



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 312 OF 2016**

BETWEEN

LIMUMBA KARIM T/A ENTREPRENEUR PLAINTIFF

-AND-

ECOBANK MALAWI LIMITED DEFENDANT

ORDER

Kenyatta Nyirenda, J.

On 10th August 2016, the Plaintiff commenced an action by originating summons whereby it seeks the Court's determination on the following questions:

- "1.1 *Whether the Plaintiff having duly assigned the proceeds of sale of stock subject of financing facility from the Defendant the Defendant:*
 - 1.1.1 *Should recover proceeds of the sale from the Plaintiff's debtor; or*
 - 1.1.2 *Should still insist on recovering the financing facility from the Plaintiff*
- 1.2 *Whether all the recoveries that the Defendant has made so far from the Plaintiff instead of the Plaintiff's debtor are reversible and therefore be reversed.*
- 1.3 *The Defendant be restrained from exercising power of sale of the property that the Plaintiff charged to the Defendant in respect of the finance facility; and*
- 1.4 *Whether the Defendants should bear costs of this Originating Summons"*

On the same day, the Plaintiff filed an Ex-parte Summons for an Order of Interlocutory Injunction restraining the Defendant from selling or advertising for sale property title number Alimaunde 43/383/237 in the City of Lilongwe. The *interlocutory injunction* was granted subject to the Plaintiff filing an *in-te-partes* summons within 14 days from 10th August 2016.



It is clear from the contents of the originating summons that the questions being raised relate to a commercial matter, as defined in section 2 of the Courts (Amendment) Act, 2016 [Act No. 23 of 2016]:

"commercial matter" means a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including-

- (a) *The formation or governance of a business or commercial organization;*
- (b) *The contractual relationship of a business or commercial organization;*
- (c) *Liabilities arising from commercial or business transactions;*
- (d) *The restructuring or payment of commercial debts;*
- (e) *The winding up of companies or bankruptcy of persons;*
- (f) *The enforcement or review of commercial arbitration award;*
- (g) *The enforcement of foreign judgments of commercial matters subject to the provisions of the law;*
- (h) *The supply or exchange of goods and services;*
- (i) *Banking, negotiable instruments, international credit and similar financial services;*
- (j) *Insurance services; or*
- (k) *The operation of stock and foreign exchange markets,*

In the event of doubt as to whether a matter is commercial or not, the judge at the outset or during the course of the action, shall have power to resolve the issue;"

In terms of section 6A of the Courts Act, it is the Commercial Division that is charged with hearing commercial matters. In the premises, this matter has to be transferred to the Commercial Division. I, accordingly, direct that the Plaintiff should have this case transferred to Commercial Division within 14 days hereof, failing which the action shall automatically stand dismissed and the interlocutory injunction granted herein will no longer be valid. It is so ordered.

Pronounced in Court this 10th day of January 2017 at Blantyre in the Republic of Malawi.

Kenyatta Nyirenda
JUDGE