



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 132 of 2018

(Before Honourable Justice Sikwese)

BETWEEN:

MAHMOOD AZHAR CHAUDHRY.....CLAIMANT

-AND-

ZOA TEA ESTATES LTD.....1ST DEFENDANT

JANET MAXWELL DORAN.....2ND DEFENDANT

CORAM: D.H. SANKHULANI, ESQ., ASSISTANT REGISTRAR

Mr. Kauka, of Counsel for the Claimant

Mr. Mtonga, of Counsel for the Defendants

Mr. Ntonya, Court Clerk

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Sankhulani, AR

RULING ON APPLICATION TO AMEND SUMMONS AND STATEMENT OF CASE

Introduction

This ruling follows hearing that was held on an application, brought under **Order 25, rule 1(i) and Order 7, rule 23 of the Courts (High Court) (Civil Procedure) Rules 2017**, by the Claimant to amend the summons and statement of case herein.

Background Information

The Claimant commenced the present action by way of a summons, claiming an injunction and costs of the action. On the same date that the Claimant filed the said summons, he also filed an application for an interim injunction. The application was heard on the same date, upon which an interim injunction was granted.

The Defendants duly filed their defence.

Later on, the Defendants filed, on the same date, an application to strike out action for being frivolous, vexatious and an abuse of the court process and also an application without notice to set aside the aforesaid interim injunction. Those two applications are still pending. The former will be heard on the 5th day of October this year (2018). The latter is yet to be given a date.

Subsequently, the Claimant brought the present application to amend summons and statement of case.

The Defendants then filed a notice of intention to apply for Registrar to refer the application to amend to a Judge.

On the date scheduled for hearing of the present application, this Court first heard the application to refer matter to Judge, upon which it ruled in favour of it proceeding to hear the application. Accordingly, this Court heard the present application and then adjourned the matter for ruling. Hence this ruling.

Issues for Determination

- Whether the present application ought to be referred to the honourable Judge.
- Whether permission to amend ought to be granted herein.

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Whether the Present Application Ought to be Referred to the Honourable Judge

In their submissions in opposition to the present application, the Defendants maintained their earlier prayer to refer the present application to the Honourable Judge seized of this matter (hereinafter referred to as 'the Judge').

As it has already been mentioned, I had refused the application to refer the present application to the Judge, when the present application came up for hearing. However, having critically examined the circumstances of this matter, I am now inclined towards referring the present application to the Judge. I furnish my reasons. As it has been alluded to earlier on, by the summons and statement of case herein, the sole substantive relief that the Claimant seeks herein is an injunction, apart from costs. Again, as it has been mentioned earlier on, there are two applications by the Defendants, one of which is to strike out the action herein. One of the two grounds for the said application is that the action herein has no substance in that the sole relief sought hereby is an injunction. Now coming to the present application, one of the amendments for which permission is sought is the addition of a prayer for a declaration. Clearly, that is an attempt to respond to the Defendants' ground mentioned above for applying to have the action herein struck out. I so opine and find. That attempt renders the present application and the said Defendants' application to strike out action related. I further opine. That relationship, in my most-considered opinion, necessitates that both applications be made returnable before the Judge. That arrangement would, in my opinion, better serve the interests of the ultimate justice of this matter.

In view of the foregoing finding and reasoning, I finally find that the present application ought to be referred to the Judge, under **Order 25, rule 2(1) of the Courts (High Court) (Civil Procedure) Rules 2017**, which empowers a Registrar to refer a proceeding before him to a Judge in chambers.

Whether Permission to Amend Ought to be Granted Herein

This issue has naturally fallen away, in view of the immediately foregoing finding.

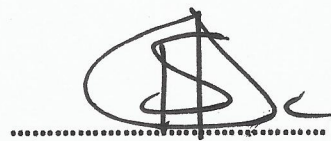
Final Order

In view of the foregoing findings and reasoning, I hereby refer, under **Order 25, rule 2(1) of the Courts (High Court) (Civil Procedure) Rules 2017**, the present application to the Judge in chambers, there to be heard afresh.

Costs

These are in the court's discretion, although they usually follow the event. Each party herein shall bear their own costs of hearing of the present application that took place on 25th May, 2018 before the Registrar.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 8th day of June 2018.

A handwritten signature in black ink, consisting of a stylized 'S' and 'K' intertwined, with a horizontal line underneath.

D.H. SANKHULANI

ASSISTANT REGISTRAR

