



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 2592 OF 1999

BETWEEN:

NATIONAL BANK OF MALAWI.....PLAINTIFF

AND

**PATRICIA KACHINGWE t/a NARAS
TRADING AGENCIES.....DEFENDANT**

CORAM: MASOAMPHAMBE, ASSISTANT REGISTRAR
Mulele, Ms, Of Counsel for the Defendant



RULING

This is an application to set aside the judgment which was entered against the defendant. The application is supported by an affidavit sworn by Ms Mercy Thandi Mulele of counsel for the Defendant. It is argued that the Order should be set aside because the Defendant has a good defence on the merits which is that when the matter against the defendant was instituted, the defendant had already paid in full the loan plus interest thereof. The total being K50,000.00. And the defendant tendered in evidence the deposit slips in support, and the same were marked "MTM2" and "MTM3".


In an application to set aside a regular default judgment, there is need for an affidavit disclosing that there is a defence on the merits. This principle was propounded in **Fardent v Ritcher** [1889] 23 QBD 124. But where the judgment is irregular in general, the defendant is entitled to have it set aside. The case

in point is *ex debito justitiae* (**Anlaby v Practorious**) [1888] 20 Q.B.D. 764.

Turning to the case at hand, the defendant avers that there is a defence on the merits to the plaintiff's claim. The defence is to the effect that when the matter was brought to court the defendant had already made good of the loan in full. The default judgment should not have been entered any way.

In the opinion of this court this proposed defence has the likelihood of succeeding. For this reason, I grant the defendant's application and hereby set aside the default judgment in question. The defendant must file the defence within 14 days of this Order. The defendant is in any case condemned in costs for this action.

Made in Chambers this ^{25th}.....day of April 2008 at Blantyre.


T.S. MASOAMPHAMBE
ASSISTANT REGISTRAR

