



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 798 OF 2014

BETWEEN

ANDERSON GEORGE MIDIMA-----CLAIMANT

AND

THOKOZANI KUYAMA-----1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED-----2ND DEFENDANT

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

Sikwese, Counsel for the Plaintiff

Kaonga, Counsel for the Defendants

Itai, Court Interpreter

RULING

This is a summons for stay of execution brought under Order 10 Rule 5 of the High Court Rules. The summons is supported by an affidavit deposed by counsel Kaonga who represents the 2nd defendant. It is stated in the affidavit that initially the plaintiff lodged a complaint against the 2nd defendant. At that time, the plaintiff was unrepresented. On 9th December 2014 the matter was settled and a discharge voucher AK1 was executed. As per AK1 the plaintiff discharged the 2nd defendant after payment of Mk800,000.00. On 3rd February 2015 the plaintiff received the money through ECObank as shown on AK2. The 2nd defendant therefore says that the plaintiff lacks legal standing to continue prosecuting this matter against the 2nd defendant. The issuance of the warrant of execution AK3 only led to the 2nd defendant to incur sheriff costs of Mk1,137,593.75. That what the plaintiff is doing is abuse of the court process.

It is therefore the prayer of the applicant that there should be a stay order of the judgment against the 2nd defendant with costs pending an application to set aside the whole proceedings.

The application is opposed and counsel Sikwese for the plaintiff filed an affidavit opposing it. The plaintiff's counsel says that on 25th day of July 2014, a writ of summons was issued by the court against the 2nd defendant. This writ was also served on the 2nd defendant on 30th July 2014. On 15th September 2014 a default judgment was entered against the 2nd defendant and it was also served on them. The served copy is CKS3. On 16th September 2014 the defendant's counsel served their defence which is CKS4. At that time the issue of the default judgment of 15th September 2014 was brought to the notice of the 2nd defendant's counsel. On the 13th of November 2011 the 2nd defendant's counsel wrote proposing a settlement out of court. The letter is CKS5. As there was no response from the 2nd defendant, the plaintiff proceeded with assessment of damages and CKS6 is the evidence to that effect. Counsel Sikwese deponed that neither the 2nd defendant nor their previous counsel informed Messrs Sikwese and Company about their dealing with the plaintiff. That the conduct of the defendant in dealing with the plaintiff when the plaintiff was legally represented is unlawful and unconscionable.

It is settled as a fact in this matter that the plaintiff was legally represented by Messrs Sikwese and Company from the commencement of these proceedings. The 2nd defendant was also legally represented by Messrs Lincoln Edwards and Company. At the time when the 2nd defendant was directly dealing with the plaintiff, the 2nd defendant was very much aware that the plaintiff was legally represented. At that very time, the 2nd defendant should have been aware through Messrs Lincoln Edwards and Company that a default judgment had already been entered against them. It was therefore unusual that the 2nd defendant went ahead to negotiate with the plaintiff behind the back of counsel.

I find that the 2nd defendant in this matter has is to blame. I looked at the alleged letter which they said the plaintiff had written to them requesting that the matter herein be settled out of court. With due respect, I did not find any passage in that letter where the plaintiff had made such a request. This letter actually shows that the plaintiff was operating at the whims of the defendant. The plaintiff stated in that letter that he was accepting what the 2nd defendant had decided.

I therefore do not find any merit in this matter as to why I should stay the execution of the judgment which was regularly obtained. I dismiss the application with costs.

MADE THIS

DAY OF DECEMBER 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE
