had faded when disputes should be dealt with at the altar of technicalities.

Pronounced in Court this 11th day of January 2017 at Blantyre in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE