

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.141 OF 1993

BETWEEN:

P.B. MBEWE ..... PLAINTIFF

- and -

S. GAFFAR ..... DEFENDANT

CORAM: D.F. MWAUNGULU, REGISTRAR

Chizumila, Counsel for the Plaintiff  
Kombezi, Counsel for the Defendant

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O R D E R

In this application the plaintiff wants to sign judgment under Order 27, rule 3 of the Rules of the Supreme Court:

"Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the court, may give such judgment or make such order, on the application as it thinks just."

The purpose of the rule is found in the words of Sargant, J. in Ellis v. Allen (1914) 1 Ch. 904, 908-909:

"The object of the Rule was to enable a party to obtain speedy judgment where the other party has made plain admission entitling the former to succeed: in my judgment it applies where either there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."

A Court will not allow judgment to be entered otherwise than through trial except in the case of very plain and clear admissions and where the other party can not succeed in the fact of the admission. Where the admissions are contained in a defence, the facts must be clearly pleaded and admitted by the other party. This Court should not be called upon to make deductions which can not clearly be fixed to what is contained in the defence. In Ash v. Hutchinson and Company Publishers Limited (1936) 1 Ch. 489, 503, Lord Justice Greene said:

"A plaintiff who relies in the proof of a substantial part of his case upon admissions in the defence, must, in my judgment, show that the matters in question are clearly pleaded and as clearly admitted; he is not entitled to ask the court to read meanings into his pleading which, upon a fair construction, do not clearly appear in order to fix the defendants with an admission."

In every case, as the present, the Court looks at the document as a whole to see if it clearly is an admission of the facts on which the plaintiff wants to sign the document. Obviously if the facts do not render a clear admission, the Court will not allow the plaintiff to sign judgment. In Ranking v. Garton Signs Company Limited (1979) 2 All E.R. 1185, 1191, Lord Justice Geoffrey-Lane said:

"When that type of admission is under consideration, the simple question to be asked is this: have the defendants made a clear admission of liability or not, and in order to discover that, as I have already observed, one has to look at the terms of the letter and of the pleadings in each particular case."

In this particular case, the plaintiff is relying on admissions contained in the defence.

In paragraph 4 it is said:

"The defendant pleads that a total sum of K400,000 was paid towards the balance of K800,000 and that the present balance of the debt is K400,000."

In paragraph 7 it is contended:

"By the said agreement of sale dated the 11th day of March. 1992, and executed by the plaintiffs, the plaintiffs agreed with the defendant in Clause 6 all unforeseen liabilities and all bad debts not recovered by 31st March, 1993 would be for the account of the plaintiffs."

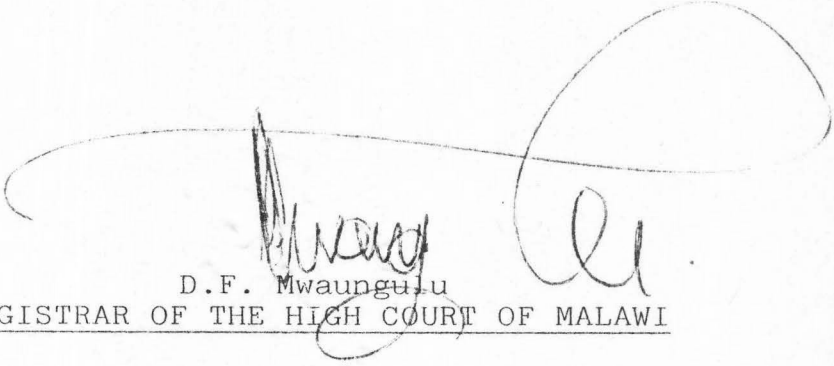
In paragraph 8 it is pleaded:

"The defendant pleads that the majority of debts have not been recovered and a lot of money and property was lost in the said fire accident, and in the circumstances, the defendant is not liable to the plaintiffs for the balance of K400,000."

This, in my judgment, is really a question of confession and avoidance. The defendant acknowledges the debt but pleads payment or satisfaction. The pleadings must be read as a whole. Read that way, there is no admission.

I do not think, therefore, this is a case where the plaintiff can sign judgment on admission. I dismiss the summons with costs.

MADE in Chambers this 11th day of November, 1993 at Blantyre.



D.F. Mwaungulu  
REGISTRAR OF THE HIGH COURT OF MALAWI