

IN THE HIGH COURT OF MALAWI AT BLANTYRE
PRINCIPAL REGISTRY

CIVIL CAUSE NO.394 OF 1985

BETWEEN:

H.M. BHAMJEE PLAINTIFF
and
H.S. BATH DEFENDANT

Coram: MAKUTA, C.J.

Nyirenda, Counsel for the Plaintiff
Defendant/Respondent, unrepresented
Kadyakale, Law Clerk

ORDER

This is an unusual application. The plaintiff is asking the court to appoint its officer to execute a conveyance for and on behalf of the defendant conveying plot number CC 6 to the plaintiff. The application is made under 0.45 (8) of the Rules of the Supreme Court. The Order provides in effect that where the High Court has given or made a judgment or order directing a person to execute any conveyance, contract or other documents, or to indorse any negotiable instrument, then, if that person:-

(a) neglects or refuses to comply with the judgment or order; or

(b) cannot after reasonable inquiry be found

the High Court may, on such conditions, if any, as may be just, order that the conveyance, contract or other document be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for the purpose.

Briefly the facts are that the plaintiff brought this action against the defendant to enforce an agreement made in October, 1979, for sale of plot number CC 6 situated in Limbe, at the price of K3,500.00. The agreement provided that the sale should be completed soon after Government's notification that it did not intend to acquire the property, and that the defendant should give vacant possession of the property to the plaintiff. The plaintiff paid the

purchase price but the defendant left the country and is residing in the United Kingdom. An order for a substituted service was obtained on 26th September, 1985 and it was duly posted by registered mail to the address of the defendant. There was no response.

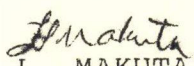
On 8th April, 1986 a judgment in default was entered against the defendant. The judgment required the defendant to execute the conveyance transferring title from him to the plaintiff within 30 days from the date of the judgment. It was sent by registered mail to the defendant in the United Kingdom. The document has not been returned by the Post Office and the defendant must have received it. The defendant has not, however, responded.

I had a lot of misgivings as to whether I should make the order. It was held in Astro Exito Navegacio SA vs Southland Enterprise Company Limited (1983) 2 All ER. 725 that there is no limitation on the class of document in relation to which the powers accorded by the Order might be invoked nor on the purpose for which a document executed in accordance with the powers might be used. In that case the court ordered a court official to sign the document in question.

In the present case I am satisfied that the defendant has been duly served but has neglected or refused to comply with the judgment. In my view it is a deliberate attempt to flout the judgment and this cannot be condoned. I therefore order that the Registrar may sign the conveyance on behalf of the defendant on condition that:-

- (a) The Registrar shall not be liable to be sued for any act or omission of any party or his representative in this action;
- (b) The plaintiff makes an undertaking that any costs or damages which may arise as a result of the order will be borne by him; and
- (c) This order will be effective only after the undertaking in (b) has been made.

MADE in Chambers this 15th day of August, 1986 at Blantyre.


F. L. MAKUTA
CHIEF JUSTICE