IN THE MALAWI SUPREME COURT OF APPEAL AT

BLANTYRE

M.S.C.A. CIVIL NO. 8 OF 1981

BETWEEN:

NOTCUTT (OVERSEAS) LIMITED ..... APPELLANT

- and -

E. NAKANGA AND TWO OTHERS ..... RESPONDENT

Before: The Honourable the Chief Justice (Mr. Justice Skinner)
The Honourable Mr. Justice Villiera, J.A.
The Honourable Mr. Justice Banda, J.A.
Savjani of Counsel for the Appellant
Mhoni, Legal Aid, Counsel for the Respondent
Official Interpreter : Kadyakale
Court Reporter : Manda

J U D G M E N T

Skinner, C.J.

The history of this matter is as follows: the respondent, who is a second defendant in the proceedings in the High Court, took out a third party notice and an application was made by the appellant, who is the third party named therein, to set aside the notice. The learned Registrar who heard the matter, refused to do so. There was an appeal to a judge in chambers by the appellant against the decision of the Registrar. The appeal was dismissed. The appellant now appeals to this court.

The appellant is an insurance broker, and both before the Registrar and the judge below the matter proceeded on the basis that an insurance broker is the agent of the insurer. It is conceded in this court, by Mr. Mhoni for the respondent, that in law an insurance broker is not the agent of the insurer. The position in law is, and it is well settled law, that an insurance broker is the agent of the insured and not of the insurer: see Anglo-African Merchants Ltd. and Another v. Bayley and Others (1970), 1 Q.B. 311, the latest case on the point.

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In the instant case the decision of the judge below was on the basis that the appellant was the agent of the insurance company and, in law this is not so. The appeal succeeds. The third party notice is set aside.

The proposition of law upon which we have based our decision in this appeal was not taken by the appellant either before the Registrar or the judge in Chambers. The grounds of appeal before this court do take the point. The appellant has succeeded on a point not raised below and in these circumstances we feel that the correct order to make is that each party pays its own costs.

DELIVERED at Blantyre this 3rd day of November, 1981.

Skinner, C.J.

Villiera, J.A.

Banda, J.A.