

C.T.

IN THE HIGH COURT OF MALAWI, BLANTYRE

PRINCIPAL REGISTRY

CIVIL CAUSE NOS. 541 AND 542 OF 1986

BETWEEN:

JOHN G. KAWAMBA
t/a CENTRAF ASSOCIATES LIMITED PLAINTIFF

AND

W.T.C. FREIGHT LIMITED DEFENDANT

CORAM: MBALAME, J.

Chizumila of Counsel for the Plaintiff
Msisha of Counsel for the Defendant

JUDGMENT

There are two appeals combined in this action. The appellant is the defendant in both cases and the two cases are dealt with together. I shall, therefore, pass one judgment in respect of both appeals.

The appeal is from the ruling of the learned Registrar of 9th November, 1987. The appellant sought to set aside the default judgments entered against it on 20th and 23rd October, 1986. The respondents opposed the applications on the grounds that there had been inordinate delay and that there was no defence disclosed.

The appellants have filed three grounds of appeal, namely:

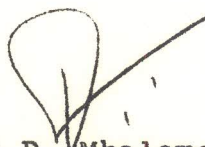
- (a) That the learned Registrar erred in denying the opportunity to the defendant to set aside judgments when such delay was caused entirely by counsel for the defendants and not the defendant himself.
- (b) That the learned Registrar erred in defending the plaintiff's actions against the defendant.
- (c) That the learned Registrar erred in holding that there were no triable issues raised on the defence by the defendant.

The appeal is vehemently opposed by Mr. Chizumila who appears for the respondents. It is his contention that there has been inordinate delay and that allowing the appeal would be a total denial of justice to the respondents. The writ was served on

24th July, 1986. The defendant did nothing until 23rd October when judgment was entered. Then there was warrant of execution on 26th November, 1986. Again, the defendant did nothing. It was only on 8th December, 1986 that the application was made to set aside the judgments. He further contends that the defendants had no serious intention to defend the case. He has prayed to this Court to disallow the appeals in that the money was already paid to the defendants and that a reversal of the judgments would result in injustice.

On the other hand Mr. Msisha has submitted that the delay was caused by counsel from Lilley Wills & Company who was then handling the matter and that the appellants should not be penalised for that counsel's mistake. He contends that there are triable issues and that the appellant has a good defence in both cases. I have considered the circumstances surrounding the cases and I am of the opinion that this is a case where both appeals should fail. There has been inordinate delay which cannot be excused. The defendant could very well have defences in both cases, but I think, as Mr. Chizumila has submitted, it would not be in the interest of justice for me to allow the appeals as this would in the end result be injustice to the respondents. I should perhaps mention that if anything, the appellant might wish to seek compensation from the counsel who kept the summons in his drawers for 5 months. Of course, it should be understood that I am not in any way pre-judging any possible action as this is just my observation. I, in the end result, dismiss both appeals with costs.

MADE in Chambers this 11th day of March, 1988 at
Blantyre.



R.P. Mbalame
JUDGE