



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CAUSE NO.688 OF 2021
BETWEEN

JOHN COLLINWOOD ONIONS t/a ONIONS PROPERTY DEVELOPMENT AND REAL ESTATE AGENTS.....CLAIMANT
AND
MONICA MICHONGWE t/a MOGIT PRINTING SERVICES.....DEFENDANT

CORAM:	<i>Madalitso Khoswe Chimwaza</i>	<i>ASSISTANT REGISTRAR</i>
	U.H. Mataka	Counsel for claimant
	Monica Michongwe	Defendant not represented
	C. Zude	Court Clerk

RULING ON THE JUDGMENT ON ADMISSION WITHOUT A SUMMONS

1. This was an application for a judgment on admission made under Order 12 Rule 32(2) of the High Court Civil procedure Rules. The claimant want the Court to enter a judgment on admission based on a clear admission made by the defendant, without commencing action with a summons.
2. The defendant who is not legally represented is challenging the application on the basis that she was never served with any summons for commencement of the proceedings. She claims she has a defence to the claims and a counter claim which she has failed to properly file due to the fact she was not served with a summons regarding the claims. She also claims she has failed to instruct Counsel to represent her as there are no summons to inform Counsel on what defence to file and the counter claim.
3. Counsel admitted to have commenced the action using Order 12 Rule 32 (2) of the CPR which does not require issuance of a summons in a case where there is a clear admission of a debt. Counsel continued to state that they

attached a letter in which the defendant was admitting to owe the claimant K2,400,000.00 in rentals and therefore there was no need for a summons.

Issue for Determination

Can a Court enter Judgment on admission without a summons commencing the proceedings?

Reasoned Analysis of the Law and Facts

4. Under Order 5 Rule 1 of the Courts, High Court Civil Procedure Rules, (2017) the rules are clear that proceedings shall commence by way of summons in form 1 unless otherwise provided by any other law. The summons shall specifically state the relief claimed by the claimant, shall contain a statement of case, set out the address that is to be used for service of documents and have with it a form of response that may be completed by the defendant. Order 5 Rule 2. Apart from a summons a proceeding may commence through a petition or an application.
5. Looking at the specific contents of a summons it is clear that they are meant to inform the defendant about the claims being made and relief or remedy being sought by the claimant so that the defendant can properly respond to the claims either admitting or denying the claims and prepare his/her defence.
6. Order 12 which was used to commence the present proceedings governs the procedure for ending the proceedings early. In talking of ending the proceedings early, the rules are implying that the claimant must have filed claims against the defendant and do not wish that they should proceed to full trial. Therefore he or she may apply for stay of proceedings where the claim has been satisfied or goods have been returned. Order 12 rule 1 of the CPR
7. A claimant may apply to the court to enter a judgment in default where the defendant does not file and serve a defence within 14 days after being served with a summons. Order 12 rule 6 of the CPR.
8. A claimant may also apply to the court for a summary judgement where the defendant has filed a defence but the claimant believes the defence does not have real prospects of succeeding at trial. Order 12 rule 26 of the CPR
9. A claimant may also apply for a judgment on admission as a way of ending proceedings early as per Order 12 Rule 28 through to Rule 33 of the CPR.

Order 12 rule 32 (1) specifically states that:

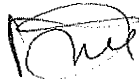
'this rule shall apply where:-

- a) The only *remedy (relief)* which the claimant is seeking is the payment of a specified amount of money; and
 - b) The defendant admits the whole of the *claim*. (emphasis supplied).
10. The reading of Order 12 rule 32(1) a) and b) clearly shows that it is dealing with proceedings that were commenced by way of summons and there is a statement of case which is detailing the *claim* being made and the *relief (remedy)* being sought by the claimant. Surely a judgment on admission cannot be entered by a Court in the absence of a summons commencing the proceedings and detailing the claims and relief being sought.
 11. An application for a judgment on admission is not a standalone, it follows a claim and relief sought in the summons. A judgment is entered following a claim that has been filed with the Court, through a summons. With due respect to Counsel, I disagree with the claimant that because the remedy being sought was the payment of a specified amount of money which was already admitted in writing by the defendant, then a court should be moved to enter a judgment without a summons.

12. The application filed by the claimant envisages that proceedings are already underway, therefore they should not proceed to trial but should be ended early by entering a judgment based on the admission.
13. It is the finding of this court that the proceedings were incompetent as the Court cannot be moved to enter judgment in the absence of proper proceedings being commenced through a summons against the defendant. The application for a judgment on admission is therefore dismissed for being incompetently brought before Court without a summons commencing the proceedings.
14. Either party will bear own costs. The claimant is at liberty to re-commence the proceedings properly.

Either party aggrieved by this ruling has the right to appeal to the Supreme Court of Appeal.

Made in Chambers this 8th day of October, 2021 at High Court, Lilongwe Registry.



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR