



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 911 OF 2007**

BETWEEN:

THOMAS MUNYIMBIRI PLAINTIFF

AND

NICO GENERAL INSURANCE COMPANY LTD DEFENDANT

CORAM: Hon. Justice M.L. Kamwambe
Mr Mumba of counsel for the Plaintiff
Mr Mzumara of counsel for the Defendant
Mrs Gangata, Official Interpreter

RULING

Kamwambe, J

This is the Plaintiff's application under Order 20 rule 11 of the Rules of Supreme Court for the judge to amend his judgement of 23rd July, 2008 so that it is clear that the summons to set aside default judgment was dismissed with costs and that the Plaintiff is at liberty to proceed with assessment of damages. My said judgment was based on the appeal against the ruling of the Registrar.

Order 20 rule 11 provides that clerical mistakes in judgments and orders arising therein from any accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal. The error or omission once corrected must express the manifest intention of the court. In other words it is put that the court has no power

under any application in a judgement after it has been entered or an order in so far as it is necessary to correct errors in expressing the intention of the court. But Order 20 allows such correction.

The case of **Tak Miny Co. Ltd vs Yee Metal Supplies Co.** [1973] 1 ALL ER 569 is very instructive in this regard. The Supreme Court of Hong Kong after finding one party liable omitted to make an award of interest. The court allowed the correction and on appeal it was affirmed. Lord Person quoted a passage from Pickering J's judgment in the Court below that:-

"A most important matter for me to consider is what I would have done at the time I gave judgment had this matter of interest been in my mind. After a lengthy trial, in the course of which both sides asked me to confine my decision to take the issue of liability and having written a long judgment which occasioned to me no small difficulty, my mind was on the issue of liability rather than upon any figures. But had I thought the matter through further, as I should have done, I am in no doubt whatever...that I would have made an award of interest ...(p572.)"

Counsel for the Defendant has argued that this application is frivolous and vexatious in that my said judgment was clear. The paragraph in question reads as follows:-

*"Having considered all the circumstances surrounding the case I find that the delay in this case was inexcusable and that even if there might be merit in defendant's case it would result in occasioning injustice to the Plaintiff to allow defendant opportunity to be heard on their defence. I am in agreement with the case of **John G. Kawamba flia Central Associates Ltd v W.T.C. Freight Ltd** Civil Cause Nos 541 and 542 of 1986. Five months delay from the date of default judgement is in my view in these circumstances inordinate delay."*

Let me agree with counsel for the Defendant that any person would conclude from the above quote by reading through the lines that the Defendants application to set

aside default judgement on the ground that there is meritorious defence to the action was unsuccessful. However, that as it may be, good practice in judgment writing requires that judgments or orders should end with utmost clarity. If I thought further over the judgment's conclusion at that time, I would have clearly stated that the Defendant's application to set aside the default judgment for the reasons given is dismissed with costs. This would have been the proper way of ending or concluding a judgment without bothering to read between the lines.

It is contended by the defence counsel that if the court finds that the judgment was not clear, he would rely on the case of **Henderson vs Henderson**, the citation of which was not given to the court, that the judgment having been perfected by this court, the court becomes **functus officio** to its own judgment for correction. I wish to differ with counsel here because his suggestion would then defeat the whole purpose of Order 20 rule 11 which is to correct obvious and minor mistakes which does not necessarily affect the rights of the parties from what they were intended to be. If I may be bold enough, I would say that Order 20 rule 11 is an exception to the rule that once a judgment has been perfected it cannot go back to same court for correction. The purpose of Order 20 rule 11 is to avoid matters appropriate for correcting mere slips going on appeal to the Supreme Court.

In view of what I have stated above, the applicant's application is successful but each party should bear his own costs.

Made in Chambers this of October, 2008 at Chichiri, Blantyre.

M.L. Kamwambe
JUDGE