

IN THE MALAWI SUPREME COURT OF APPEAL  
SITTING AT BLANTYRE

HIGH COURT  
LIBRARY

MSCA CIVIL APPEAL NO. 14 OF 2013

(Being High Court Civil Cause No. 153 of 2010)

BETWEEN

NBS BANK LTD & PELANI MALANGE.....APPELLANT

-AND-

ALEXANDER SOLANKE & RHODA SOLANKE.....RESPONDENT

**CORAM: HON. JUSTICE NYIRENDA SC, JA  
HON. JUSTICE CHIPETA, JA  
HON. JUSTICE CHIKOPA, JA**

Mr. Mpaka.....Counsel for the Appellant

Mr. Ndhlovu.....Counsel for the Respondent

Mr. Minikwa.....Recording Officer

Mrs M. F. Gondwe .....Court Reporter

HIGH COURT  
LIBRARY

**RULING**

We have looked at the matter very closely, and before we came in here we also looked at various aspects of the judgment of the court below. We also had occasion to put our heads together to consider what might be the most appropriate thing to do as regards to this matter. In open court we have tried to establish from Counsel whether they were in the same predicament that we found ourselves. It is now more than clear to us that just as we thought, there are serious difficulties in seeing this matter as a case under Order 14A of Rules of the Supreme Court, that is, a matter where the facts were not substantially in dispute.

What should have happened in the court below is that Counsel should first have approached the court for the court to preliminarily determine whether the matter was indeed appropriate to be dealt with under Order 14 A of Rules of the Supreme Court. We believe that is where the court below lost the course. Had the court dealt with that preliminary issue, it would soon have been apparent that a number of issues or facts and evidence were in contest. It would then have been more appropriate for the court to rule on that, and order

that the matter proceeds by way of full trial. Because the court did not do that, and decided to proceed on the assumption that indeed the matter before it did not raise substantial dispute of facts, it soon fell into a trap where it required substantial facts to help it determine the questions of law that were before it.

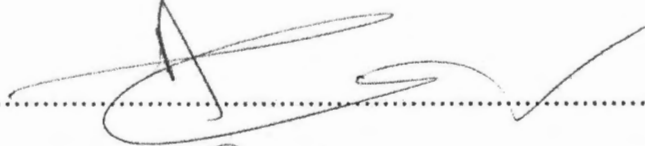
It also then transpired that the questions of facts and evidence that it had to deal with were in contest. The court found itself first dealing with the contest on facts, resolving the dispute on facts, and then applying it to the law. The parties though had not argued the matter on the facts, and evidence.

The position is that neither the court below, nor ourselves here, could make any assumptions about the facts. We therefore think that it is only appropriate that the parties be given an opportunity to present their case fully on the facts, and ultimately on the law.

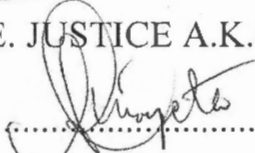
The order that we make therefore is that this matter will be remitted back to the High Court for a full hearing. It is our assumption that by the time the parties were making an application under Order 14 A the matter was at that point ready for trial. Therefore, the matter will proceed from that point to a hearing without need for further pleadings.

We think that the issue of costs should still remain in the cause.

Pronounced in Open Court the 29<sup>th</sup> day of October, 2013 at  
Blantyre.

  
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HONOURABLE. JUSTICE A.K.C. NYIRENDASC, JA

  
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HONOURABLE JUSTICE A.C. CHIPETA, JA

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HONOURABLE JUSTICE L.P. CHIKOPA, JA