

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 473 OF 2003**

BETWEEN

KWIK FIT .....PLAINTIFF

-AND-

HON. KANJIRA t/a WAK ENTERPRISES,  
BALAKA FILLING STATION AND KANJIRA  
TRANSPORT.....DEFENDANT

CORAM : **CHOMBO, J.**

Chinoko, of Counsel for the Plaintiff  
Kalasa, of Counsel for the Defendant/Absent  
Msiska(Ms), Court Interpreter  
Jalasi(Ms), Court Reporter

**RULING**

The defendant admits owing the sum of K194,455.55 to the plaintiff. An application was made to liquidate the said sums by monthly instalments of K30,000.00. It was submitted in affidavits filed by the defendant that he has already committed the sum of K50,000.00 towards settlement of another debt in a different case. The defendant submitted by the same affidavits that he has various financial obligations which would not permit him to commit more than K30,000.00

monthly towards liquidation of the outstanding debt. Defendant's lawyer was absent at the hearing. Court was informed by the plaintiff's counsel that the defendant's lawyer had forgotten about the case and had come to court without robing. The case having been set down for hearing in May 2004 and notices having been sent to all parties, the court proceeded to hear the matter undefended.

The plaintiff, by an affidavit of 16<sup>th</sup> July 2004 opposed the application by the defendant to pay debt by instalment. It was submitted by the plaintiff that the defendant's application to pay debt by instalment had been filed on 17<sup>th</sup> September 2003 and remained unprosecuted up to the date of hearing of the plaintiff's application to dismiss the defendant's application. Plaintiff's counsel submitted that there had been inordinate delays by the defendant to prosecute the summons which were perceived by the plaintiff as inexcusable and unjustifiable delays. It was submitted by the counsel that he had been informed by defendant's counsel that attempts to contact the defendant had borne no fruits. On 13<sup>th</sup> November 2003 defendant's counsel had asked for an adjournment, when the case came before Hon. Justice Kumange, that he be given time to get in touch with his client whom he was having problems to contact. On that date Kumange, J actually stated that:-

*“ I feel subject to what I have said above, this will be the final adjournment – so that the fruits of the plaintiff’s judgment start flowing at the earliest opportunity.”*

Almost eight months down the line counsel still has problems contacting his client. I am at a loss as to what counsel means that he has problems contacting his client. I want to believe that counsel has full particulars of his client which would enable him get in touch with his client. I cannot but agree with the plaintiff’s counsel that his is only meant to frustrate the cause of justice. After what Kumange, J said on 13<sup>th</sup> November 2003 counsel should have intensified the search for his client. I am therefore left with no other option but to grant the plaintiff’s application to dismiss the defendant’s application to pay the debt by instalments with the right for the plaintiff to execute judgment. I further condemn the defendant with costs of these proceedings.

Made in Open Court at Lilongwe District Registry this 7<sup>th</sup> day of October, 2004.

CHOMBO  
**JUDGE**