



**IN THE HIGH COURT OF MALAWI**

**LILONGWE DISTRICT REGISTRY**

**CIVIL CAUSE NO 417 OF 2014**

**BETWEEN**

**NUNES PROPERTIES-----PLAINTIFF**

**AND**

**MR ASIF KARIM-----DEFENDANT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE**

**Mrs Kondowe, for the Plaintiff**

**Mr Chilenga, for the Defendant**

**Mr Itai, Court Interpreter**

**JUDGMENT**

This matter came before me by way of an appeal following the summary judgment which the Learned Registrar had entered against the defendant on the 19<sup>th</sup> of August 2015. I am aware that appeals from decisions of Registrars to a Judge in chambers are governed by **Order 58** of the Rules of the Supreme Court (RSC). In a nutshell, this Order provides that an appeal from the Registrar to a Judge in Chambers is dealt with by way of actual re-hearing of the application which led to the Order under appeal and that the Judge treats the matter as though it came before him/her for the first time. What this means therefore is that an appeal of this nature would normally proceed on evidence taken before the Registrar or Master below. The appellant should not be allowed to use the

appeal to introduce fresh or new evidence or improve on what was omitted at the first hearing.

In considering this appeal, I shall therefore look at the statement of claim and its particulars as they came before the Registrar. I shall also look at the affidavit in support of the application for summary judgment which was filed pursuant to **Order 14** of the Rules of the Supreme Court. What is equally critical is that I have also to look at the defence that was filed by the defendant together with the accompanying affidavits in opposition to the application for summary judgment. That done, I will have to re-evaluate the matter and eventually decide as to whether the Learned Registrar had come to the right decision or not. As is usually the case, matters of this nature have no mathematical exactitude. It is the logical process of reasoning that is invoked by the Judge in Chambers.

I note at the outset that the plaintiff's claim as particularized in the statement of claim related to damages for breach of contract, special damages in the sum of Mk1,246,189.87 and equivalent of US\$2,300 being one month rent, interest on the special damages above the ruling commercial bank base lending rate and costs of this action. The defendant had entered a defence to the claim. It is very clear from the record that the defendant simply denied the contents of the paragraphs of the statement of claim without any particularity. When the plaintiff applied to enter summary judgment, it filed a comprehensive affidavit in support of the application. In that affidavit, the plaintiff had elaborated the nature of the damages that it had suffered as a result of the defendant's conduct. The plaintiff even attached the lease agreement which was the backbone of this matter. This agreement did stipulate in black and white all the terms and conditions of the lease including the obligation that the defendant had as a tenant. The plaintiff particularly focused on the terms and conditions that dealt with the maintenance of the house at the time the defendant was vacating the house. To that end, the plaintiff attached expenses receipts to show how much it had incurred as a result of the defendant's failure to abide by the lease agreement. The plaintiff further deponed that the defendant still owed it one month rentals. I have looked at the lease agreement which is exhibit MLFBEŞA and noted that it was not at all controverted by the defendant in his affidavit in opposition. I have also looked at

**M.C.C. MKANDAWIRE**

**JUDGE**