IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1151 OF 2001

BETWEEN:

EDDEN MANANAH ..... PLAINTIFF

- and -

SOUTHERN BOTTLERS ..... DEFENDANT

CORAM: TEMBO, J.

Salimu, of Counsel for the Plaintiff

Ndau, of Counsel for the Defendant

Kaphale, Court Clerk

RULING

TEMBO, J.: This is the defendant's appeal against the decision of the learned Deputy Registrar, dated 5th June, 2001. By her decision, the learned Deputy Registrar had granted an application of the plaintiff for judgment on admissions, pursuant to Ord. 27 r.3 of the Rules of the Supreme Court (RSC). The appeal comes up by way of rehearing of the matter. There is affidavit evidence of the parties and the Court has heard full legal arguments of both counsel for and against the application.

To begin with, let it be noted that there is no dispute as to the facts in the case. These were succinctly reflected in the ruling of the learned Deputy Registrar. Thus, the plaintiff is a Blantyre resident and a member of the Adams Family Band(Band). Whilst the Band had been engaged in a performance in Lilongwe, the plaintiff bought a bottle of Sprite drink, a product of the defendant. Immediately upon taking that drink, the plaintiff fell ill. Upon arrival in Blantyre from Lilongwe, the plaintiff went to Queen Elizabeth Central Hospital where his condition was diagnosed as food poisoning. The plaintiff had, at the material time, only partly consumed the contents of the bottle of sprite. The remainder was referred to the Malawi Bureau of Standards by way of a complaint on the part of the plaintiff. The complaint's form indicates that the matter complained against was a "stinky, sour and big roots in the bottle" of sprite which had been consumed by the plaintiff. There is exhibited a letter from the Malawi Bureau of Standards (MBS) to the plaintiff by which the MBS had advised the plaintiff that the defendant had compensated the plaintiff with six bottles of sprite in regard to the complaint then lodged by the plaintiff. The plaintiff was required to use the enclosed voucher to claim for six bottles of sprite from any Southern Bottler's Depot in the country or from the defendant's delivery van by presenting the voucher to the salesman.

In coming to her decision granting the plaintiff's application for judgment on admissions the learned Deputy Registrar had held that the MBS letter, by which the defendant was said to have made an offer of six bottles of sprite drink as compensation to the plaintiff, had constituted a clear and unequivocal indication of the defendant's admission of its negligence in its food handling, which had resulted in the plaintiff's pain and suffering and shock upon his taking the sprite drink in question.

To begin with, it must be pointed out that the plaintiff's claim against the defendant is for damages for pain and suffering and shock arising out of food poisoning after the plaintiff had taken a sprite drink manufactured by the defendant. The action of the

plaintiff is, therefore, one founded upon a tort of negligence. Besides, it is quite clear that the defendant, on its part, has not expressly or impliedly admitted the plaintiff's claim by its pleadings or howsoever. The letter upon which the admissions in question were, or ought to be, founded had been prepared and issued by MBS, an entity not being a party to the instant action; and one which, on the evidence, had not acted with clear and express instructions of the defendant to signify that the six bottles were compensation for the alleged negligence of the defendant in the instant case.

It is trite that for a judgment on admissions to be had under Ord. 27 r.3 of RSC, such admissions may be express or implied, and that they must be clear and unequivocal. Further, the admissions must be made by a party to the action, say in the instant case, such admissions ought to be by the defendant. In addition, in an action for negligence, as in the instant case, the cause of action has two elements: (1) the breach of duty to the

plaintiff,; and (2) damage suffered by the plaintiff. The plaintiff does not establish any right to judgment without evidence and proof of both of those elements. Thus, in case of application under Ord. 27 r.3 of the RSC, an admission of negligence without an admission that the plaintiff suffered injury thereby is not an admission of liability. In such a situation, a plaintiff cannot enter judgment under Ord. 27 r.3: **Blundell -v- Rimmer** (1971) 1 W.L.R. 123; and **Rankine -v- Garton Sons & Co. Ltd** (1979) 2 ALL E. R. 1185.

Reverting to the facts in the instant case, the admission upon which the plaintiff seeks to enter judgment against the defendant was not made by the defendant. In any case, it is seriously contended by the defendant that the voucher in question does not signify admission. Utmost, it is a mere expression of regret and not an admission of the alleged negligence and damage occasioned to the plaintiff; so contends the defendant. Whatever is to be the appropriate meaning to be ascribed to the alleged admission, it is quite clear to the Court that there is no clear and unequivocal admission by and of the defendant in the instant case. The application of the plaintiff for a judgment on admission, therefore, ought not to be granted. It is dismissed with costs.

MADE in Chambers this Friday, 18th day of October, 2002, at Blantyre.

A. K. Tembo

JUDGE