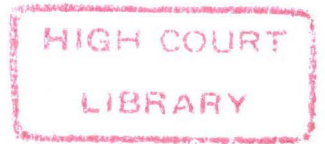


IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY



CIVIL CAUSE NUMBER 1347 OF 2015

BETWEEN:

LACKSON CHIMANGENI KHAMALATHA AND 26 OTHERS-----  
-----PLAINTIFFS

AND

THE SECRETARY GENERAL OF MALAWI CONGRESS PARTY-----  
-----1<sup>ST</sup>  
RESPONDENT

THE DIRECTOR OF ELECTIONS OF MCP-----2<sup>ND</sup> RESPONDENT

MALAWI CONGRESS PARTY-----3<sup>RD</sup> RESPONDENT

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

Wesley Namasala, for the Plaintiffs

Wapona Kita, for the Respondents

Itai, Court Interpreter

ORDER

On 25<sup>th</sup> of August 2016, I dismissed this matter for want of prosecution. In a nutshell what happened was very straightforward. I however hasten to narrate it here lets we are engaged in a deliberate misunderstanding. On 22<sup>nd</sup> of August 2016, I had adjourned this matter for hearing to the 25<sup>th</sup> of August 2016 starting at 9.00 am. Both counsel were present when I made that adjournment. On 25<sup>th</sup> of August when I was about to enter the court room, my court clerk informed me that counsel for the plaintiffs had called him from his office that he would be

coming to court 15 minutes late as his clients had not yet arrived at his chambers. I found this very strange because as an officer of the court, counsel was supposed to have come straight to the court and if at all he had some logistical challenges, he was supposed to address the court in the presence of the other side. I waited for 15 minutes and at 9:20 am I went into court for the proceedings to start. There was no one on the plaintiffs' side. Counsel for the respondents addressed me and he also confirmed receiving a phone call from the plaintiffs' counsel that he would be late by 15 minutes. Counsel however expressed surprise at the conduct of his colleague because court room decorum demands that counsel should have been at the court at 9:00 am and if at all there were any challenges, counsel should have been addressing the court from the bar. Since there was no one to address the court from the plaintiffs' side, the respondents' counsel applied that the matter be dismissed. I accordingly dismissed the matter for want of prosecution. On 29<sup>th</sup> of August 2016, the respondents' counsel filed an ex-parte summons pursuant to Order 32 rule 5(4) and under court's inherent jurisdiction to restore the matter to the cause list. Having dismissed the matter at the stage of hearing and in open court, I directed that the application should be made inter-parte. In compliance with my direction, on 30<sup>th</sup> of August, 2016, the plaintiffs' counsel filed an inter-parte summons which is supported by an affidavit deposed by counsel Wesley Namasala. On 31<sup>st</sup> of August 2016, counsel for the respondents filed an affidavit in response and there is also an affidavit in opposition deposed by counsel Wapona Kita.

It is clear from the word go that the plaintiffs' counsel had commenced this application using a wrong Order. Order 32 Rule 5(4) deals with matters which are chamber matters. The matter that led to the dismissal of this case was not at chamber stage. It had reached a hearing stage and at the time I was dismissing it, all the proceedings were in open court. As counsel for the respondents had rightly observed, this application should therefore have been brought under Order 35 Rule 2 of the Rules of Supreme Court. Having realized that all was not well, counsel for the plaintiffs changed his approach and informed the court that he was no longer relying on Order 32 Rule 5(4) but that his application was now anchored on the inherent jurisdiction of the court.

Before I further delve into the matter, let me put it on record that counsel for the plaintiffs openly confessed that he was to blame for the chaos and mess that had

been created on the 25<sup>th</sup> of August 2016. In a nutshell, counsel said that he should not have conducted himself in the way he did which led to the court dismissing the matter. Let me openly admonish counsel for the plaintiffs that court business is very serious business. If counsel has got any logistical challenges, it is always advisable for counsel to be at the court when commanded to do so. Let those challenges be explained to the court in the presence of the other parties. Moreover, the plaintiffs were and all familiar as to where the High Court is. There was thus no reason for counsel to have been waiting for the clients somewhere else thinking that the court would be held at ransom. Certainly not in this court. I am sure that this has been a learning curve for counsel and that it will not be repeated. Going back to the application, it is clear that the plaintiffs have abandoned their initial application which was based on Order 32 and that they are now relying on the inherent jurisdiction of the court. Counsel for the respondents urged the court not to entertain this as this concept of inherent jurisdiction of the court leads to abuse of issues. I have listened very attentively to both submissions. Being a court of law and equity and using my last sense of justice, I have decided to allow the plaintiffs to rely on this concept which as a matter of practice courts have been allowing. I therefore order that let the matter herein be restored.

With regards to the issue of the injunction, as it was not specifically raised by the plaintiffs in their application to restore the matter herein, I do not think that I have to make any ruling on that. Having dismissed the matter, it automatically meant that the injunction was also discharged. It is the responsibility of the plaintiffs' counsel to make a fresh application on this matter and the procedure for that is well known. I order that costs for the abortive trial are for the respondents but to be assessed and taxed after the substantive matter is finalized. I further order that this matter be set down for hearing to the 5<sup>th</sup> and 6<sup>th</sup> of September 2016 starting at 9:00 am here at the Lilongwe District Registry.

**MADE THIS 2<sup>ND</sup> DAY OF SEPTEMBER 2016 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**