

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 125 OF 1987

BETWEEN:

J S MUNTHALI.....PLAINTIFF

- and -

D D MWAKASUNGULA.....DEFENDANT

CORAM: CHATSIKA, J.

Nakanga, of Counsel, for the Plaintiff
Mhango, of Counsel, for the Defendant
Kadyakale, Official Interpreter



R U L I N G

In the main action herein, the Plaintiff took out a Writ against the Defendant in trespass. The Defendant counter-claimed against the Plaintiff in defamation. Both parties were successful in their respective claims. The Court awarded the Plaintiff damages in trespass in the sum of K1,000.00. The Defendant was awarded damages in defamation in the sum of K6,000.00. Taking into account the possibility of the set-off of K1,000.00 due from the Defendant to the Plaintiff, there was in effect a judgement for the Defendant in the sum of K5,000.00.

Immediately after the judgements were recorded, Mr Mhango, Counsel for the Defendant, took out a Writ of Execution against the Plaintiff for the sum of K26,373.62. This amount included the judgement debt of K5,000.00 and costs of the claim. It may be mentioned in passing that each party obtained judgement for his claim and costs of the claim. The Plaintiff successfully applied for a stay of the execution of the Writ and applied to pay the entire debt by instalments.

The Plaintiff's application to pay the debt by instalments was supported by an affidavit. In that affidavit, the Plaintiff stated that he had appealed to the Supreme Court of Appeal and that should the appeal be successful, which he expressed the hope that it would, his indebtedness to the defendant would be considerably reduced. He stated also that his Counsel had filed with the Court his bill of costs against the Defendant and that the same had yet to be taxed by the Court. After indicating his income and expenditure, the Plaintiff offered, subject to the result of his bill of costs, to pay the debt by monthly instalments of K150.00.

The Plaintiff's bill which was awaiting taxation was in the sum of K28,146.50. It was observed that the amount which the Plaintiff was claiming from the Defendant was about K2,000.00 more than the amount which the Defendant was claiming from the Plaintiff.

At the hearing of the application to pay the debt by monthly instalments, which was heard on the 27th March 1992, it was disclosed during cross-examination that the Plaintiff was the owner of a house at Karonga. Its value was estimated at K50,000.00. It was clear from Mr Mhango's line of cross-examination that it was the intention of the Defence to apply for an order for the sale of that house in order that the proceeds of the sale be utilised in liquidating the debt due from the Plaintiff to the Defendant.

Considering that there was a possibility of a debt of the magnitude of K28,000.00 due from the Defendant to the Plaintiff which would possibly wipe off the entire debt due from the Plaintiff to the Defendant, I did not consider that it would be fair to make such an order and allow the Plaintiff to lose his house at Karonga. I, therefore, adjourned the proceedings to a date to be announced, in the hope that before the resumed date of hearing the Plaintiff's bill of costs would have been taxed. Sixteen months have since elapsed and I am informed that the taxation has as yet not taken place.

In all fairness, I am of the view that a proper order regarding the payment of the debt can only be made after the Defendant's indebtedness to the Plaintiff has been established. In the circumstances, I adjourn the matter further for ruling to a date during the first week of October 1993. Counsel for the Plaintiff is asked to make every possible endeavour to see to it that his bill of costs has been taxed before that time.

MADE in Chambers this 26. day of August, 1993, at Blantyre.


L A Chatsika
JUDGE

