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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 6 OF 1993

BETWEEN:

MRS. P. CHAKAKALA CHAZIYA ..... PLAINTIFF

and

THE ATTORNEY GENERAL ..... 1ST DEFENDANT

and

THE ADMINISTRATOR GENERAL ..... 2ND DEFENDANT

COORAM: W.W. QOTO, DEPUTY REGISTRAR
C. Banda, Counsel for the Plaintiff
K. Nyirenda, Counsel for the 1st Defendant
Mrs. Jumbe, Counsel for the 2nd Defendant

RULING

Qoto, Deputy Registrar

This is a summons for judgment on admissions made under Order 27, Rule 3 of the Rules of the Supreme Court. This rule reads:

> "Where admissions of fact or of part of a case are made to the 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

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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".

It is clear therefore, the court has a discretionary power to give a judgment on admissions and this discretion is often made to save time and costs in an appropriate cases. Admissions of fact may be express or implied. However they may be, the case of **Construction and Development Limited v. Munyenyembe** 12 M.L.R. 292, is authority for the proposition that before a court gives judgment on them, those admissions must be clear and unequivocal. The case is further authority for the proposition that a summons for a judgment on admissions can be made before or after a defence is served or before or after summons for directions or before or after discovery.

Admissions of fact may be made expressly in a defence or in a defence to a counterclaim, or they may be admissions by virtue of the rules as where a defendant fails to traverse an allegation of fact made in a statement of claim (Order 18, Rule 13) or there is a default of a defence or a defence is struck out and accordingly allegations of fact in the statement of fact are deemed to be admitted (**Caroli vs. Hirst** (1883)31 W.R. 839).

The plaintiff's claim against the defendants is for damages for trespass, for conversion and for an account of the partnership assets of a business

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styled "ATLYN" and for payment of what is due to the plaintiff. She avers that she was at all the material times the owner of Mercedes Benz vehicle registered as number CA 9747 and an equal partner with Lynold Chakakala Chaziya in a firm styled "ATLYN". By an order of forfeiture made on or about the 7th January, 1987, Lynold Chakakala Chaziya's property was declared forfeited to the Government. Purporting to carry out the forfeiture order, the Malawi Police seized the plaintiff's said motor vehicle and closed two shops at Kasungu and Lilongwe and seized other property belonging to the partnership. The said motor vehicle was subsequently sold by the second defendant who is a corporate sole responsible for the sale of assets under the Forfeiture Act (Cap:) despite protestations from the plaintiff and the proceeds thereof were converted to the Government use.

She also avers that the goods of the two shops were also sold by the second defendant and the proceeds thereof converted to the Government use despite her claim that she was a partner of "ATLYN".

The first defendant admitted that the plaintiff,s husband was subjected to a forfeiture order and in consequence of which the Police seized the said motor vehicle and it was subsequently sold by the second defendant. The first defendant however denies that the plaintiff was the owner of the said motor vehicle and pleaded that her action is statute barred under or by reason of the Forfeiture Act. The second defendant also denied that the plaintiff was the owner the said vehicle and contended that whatever it did, it did so under the said Act and in particular under section 7 thereof.

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The plaintiff then took out summons under Order 14A of the Rules of the Supreme Court for the determination of three points of law, to wit;

(1) whether section 7 offers immunity to the second defendant for expropriating property of persons who have not been subjected to the said Act,

(2) whether the said motor vehicle belonged to the plaintiff; and

(3) whether the plaintiff was a partner in a business styled "ATLYN" and as such she was entitled to a share of the said business.

The Court answered the first question in the negative. It further held that the other points were questions of fact which could not be disposed of on Order 14A summons and as such, they could only be disposed of at the trial. The court accordingly granted the defendants unconditional leave to defend the action.

Then on 25th July, 1995, following an application under Order 24, Rule 7, the court, in view of the defendant's defence that the plaintiff was not a genuine owner of the said motor vehicle, made an order that the defendants, within 14 days from the date of service of the Order, make and file affidavits stating whether documentary evidence showing that title in said motor vehicle did not rest in the plaintiff is or has been in their possession, custody or power at any time. Both defendants made affidavits in response to this order and the plaintiff prays that I enter judgment against the defendants on the ground that the first defendant

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admits that he has no evidence showing that CA 9747 does not belong to the plaintiff and relies on section 4 of the Forfeiture Act which does not apply to her, and also on the ground that the second defendant too admitted that the motor vehicle in issue belongs to the plaintiff.

There is no affidavit in opposition but both defendants argued in opposition to the application at the hearing.

Mr. Nyirenda, for the first defendant, argued that this is not an appropriate case in which to enter judgment on admission. He said the question is not of ownership of the motor vehicle in issue but of the genuine ownership of it and this, he said, is a matter of evidence to be determined at the trial.

