



REPUBLIC OF MALAWI
MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION
LILONGWE REGISTRY

CIVIL CAUSE NUMBER 63 OF 2012

BETWEEN:

DR CASSIM CHILUMPHA

PLAINTIFF

-AND-

AUTOMOTIVE PRODUCTS LIMITED

DEFENDANT

CORAM : THE HONOURABLE MR. JUSTICE L.P. CHIKOPA
Sikwese of Counsel for the Plaintiff/Applicant
Chisanga of Counsel for the Defendant/Respondent
D Banda [Mr.], Court Clerk

RULING

Chikopa, J.

The plaintiff took out a summons for a summary judgment against the defendant. He was claiming for the sum of 'K3,170,132.64 being repair costs and for damages for bad workmanship and loss of use of motor vehicle'. The defendant opposes the summons and seeks leave to defend the action.

As we understand the action it is not a straightforward claim for debt. It is a claim for a liquidated sum arising out of an allegation of *inter alia* bad workmanship on the defendant's part. Meaning that it is not enough that the money should be proven owing but also that the defendant repaired the plaintiff's car in a shoddy fashion. Looking at the pleadings and the affidavits before us it is clear that there is a dispute between the parties as to whether there was indeed bad workmanship. That is an issue that can only be resolved upon hearing *viva voce* evidence and subjecting the witnesses to cross-examination. Not on the basis of affidavits by persons who only believe but were not, if truth be told, witnesses as to what transpired at the defendant's garage in relation to the plaintiff's motor vehicle. The application for summary judgment is not tenable. It is accordingly dismissed with costs. The defendant has leave to file a defence and the matter will be allowed to proceed accordingly.

Dated this December 2, 2012.

A handwritten signature in blue ink, appearing to read "L.P. Chikopa", is written over a large, diagonal watermark that says "final order".

L.P. Chikopa
JUDGE