

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.875 OF 1992



BETWEEN:

STEVEN KALIMEJE & OTHERS..... PLAINTIFFS

- and -

KALOSI KALIMEJE DEFENDANT

CORAM: MWAUNGULU, REGISTRAR

Nyirenda, Counsel for the Plaintiffs
Kamwambi, Counsel for the Defendant

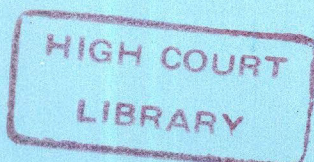
O R D E R

This is a summons for judgment under Order 19 rule 7 of the Rules of the Supreme Court. The summons for judgment has been necessitated because the statement of claim includes a claim for an account. The writ with a statement of claim endorsed was served on the defendant who filed a notice of intention to defend on 20th August, 1992. The defendant did not serve defence in time. He actually served it after the time set for service. He did not apply to the Court for extension of time. This morning I refused to enter judgment and condemned the defendant to costs for delay.

Mr. Nyirenda argued that the defence served was irregularly done. The defendant should have applied for extension of time in which to serve defence. He submitted that judgment should be entered against the defendant. Later, however, he acceded only to the extent that the defendant should make a formal application to the Court to extend the time.

The practice, as I understand it, is that on motions or summons for judgment the Court will not disregard a defence served merely because it was served after the prescribed time and without applying for extension of time. GILL -vs- WOODFIN, (1884) 25 Ch.D 707. In GIBBINGS -vs- STRONG, (1884) 86 Ch.D 66, 70 Lord Justice Cotton said:-

"I think it is the duty of a Judge, when an action comes before him on motion for decree in default of pleading, to look at everything the knowledge of which may enable him to do justice between the



parties. The plaintiff was entitled to move under Order xxix, rule 10, but especially having regard to rule 14, I do not think that where a defence has actually been put in, rule 10 can be construed as obliging the Court to pay no attention to it, because it was put in after time and without leave."

Except for the differences in the orders and rules, the applications are based on the same provisions. The correct order in this case is not to enter judgment, particularly so because Mr. Nyirenda has no objection to the defence being served, and condemn the defendant to the costs of the delay.

MADE in Chambers this 15th day of December, 1992 at Blantyre.

D.F. MWAUNGULU
REGISTRAR OF THE HIGH COURT