

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 739/92



BETWEEN:

LEONARD KATENGEZA.....PLAINTIFF

and

BRIGHTON CHIKUSE.....DEFENDANT

CORAM: JANE MAYEMU ANSAH (MRS) DEPUTY REGISTRAR

Chuzumila of counsel for the plaintiff
Msungama of counsel for the defendant

RULING

This a summons to set aside judgement. Mr Msungama acting for the defendant argued that the judgement is irregular. In the alternative he says that if the judgement is regular then he has a good defence. Mr Chuzumila for the plaintiff says that the judgement was regular.

The basis of the irregularity, details of which are given in the affidavit in support of the summons is that there was no proper or valid service on the defendant. Service was purported to be done by post but the envelop that contained the writ of summons was addressed to a Mr J Chikuse when the defendant's first name is Brighton therefore if only the intial had been used it would have been B and not J. Although the envelop was sent to the defendant's collect address and the defendant collected it from the Post Office, because of the error, the envelop was opened on after judgement had already been obtained. The opening, in fact was prompted by the receipt of a judgement in default. The error is conceded by the plaintiff's counsel. Despite this plaintiff's counsel still argues that the judgement was regular in that the defendant kept the envelop without returning it to the sender therefore he must have opened it. I believe to go further and read between the lines as to whether the letter was opened or not would only lead to assumptions. I therefore find that the letter was opened after judgement in default was entered therefore the judgement is irregular. I set it aside with costs to the defendant.

Made in Chambers on 15th day of October 1992




JANE MAYEMU ANSAH (MRS)
DEPUTY REGISTRAR