



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY 375 of 2013

BETWEEN:

JONAS CHUMACHIYENDA.....PLAINTIFF

-AND-

EASYPACK LIMITED..... DEFENDANT

CORAM:	Mandala:	Assistant Registrar
	Kauka:	Counsel for the Defendant
	Messrs JB Suzi & Co:	Legal Practitioners for the Plaintiff
	Chitsulo:	Court Clerk

RULING ON STAY OF FURTHER PROCEEDINGS

The Defendant, through its legal practitioners made an application by way of summons, for stay of all further proceedings until taxation and payment of costs incurred by the Defendant in Personal Injury Cause No 135 of 2015 (Zomba Registry) between the same parties. The Defendant was served with the summons as well as with the subsequent notice of adjournment. There was proof of service so the court proceeded to hear Counsel for the Defendant on 7th March 2017.

FACTS

The basis of Counsel's application was the commencement of two proceedings, namely, the current proceedings in the Principal Registry and Zomba District Registry under Personal Injury Cause Number 135 of 2015. When this was discovered, the action in the Zomba District Registry was discontinued by consent. Counsel for the Plaintiff exhibited a Consent Order Discontinuing Action signed by both legal practitioners acting on behalf of the parties. This Consent Order however, was not endorsed by the Court. The order provides for payment of costs by the Plaintiff



to the Defendant attempts to engage the Plaintiff's lawyers through written correspondence have proved futile as the Defendant's Counsel has not received a reply.

When the Court inquired on the lack of Court endorsement, Counsel for the Plaintiff argued that he had sufficient evidence to prove that there is an agreement by the parties that costs be paid by the Plaintiff. Counsel relied on the dictum of Mwaungulu JA in *Mulli Brothers Limited v Malawi Savings Bank*, where in a nutshell the Justice of Appeal stated that once parties have agreed their agreement constitutes a contract and the court is enjoined to endorse agreement and the consent order is merely a formality.

ISSUES

- I Whether all further proceedings should be stayed pending payment of costs to the Defendant

THE LAW

Order 21 rule 5 of the **Rules of the Supreme Court** states:

- (1) *Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings and action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.*
- (2) *An application for an order under this rule may be made by summons or motion or by notice under Order 25 rule 7.*

ANALYSIS

This court agrees with Counsel for the Defendant when he says that the agreement made by he and the Plaintiff's legal practitioner was a contract. The document exhibited by Counsel is documentary evidence proving the existence of an agreement by the parties that the action commenced in the Zomba District Registry be discontinued, this is cemented by the appendage of both Counsel's signatures on the Consent Order Discontinuing Action although it was not endorsed by the court. This court finds that the Plaintiff through Counsel is liable to payment of the Defendant's costs that were incurred in the action commenced in the Zomba District Registry.

Having found that there was an agreement by the parties to discontinue the action in the Zomba District Registry, this court finds that the application made by the Defendant is well founded.

This court hereby orders that all further proceedings be and are hereby stayed until taxation of and payment of costs to the Defendant.

Made on the 10th day of March 2017

A handwritten signature in purple ink, consisting of a large loop followed by several sharp, downward-pointing strokes.

CM Mandala
ASSISTANT REGISTRAR