

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1132 OF 2002**

BETWEEN:

THE NEW BUILDING SOCIETY PLAINTIFF

AND

MALAWI HOUSING CORPORATION DEFENDANT

CORAM: POTANI, REGISTRAR

Chagwamnjira, Counsel for the Plaintiff

Dzoole, Counsel for the Defendant

RULING

On April 4, 2002, the Plaintiff commenced this action against the defendant claiming the sum of K3, 089,583.22, interest at normal bank lending rate, any relief the court may deem just and costs. Upon being served with the writ and statement of claim, the defendant gave notice of intention to defend and served a defence. Subsequently, the plaintiff filed the present application which is one for judgment on admissions under order 27 Rule 3 of the Rules of the Supreme Court.

It is trite law, as was stated in the celebrated case of *Ellis vs. Allen* (1914) Ch 904, that for judgment to be had under Order 27 Rule 3, the admissions relied on by the party seeking judgment may be express or implied, but they must be clear and unequivocal.

The brief facts of the present case are that the parties herein entered into an agreement under which the plaintiff was to purchase some land in the cities of Lilongwe and Blantyre from the defendant at an agreed price of K3,089,503.22. The plaintiff duly paid the agreed purchase price. For some reason, the agreement did not fully materialize. On the one hand, the plaintiff alleges in paragraph 3 of the affidavit in support that it was the defendant who decided to rescind the agreement while on the other hand, the defendant alleges in paragraph 4 of the affidavit in opposition that it was the plaintiff who decided to rescind the agreement and in that respect, reliance has been made on a letter written by the plaintiff to the defendant exhibited to the affidavit in opposition as 'EDD1'.

The alleged admission on which the plaintiff seeks to have judgment is contained in exhibit 'P1' to the affidavit in support being a letter from the defendants to the plaintiff. That letter is dated May 11, 2001. The case of *Hampden v. Wallis* (1884) 27 Ch D 257 is authority for the proposition that an admission for purposes of Order 27 Rule 3 may be

contained in a letter authored either before or after the commencement of the proceedings. By its letter, exhibit 'P1', the defendant gave the plaintiff an assurance that that the refund that plaintiff was following up was being looked into by its financial controller. What is significant is that in the letter the defendant makes reference to the plaintiff's letter of August 4, 1999, being exhibit 'EDD1' referred to earlier on. It is curious to note that while it is clear from that letter that it was the plaintiff who rescinded the agreement, in the same letter the plaintiff clearly specifies his claim for a refund of the purchase price of K3,089,583.22. The defendant in exhibit 'P1' does not make any suggestion at all that the defendant did not accept the plaintiff's decision to terminate the agreement and the plaintiff's claim for a refund of the purchase price. The tenor of the letter is actually an acknowledgement by the defendant that there was an outstanding sum of money to be refunded to the plaintiff. All in all, a reading of 'EDD1' and 'P1', in my view, demonstrates that the defendant made an implied but clear admission of owing the plaintiff the sum of K3,089,582.22. I thus order that judgment be entered for such sum in favour of the plaintiff.

The claim for interest has given me anxious moments especially considering that as noted from 'EDD1' it was the plaintiff who terminated the agreement. I would, therefore, not order payment of interest and should the plaintiff wish to pursue that claim, the matter should proceed to trial in that respect.

Costs of this application are for the plaintiff.

Made in Chambers this day of November 6, 2002, at BLANTYRE.

H S B Potani
REGISTRAR