

THE HIGH COURT
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IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

BLANTYRE REGISTRY

Commercial Cause No. 163 of 2023

BETWEEN

SIMEON MDEZA & 22 OTHERSCLAIMANTS

AND

JOHN CHITIMBE t/a AUTOHUB..... DEFENDANT

Coram: **Manda, J**

Msungama for the Claimants

Kumitengo for the Defendant

M. Kachimanga Court Clerk/Interpreter

RULING

This was the claimants' application for Summary Judgment which the defendant did not oppose. Instead the defendant filed a preliminary application for stay of proceedings arguing that there is a criminal matter before the Chief Resident Magistrate Court on the same facts and against the defendant in this instance.

According to the defendant, "some" of the claimants in this matter commenced criminal proceedings against him and that the matters have since been consolidated but that hearings have not started. It was Counsel for the defendant's argument that these Civil proceedings need

to pave way for the criminal proceedings in the lower court, considering that the determination of this court in the present instance is likely to influence the lower court, causing it to fail in dispensing justice to the defendant. The basis of the application was therefore that these proceedings should be stayed on the ground that this court is superior and thus would alter the course of justice for the defendant in the lower court.

In response to the application, the claimants objected to the application by the defendant stating that they are not part of the criminal proceedings that were instituted against the defendant in the Court below. In this regard the claimants noted that the defendant has not brought any evidence in the form of charge sheets to show that the claimants are complainants in the stated criminal case. This was not disputed by Counsel for the defendant.

I should also add that the defendant did not provide the court with any information regarding the charges that he is facing in the lower court nor has the defendant demonstrated that there is a high likelihood that this court and the lower court will arrive at different decisions. On that note, it should be noted that the claims against the defendant are for the refund of purchase price of vehicles which the latter was to supply. The amount involved is MK131, 390, 000 which is outside the jurisdiction of the Magistrate Court. Further, this money cannot be recovered by way of a criminal proceeding since the aim of the criminal proceeding would be a conviction and a possible sentence. In this regard, it must also be noted that it has not been argued or shown that the claimants have applied or will apply for restitution in the criminal matter, which perhaps would have given rise to the suggestion that the defendant would suffer double jeopardy. The defendant's argument were thus unsubstantiated and quite frankly I did not see any reason for entertaining the application for stay.

Coming now to the application for summary judgment, as already noted, the defendant did not oppose it. As for the defense that was filed, the same was a general denial which is not acceptable under Order 7 r 6 of the Civil Procedure Rules. The defense must thus, for all intents and purposes, be considered to be a sham!

There being no good and arguable defense in this matter and the defendant having elected not to oppose the application for summary judgment, I did not see any grounds for staying this matter to pave way for the criminal matter which is yet to be commenced. On that note I must also find the application for stay to be without merit as it was not supported by any evidence and was quite clearly misconceived. The application for stay is thus denied and summary judgment is entered for the claimants for the sum of MK131, 390, 000, plus interest at 3%

above the National Bank lending rate. The claimants are also awarded the costs of the action. The interest to be assessed if not agreed and the costs will be taxed if also not agreed.

The matter having been commenced in court, the claimant is only entitled to party and party costs and not collection costs. The claimant cannot also claim for the legal fees paid to counsel or legal fees on contingency basis. These claims thus fail.

Made in Chambers this.....24th.....day ofJanuary.....2024



K.T. MANDA
JUDGE

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