

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 425 OF 1993

BETWEEN:

ADIL TAYUB t/a TRANS AFRICAN COMMERCIAL AGENCIES PLAINTIFF

and

HARUN SACRANIE
t/a PLASTICHEM INDUSTRIES DEFENDANT

Coram: Jane Mayemu Ansah (Mrs); Deputy Registrar
Chizumira; of Counsel for the Plaintiff
Maulidi; of Counsel for the Defendant.

R U L I N G

This is an application for summary judgement made under Order 14 rule 1. It is supported by an affidavit. The application is strongly opposed by the defendant and there is an affidavit in opposition.

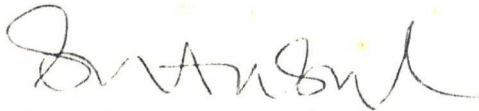
The basis of this action is simple and straight forward. The plaintiff is a holder of the defendant's cheque number 062141, which when presented for payment was returned by the Bank with the words "Refer to drawer". However, the plaintiff contrary to the provision of Section 48 of the Bills of Exchange Act did not give the drawer a notice of dishonour. The section reads:

"Subject to this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser and any drawer or endorser to whom such notice is not given is discharged."

Mr Chizumira cited many authorities, including my recent ruling in which I agreed with the authorities that a cheque is regarded as cash and in the normal course of things there is no defence unless fraud or illegality is pleaded. That case can be distinguished in that, the

plaintiff gave the defendant a notice of dishonour, which is absent here. It would be unfair to enter judgement for the plaintiff in the absence of such notice. I dismiss the application for summary judgement with costs.

MADE in Chambers this 31st Day of Dec..... 1993.



Jane Mayemu Ansah (Mrs)
DEPUTY REGISTRAR