He again argued that the issue has to be looked at in the context of the Forfeiture Act. He said the Act was passed in order to protect the Government from people who act in a manner prejudicial to the safety or economy of the Government. He said the Act was meant to cover people who in order to avoid the effect of the Act pass their property on to others and the present was one such a case. He again said Section 4 of the Act makes the intention of the Act clear. The admissions relied on by the plaintiff, he argued are **prima facie** evidence so that there is need for oral evidence to be adduced at the trial.

Mrs. Jumbe, for the second defendant agreed with Mr. Nyirenda that the question of ownership must be decided through oral evidence.

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Let me at this stage state what Mr. Nyirenda said in his affidavit in response to the order of the court that the defendants show documentary evidence showing that the ownership of title in the said motor vehicle did not vest in the plaintiff. He deponed in the affidavit that the first defendant does not have in his power or custody, possession documentary evidence showing that title in CA 9747 does not vest in the plaintiff. He, however, deponed that the first defendant's contention was that title to the said motor vehicle does not rest in the plaintiff by reason of section 4 of the Act.

In the affidavit in response to the same order of the court, the second defendant through Mr. Babezelenge Jacob Mwafulirwa, of counsel, deponed that the document evidence in relation to ownership of the aid motor vehicle shows that:-

(a) from the 25th April, 1984 to 27 March, 1986 - Mr. Chaziya

(b) from 27th March 1986 to 30th March, 1987, Mrs. P.C. Chaziya

(c) from 30th March, 1987 to date Plastic Industries.

It is clear in my view that the first defendant has no documentary evidence in his possession showing that title to the motor vehicle in issue did not vest in the plaintiff. The plaintiff averment that this motor vehicle belonged to her is therefore undisputed and unchallenged.

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Mr. Nyirenda conceded in argument that what the plaintiff stated that the motor vehicle is hers is **prima facie** evidence of ownership of it by her. Now since the first defendant does not have in his power documentary evidence showing otherwise, it is trite that the **prima facie** evidence must stand. I would go further. The first defendant has not filed any affidavit in opposition disputing the plaintiff's claim that the motor vehicle is hers. In my construction there is an implied admission in the affidavit of Mr. Nyirenda, for the first defendant, that the motor vehicle belongs to the plaintiff save for his argument that the ownership off it became vested in the Government by operation of law. I further find that there is an express admission in the affidavit of Mr. Mwafulirwa that from 27 March, 1986 to 30 March, 1987 the motor vehicle in issue belonged to the plaintiff. That admission is clear and unequivocal.

I failed to see the meaning of the defendants 'counsels argument that the issue in here is one of genuine ownership of the motor vehicle in issue. In my view ownership is ownership. You either have ownership of the property or not so that the word genuine does not add anything to ownership. With greatest respect to counsel for the defendants the word genuine before ownership is superfluous.

This then brings me to section 4 of the said Act in which both defendants relied for their argument that ownership of the said motor vehicle vested in the Government by its operation.

I agree with Mr. Nyirenda that the Act that once a declaration that a

person is subject to forfeiture is made under S.2 all the property to which that person was entitled or deemed to have been entitled at the date of the publication vests in the Administrator General. This section talks of property of a person who is subject to the order of the forfeiture. It is not disputed that the plaintiff in this case was not subject of a forfeiture order of 7th January, 1987.

That forfeiture order was against Lynold Chakakala Chaziya, her husband. As such therefore it was all the property to which Mr. Lynold Chakakala Chaziya was entitled to or was deemed to have been entitled to at the date of the publication of the forfeiture order that vested in the Administrator General. From the affidavit of Mr. Babezelenge Jacob Mwafulirwa from 27th March 1986 to 30th March 1987, the motor vehicle in issue was owned by the plaintiff. The Married Women's Property Act 1882 makes it clear that a wife can have separate property from that of her husband in a matrimonial home and when in the present case I ask myself "whose was the car in issue at the time of the forfeiture order?" The answer is "the plaintiff's".

Mr. Nyirenda in argument argued that Mr. Lynold Chakakala Chaziya transferred ownership of the motor vehicle in issue to avoid the forfeiture order. I think this argument falls of its own inanition. Mr. Chaziya transferred ownership of the motor vehicle in issue in March 1986. He could not have known that in January 1987, a forfeiture order was going to be made against him. It is a fact of life that one cannot see what lies in the womb of the future. If it were so Mr. Chaziya would have disposed of all his

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property before the forfeiture order came. With respect, I reject Mr. Nyirenda's argument as a figment of his imagination.

As it is there is clear and unequivocal admission of fact by the defendants that at the time of the forfeiture order the motor vehicle in issue CA 9747 belonged to the plaintiff. As such, it was not caught by the provisions of the Forfeiture Act. There is nothing in my judgement, in the circumstances militating against the order sought by the plaintiff.

I accordingly give judgment to the plaintiff against the defendant on admissions of fact by the latter on her claim for damages for conversion of CA 9747.

I adjourn the assessment of such damages to a date to be fixed.

MADE IN CHAMBERS this 30th day of January, 1997, at Blantyre.

W.W. Qoto
DEPUTY REGISTRAR