



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 3500 OF 2006**

BETWEEN:

TENDAI NYALANIPLAINTIFF

-AND -

MR CHIWAYA AND MRS CHIWAYA.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Masanje, of Counsel for the applicant

Mr Chidothe, of Counsel for the respondent

Mr Manda- Official Interpreter

RULING

Twea, J

I have heard the parties.

I have before me proceedings in respect of disobedience of a court order. It is not a hearing to determine the rights as the defendants counsel wants to put it. In any case the record shows that the defendants have not responded

to the summons since it was served on their consent then on 9.5.07. The record further shows that there was a consent order on 23.8.07. The defendant went back on this and the plaintiff came to court on 13.11.07 when this order of which it is alleged they havebreached was made.

As a court of law, I would be failing in my duty if I allow litigant to disobey orders and do as they please. Court are there to settle disputes amicably, each party being given a right to be heard. In this case the defendants have not responded to the summons for now almost one year – they cannot be heard to say they are being denied the right to be heard. They have had that right and so some limited extent they still have that right. This however does not give them the licence to breach court orders.

The issues raised by Counsel for the defendant will be dealt with at the hearing. Let him file the documents required to put forward the case for the defendants. This however does not have the effect of suspending the court order.

The parties were given a right to mutually discuss the issues if there is need for variation, with their lawyers or to court. If there was or is a problem the defendant had the right to come to court and apply for a variation. They cause now be heard to say, the child is refusing to go to her father when they never called for a discussion with plaintiff lawyers or come to court to ask for a variation.

I have in this case appointed the District Social Welfare Officer as guardian ad litem for the child, in order to protect her from the influences of competing interests.

I bear in mind that the child has the contribution right to know and be raised by his or her parents. However, I bear in mind that for complete development socially a child must be able to relate to the families of her mother and her father – thus grandparents, aunties, uncles and cousins are important. I also bear in mind that one of the grandparents is ill and it would not be in.....of the child to see the grandparent in prison.

I deny any adjournment. I order that the order of this court granted on 13.11.07 and perfected on 24.1.08 be respected and obeyed. I will therefore

commit the contemnor to prison for 30 days – suspended for 7 days on condition that they restore the child to the father.

Should they wish to contest the proceedings they may instruct their lawyers to file the documents so that the matter comes up for hearing.

The child will not testify except through her guardian ad litem.

Costs to the plaintiff.

Pronounced in Chambers this 17th day of April 2008 at Blantyre.

E. B. Twea
JUDGE