

115 S.F. Mwaungulu

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 727 OF 1992

HIGH COURT  
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BETWEEN:

WALFORD MEADOWS LIMITED.....PLAINTIFF

and

MKULUMADZI FARM BAKERIES.....DEFENDANT

CORAM: Jane Mayemu Ansah (Mrs) Acting Deputy Registrar

Tembenu Counsel for the plaintiff  
Chikopa Counsel for the defendant

RULING

This is an application to set aside a default judgement that was entered against the defendant on 6th April, 1992. The application is duly supported by an affidavit. It is sought to set aside the judgement on one ground, that the defendant has got a defence on merit. Mr Tembenu counsel for the plaintiff has argued that although there are triable issues, the rules are against setting aside a regular judgement, because what the defendant has is a counter claim and not a set-off, which in law is regarded to be a defence. The grounds of his application are contained in paragraph eight legal practitioner's affidavit a-f. It is true that sub paragraph b refers to a counter claim, but the rest do not. I therefore find that the defence which is contained in paragraph eight disclose arguable and triable issues. I allow the application. Judgement is hereby set aside and the defendant is granted leave to defend this action.

Made in chambers this 28<sup>th</sup> day of July 1993

Jane Mayemu Ansah (Mrs)  
ACTING DEPUTY REGISTRAR

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