

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 104 OF 1984



BETWEEN:

THE ADMINISTRATOR GENERAL PLAINTIFF
(as Administrator of the
Estate of S D Kathumba)

and

S D Liunde DEFENDANT

Coram: D F Mwaungulu, REGISTRAR
Kombezi, Counsel for the Plaintiff

RULING

This was an application ex-parte for renewal of a writ that was taken out on the 12th of March, 1984. I have real problems with this application and I think the right thing to do is to dismiss the summons all together.

The writ was taken out on the 12th of March 1984. It is signed by Mr A D Liunde, the defendant, so that to all intents and purposes it was served. It is not even necessary to prove service because an acknowledgment of service was lodged with the Court. The Court did not comply with certain procedural requirements.

The acknowledgment of service is signed by Mr. Gunde in compliance with Order 12, Rule 3(1) of the Rules of the Supreme Court. In compliance with Order 12, Rule 3(2) the defendant shows his address of service, i.e., Chichiri Prison, Box 30117, Chichiri, Blantyre 3. This is an acknowledgment of service and has the consequences of entering an appearance in previous rules. (Order 12, Rule 10).

Of course the defendant did not state whether he wants to contest the proceedings. He is, however, not obligated. There is nothing in the rules or practice which makes it mandatory to do so. He is only obligated if he wants to contest the proceedings. He is not obligated to apply for stay of execution either. In this case there was proof of service because there is an acknowledgment of service.

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The Court however omitted to affix to the acknowledgment of service an official stamp showing the date on which the acknowledgment was received (Order 12, Rule 4). This is not consequential here because there was nothing done since the acknowledgment was lodged. A belated acknowledgment is allowed (Order 12, Rule 6(2)).

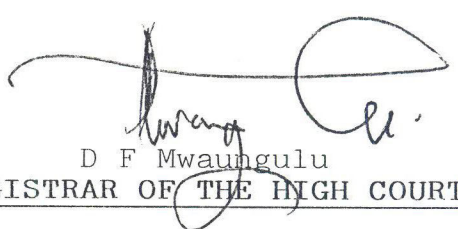
Here the acknowledgment was received on the 25th of July 1984 according to the letter from the defendant. The defendant had asked assistance from the Court on how to complete the forms. The Court did not assist. The Court should have affixed the acknowledgment of service with the date of the 25th of July 1984.

Where does all this leave the plaintiff. There is an acknowledgment of service which means the defendant was served. The writ was taken out on the 12th of March 1984 and was served at least by the 25th of July 1984. It was served within twelve calendar months. There is no need to renew it, therefore. It is also unnecessary therefore to consider the effect of the Statute of Limitation.

What should the plaintiff have done then? He should have proceeded under Order 3, Rule 6 of the Rules of the Supreme Court.

I dismiss the summons.

Made in Chambers this 18th day of October, 1990.


D F Mwaungulu
REGISTRAR OF THE HIGH COURT