

IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 316 OF 1993



BETWEEN

F.F.I. SAYANI t/a SAYANI  
STATIONERY SUPPLIES ..... PLAINTIFF

AND

MISSION FOR EVANGELICAL  
TRAINING AND DEVELOPMENT ..... DEFENDANT

CORAM: TWEA, SENIOR DEPUTY REGISTRAR  
Movette (Mrs), for the Plaintiff  
Defendant/Counsel absent

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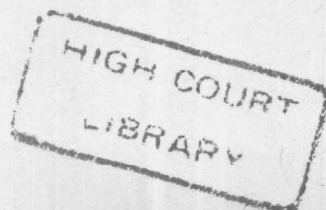
R U L I N G

This is an application for summary judgment against the defendant under or 14 r 1 of R.S.C.

In this case the plaintiff by writ brought action against the defendant for payment of goods supplied to the defendant at the defendant's request. The plaintiff averred that the debt due plus interest was K24,928.26. The defendant denied this in their defence of 1st November 1993. The plaintiff then applied for, and with the consent of the defence, was granted directions for trial. It is only after directions were order that the plaintiff now seeks to enter summary judgment on grounds that the defendant has no triable defence and that the defence on record is in fact a sham.

I have carefully examined the record and the rules applicable. I do not think order 14 r 1 is applicable here. In my view, or 25 on summons for directions gives the court and indeed counsel wide powers to deal with a lot of preliminary issues in order to minimize the cost of litigation. In fact under or 25

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r 7, it is the duty of each party to make all interlocutory applications on summons for direction. This gives the party a lot of powers and in or 25 r 7 (3) it is said:

"Any application subsequent to the directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by two clear day's notice to the other party stating the grounds of the application".

This case, in my view, is on all focuss with the rule. When the plaintiff brought this before court it should have been obvious to them that the application for directions was made. However, I do not think this court would throw out this summons. In my view, order 2 r 1 applies here and I will look at this summons as if it were brought under or 25 r 7 (3) of R.S.C. and not or 14 r 1.

I have considered the affidavit submitted and the exhibits attached there to. I am afraid, I do not agree with the plaintiff. The documents exhibited only refer to a debt of K14,048.49 and not K24,228.96 which is claimed and denied. The plaintiff avers that this sum is made up of the capital plus interest. By simple arithmetic the interest amount in this case would be K10,880.47 about 67% of the sum which is in issue as per exhibits. The defendant denies this and put the plaintiff to service proof thereof. On the facts before me, I would not say this defence is a sham at all. I find that the exhibits do not contain any admission of debt plus interest of K24,928.96 at all. I thus dismiss the summons for summary judgment brought by the plaintiff. I do not find that there were sufficient reasons for bringing this summons by plaintiff, therefore the dismissal is with costs.

PRONOUNCED in Chambers this 26th day of April 1994 at Lilongwe.

  
E. B. TWEA  
SENIOR DEPUTY REGISTRAR