

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1440 OF 1994

SUCREST CHICKENSAPPELLANT

VS

J & M DISTRIBUTORS

T/A CHIKUMBUTSO POULTRY FARM.....RESPONDENT

Coram :

E. B. Twea
ACTING REGISTRAR

Sindhu for plaintiff
Defendant Counsel absent

ORDER

This summons was brought by the plaintiff to enter judgment on admission. The summons was duly served on the defendant lawyers who did not appear, however. The plaintiff thus proceeded with the summons under Or 27 r 3 of the Rules of the Supreme Court or 27 r 3 reads:

"Where admissions of fact or of part of a case are made by a party to a cause or matter either by this pleading or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions....."

The plaintiff did not file any affidavit evidence but when prosecuting his appeal he did produce documents for which he relied to prove the admission. I have looked at this and I feel I would treat it as an irregularity in accordance with Or. 2 r 1 on non-compliance with rules of procedure. I will thus not throw out the summons.

The plaintiff produced five invoices totalling to US\$23,400 from herself for the defendant company. Further the plaintiff produced the letter by the defendant company's managing director in which she admit the debt owing to the plaintiff but pleaded for time and cited foreign exchange remittance procedural difficulties as part of the reasons for

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failing to pay on time. Further, by her letter, PEX III, the director indicated that they had sufficient funds : fixed assets and capital, to pay out their creditors. It is my view therefore that by its letters the defendant company clearly admits owing the plaintiff the sum of US\$23,400 stipulated in plaintiffs letters and invoices PEX I and PEX II .

Be this as it may, I find that the defendant did not admit the interest charged as per their letter PEX III. This letter clearly stipulates that in their view, there was no agreement to pay interest at the rate of 48% on overdue accounts. For this reason I find that the interest sum is not admitted at all.

I enter judgment on admission for the plaintiff in the sum admitted of US\$23,400 only with costs.

Pronounced in Chambers this 19th day of September, 1994 at Blantyre.



E.B. Twea
ACTING REGISTRAR