

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**MISCELLANEOUS CIVIL CAUSE NO. 649 OF 2006**

**BETWEEN:**

CHARTER INSURANCE CO LTD.....PLAINTIFF

AND

BOARD OF EXECUTORS ..... DEFENDANT

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

Mr. J. M. Chirwa for the Appellant

Mr. Gulumba for the Respondent

Mr. Allan Chuma, Official Interpreter

**JUDGMENT**

***Mkandawire J***

This is an appeal following the ruling of the learned Hon Assistant Registrar given on the 27th of July, 2006 in which he refused to enter summary judgment in the sum of K2,869, 532.37t plus interest thereon plus costs. The appeal is supported by affidavits and there is also filed skeletal arguments. This appeal is opposed by the respondent who have filed an affidavit in opposition plus skeletal arguments.

An appeal to the judge in chambers from the ruling of the Hon Assistant Registrar is by way of re- hearing. This therefore means that I have to study and consider all that was presented before the Assistant Registrar. I will also study the ruling that was dishd out by the Assistant Registrar.

In the first place, I have looked at the ruling which is very brief indeed. It is actually only two pages long.

Before I further delve into the matter, I have reminded myself about the purpose of summons for summary judgement pursuant to Order 14 rules of the Supreme Court. In the case of Home and Overseas Co (UK) Ltd (1990) I.W.L.R. 153 Parker, L.J. said that Order 14 of Rules of the Supreme Court can be invoked if the plaintiff proves his claim clearly and if the defendant is unable to set up a defence to the claim. He added that where the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived or if arguable it can be shown to be plainly unsustainable, then the plaintiff is entitled to summary judgment under Order 14 Rules of the Supreme Court. In the case of (Roberts v Plant (1895) IQB it was held that the purpose of Order 14 of the Rules of the Supreme Court is to enable the plaintiff to obtain a summary judgment without trial if he can prove his claim clearly and if the defendant is unable to set up a bona fide defence or raise an issue against the claim which ought to be tried. Having stated the position clearly, I should now revert to the facts of the case as presented before the Assistant Registrar. The Plaintiff commenced this matter by a writ of summons in which they were claiming for MK3,146,057.14t plus interest thereon and cost of the action. The defendant served a defence on the plaintiff denying the claim and admitting owing an amount to the tune of MK702,163.00. The defendant further stated that the sum of MK3,146,057.14 is a result of the plaintiff's failure to credit the defendant's account of certain sums which were shown in the documents submitted. In their defence to the claim, the defendant say that the only amount owing should be less than the sum of MK700,000. There is however a comprehensive document 'KK6' which is the customer activity report showing all the details of the account and it indicates that there is still a balance of MK2,869,532.37. The issue of the wrong receipt of K27,809,28t instead of K270,908.28 is highlighted in this activity report.

I have looked at the spirit of the ruling of the Hon Assistant Registrar which was as follows on page 2 of the said ruling:

*' The plaintiff now applies for summary judgment claiming the sum of K2,869,532.37t. By the very fact that the Defendant is claiming a lesser sum after the defendant has raised a defence it should be*

*clear that the Defendant has a case and it should be heard at a trial.*

*While not agreeing with the Defendant that there is no clear explanation from the Plaintiff regarding the sums of money discounted in respect of already settled premiums ,cancelled policies and repaid commissions, I am of the opinion that the adjustments to the initial claim have been made possible after the defendant has responded to the plaintiff's claim.*

*The sum could go down further if the Defendant was to challenge the calculations. This can only be possible at trial where documents would be produced and witnesses examined and cross-examined on what they know on the accounts. This will not in my opinion, be possible through affidavits.'*

I have addressed my mind towards the provision of order 14 rule I of Rules of Supreme Court. My understanding of this order is that the plaintiff can apply for summary judgment to a lesser sum than that which was initially claimed. In the instant case, that is what the plaintiff did. Looking at the nature of defence put forward by the defendant, it is clear that it is just a general defence. Much as I do appreciate that what the defendant had raised about certain sums which were not taken into account really bore fruits by reducing the initial sum after certain reconciliations and subtractions, I do not think that this should be the basis for denying the plaintiff a quick judgment on a sum to which the defendant has made no specific denial. General denials without any basis should not at all be allowed. If the defendant had any particular defence to the amount of MK2,869,532.37t, they should have raised it. Moreover, I find exhibit 'KK6' the activity report very clear and straight forward. It speaks for itself.

I therefore set aside the ruling of the Hon Assistant Registrar and in lieu thereof order that summary judgment be entered for the sum of MK2,869,532.37 with interest thereof. The matter for trial should only be on the remaining sum of MK276,524.77t. The appeal succeeds with costs to the appellent.

MADE IN CHAMBERS this 1st day of November, 2006 at Blantyre

M. C.C. Mkandawire

**JUDGE**