



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 153 of 2016

(Before Honourable Justice Katsala)

BETWEEN

RELIANCE TRADING COMPANY.....CLAIMANT/ENFORCEMENT CREDITOR

AND

DWANGWA SUGAR FARMERS ASSOCIATION.....DEFENDANT/ENFORCEMENT DEBTOR

NEW FINANCE BANK.....10TH GARNISHEE

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

Mr. T. Chokotho, of Counsel for the Claimant/Enforcement Creditor

Mr. Sitima, of Counsel for the 10th Garnishee

Mr. E. Makombe, Court Clerk

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Sankhulani, AR

RULING

Introduction

This ruling follows hearing that was held on the Claimant's preliminary objection to the hearing of the 10th Garnishee's application to set aside the garnishee order absolute herein, which Claimant's preliminary objection now stands as an application under **Order 10, rule 9** of the **Courts (High Court) (Civil Procedure) Rules 2017** for this Court to review its order extending time in which the 10th Garnishee had to file the application to set aside garnishee the order absolute, for the purpose of setting the same aside.

Background Information

By the amended specially-endorsed writ of summons herein, the Claimant claimed, inter alias, the sum of K15,071,150.00 being balance of money owed to it for work suites and gumboots supplied to the Defendant.

The default judgment herein, for liquidated sums of money and for interest and costs to be assessed, was entered on account of absence of both notice of intention to defend and defence from the Defendant. The default judgment was followed by a consent order settling the matter, which consent order essentially provided for payment of the judgment debt herein through specified monthly installments.

It would seem the Defendant defaulted on the installments. So, subsequently, on the Claimant's application, a garnishee order nisi was made against 11 garnishees, including the 10th Garnishee. After being served with the interim order, eight (8) garnishees gave negative responses, indicating inability to honour the judgment debt herein. However, three (3) garnishees, inclusive of the 10th Garnishee, did not respond to the garnishee order nisi. Accordingly, this Court, on the scheduled date to show cause why the garnishee order nisi should not be made absolute, made the said garnishee order nisi absolute as against the said three (3) garnishees, including the 10th Garnishee. The other garnishees were all discharged.

Afterwards, the 10th Garnishee obtained stay of execution of the said garnishee order absolute pending an application to set it aside. The stay required the application to set aside to be filed within seven (7) days thereof. Having failed to comply with that time prescription, the 10th garnishee subsequently brought an application for extension of time within which to file the application to set aside the garnishee order absolute. The sought extension of time was granted. The 10th Garnishee then filed the application to set aside the garnishee order absolute herein, which application is supported by a sworn statement. Before the scheduled date for hearing of the application to set aside garnishee order absolute, the Claimant filed a notice of preliminary objection to the said application, supported by skeleton arguments. The sole ground founding the preliminary objection was that the application to set aside garnishee order

absolute was not brought promptly, bearing in mind that the same was brought after over eight (8) from when it was first ordered to be filed before an extension was allowed, as above indicated. However, at the end of hearing of the preliminary objection, it was made known that this Court, on the 10th Garnishee's application, had granted an order extending time in which the 10th Garnishee had to file the application to set aside garnishee order absolute, only that the order extending time had not been served on the Claimant. In view of that, the Claimant prayed that the preliminary objection be treated as an application, under **Order 10, rule 9** of the **Courts (High Court) (Civil Procedure) Rules 2017**, for this Court to review its own order extending time in which the 10th Garnishee had to file the application to set aside the garnishee order absolute. The matter was then adjourned to today's date for ruling. Hence the present ruling.

Issue for Determination herein

- Whether the order extending time in which the 10th Garnishee had to file the application to set aside garnishee order absolute ought to be set aside.
- Whether the garnishee order absolute herein ought to be set aside.

Whether the Order Extending Time in Which the 10th Garnishee Had to File the

Application to Set Aside Garnishee Order Absolute Ought to be Set Aside

The Claimant asks this Court to review its decision to extend time in which the 10th Garnishee had to file the application to set aside garnishee order absolute, for the purpose of setting the same aside.

The starting point for this discourse is the application to extend time itself. The application to extend time in which the 10th Garnishee had to file the application to set aside garnishee order absolute was made without notice. In my opinion, it was properly brought before this Court, as it was so brought under **Order 3, rule 5** of the **Courts (High Court) (Civil Procedure) Rules 2017** and also under the **Court's Inherent Jurisdiction**. Further, it is also my considered view that the application took the correct format for applications in a proceeding as is prescribed in **Form 4** of the **First Schedule** to the **Courts (High Court) (Civil Procedure) Rules 2017** (see **Order 10, rule 1** of the **Courts (High Court) (Civil Procedure) Rules 2017**), since it was supported by a sworn statement. The said sworn statement contained reasons that explained the delay and justified the granting of an extension. So, when this Court granted the extension of time, it must have been satisfied with the reasons for the delay and the justification for an extension of time, as is

required in applications for extension of time (per Katsala, J., in **Countrywide Hotels Ltd and Another –V- Business Partners International Commercial Case No. 267 of 2016, High Court-Commercial Division, Blantyre Registry, Unreported**). I so opine and find. It, therefore, means that the application for extension of time in issue herein had properly been brought before this Court, and also that this Court had judicially exercised its discretion when it granted the extension in issue herein. However, nothing that has come from the Claimant faulting either how the application for an extension was brought before this Court or how this Court exercised its discretion in granting an extension as it did. The Claimant's skeleton arguments in support of the preliminary objection herein, which objection, as above explained, now constitutes an application to review the order extending time in which the 10th Garnishee had to file the application to set aside garnishee the order absolute, are completely silent on how the application for an extension of time was brought before the court. The said skeleton arguments are also silent on how this Court exercised its discretion in granting an extension. Likewise, I find Counsel's oral representations wanting in this regard. I his oral representations, Counsel for the Claimant said that the basis of the present application as it stands is that the **Courts (High Court) (Civil Procedure) Rules 2017** strictly require promptness when applying to set aside orders. With all due respect to Counsel, I find that basis to be misconceived as I find it not to be relevant to the present application, which relates to review of an order extending time. All in all, I find the Claimant to have failed to make its case for the setting aside of the order extending time in which the 10th Garnishee had to file the application to set aside garnishee order absolute. I, therefore, finally find that the order extending time in which the 10th Garnishee had to file the application to set aside garnishee order absolute ought not to be set aside at all.

Whether the Garnishee Order Absolute Herein Ought to be Set Aside

At the conclusion of hearing of the present application, Counsel for the Claimant stated that, should the court find in the 10th Garnishee's favour, the Claimant would not object to the setting aside of the garnishee order absolute herein, since their main concern was promptness on the 10th Garnishee's part.

Therefore, in view of the immediately foregoing finding that has gone in the 10th Garnishee's favour, I finally find that the garnishee order absolute herein ought to be set aside as against the 10th Garnishee.

Final Order

In view of the immediately foregoing finding, I hereby set aside the garnishee order absolute herein as against the 10th Garnishee. The 10th Garnishee is discharged, accordingly. The Claimant's preliminary objection, which constituted the present application, is hereby overruled.

Costs

These are in the court's discretion. The Claimant and the 10th Garnishee shall bear their own costs of both the application to set aside garnishee order absolute and the just-set-aside preliminary objection, since both of them have a fair share of blame as to why matters had to reach this far. The 10th Garnishee shall also bear its own costs of both the application for stay and the application for an extension of time herein.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 7th day of December 2018.



D.H. SANKHULANI
ASSISTANT REGISTRAR