



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO 487 OF 2014**

**BETWEEN:**

**ACKIM NYIRENDA-----PLAINTIFF**

**AND**

**SANA CASH AND CARRY-----DEFENDANT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE**

**Nyirenda, for Plaintiff**

**Mtupila, for Defendant**

**Itai, Court Interpreter**

**JUDGMENT**

This is an appeal by the defendants against the decision of the District Registrar made on the 11<sup>th</sup> of March 2015. In that decision, the Registrar had dismissed an application by the defendants to set aside a default judgment. The appellant have submitted that the Registrar erred in holding that there was delay in making an application to set aside the judgment. The application is supported by an affidavit and there are also skeleton arguments attached thereto. This appeal is opposed by the plaintiff. There is also an affidavit in support of the opposition and there are also skeleton arguments attached thereto.

I have gone through the ruling that was delivered by the Learned Registrar and have noted that the Registrar accepted that the appellant had a defence on merits. The only problem that the Learned Registrar had found with the

appellants is that they had delayed in lodging the application to set aside the judgment, which judgment was regularly obtained. I hereby reproduce what the Learned Registrar had said in his ruling:

*“On the question of delay, it appears that the defendant was jolted into action after being visited by the sheriffs. Otherwise it is clear that it had a claim in the High Court hanging in their heads. The question is whether despite the fact that the defendants have a defence on the merits, I should still set aside the judgment after such a delay, a delay of about 2 months.*

*In my view, the defendants should not be rewarded for their lax approach in this matter when they clearly knew that they had a defence especially when the so called lay persons acknowledged in OM1 that they knew what was required of them after the writ of summons had been served on them.*

*I dismiss the defendant’s application with costs on account of their delaying to have the regular judgment set aside.”*

It is therefore clear that the only issue for my determination relates to whether the delay of about 2 months would really amount to inordinate or inexcusable delay.

I have looked at several case authorities in this area. I am in the first place aware that an application to set aside a default judgment should be made promptly and within a reasonable time as is stipulated in note 13/9/12 (1999 Rules of Supreme Court). As to what is a reasonable period will depend on the circumstances of each and every case. In the case of **Nico General Insurance vs Thomas Mwanyimbiri MSCA and Appeal NO 54 of 2008 (unreported)**, the court held that a period of 5 months delay before bringing the application to set aside default judgment was inordinate and inexcusable. In the case of **John G. Kawamba t/a Central Associates Limited vs W.T.C. Freight Limited Civil Cause NO 541 and 542 of 1986, HC PR**, it was held that 6 months delay after the default judgment had been entered was inexcusable.

I have looked at the case at hand. It is a case which also touches on the employment status of the plaintiff. I hold the view that merit of defence should

not come at the whims of the defendant. When I look at the reasons being put forward for the delay, I find them not impressive and convincing. The defendant had a Human Resources Manager who I take to be an able and competent officer. The writ of summons was very clear as to what the defendants were supposed to do. It did not require one to be a lawyer to follow the instructions as stipulated thereon. I take it that it was just arrogance of the Human Resources Manager that he started entering into the arena of philosophical arguments by starting to write the court instead of doing the needful. That route that the Human Resources Manager had decided to take has certainly not yielded any positive results.

I find that a period of about 2 months in the circumstances of this case is inordinate and I accordingly dismiss this appeal with costs.

**MADE THIS 15<sup>TH</sup> DAY OF JUNE 2015 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**