



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO.742 OF 2013

BETWEEN

Fatsileni Chikaonda..... Plaintiff

AND

United General Insurance..... Defendant

CORAM: *Madalitso Khoswe Chimwaza, Assistant Registrar*
M. Tembo, Counsel for the 1st defendant
Plaintiff not present but duly served with notice
Mrs Ng'ambi Court Clerk

RULING ON SUMMONS TO DISMISS ACTION FOR WANT OF PROSECUTION

This is an application to dismiss matter for want of prosecution filed by the 1st defendant United General Insurance Company. It is supported by an affidavit sworn by Counsel Mayamiko Tembo. The applicants were not present during the hearing of the summons despite being served with notice. The application is not challenged as the plaintiff did not file any affidavit in opposition.

The brief history of the matter is that the plaintiff commenced action by way of writ of summons dated 18th July, 2013 claiming damages for pain and suffering, damages for disfigurement and damages for loss of amenities. On 24th July 2013, the plaintiff served the writ of summons on the 1st defendant. By 30th August 2013 the 1st defendant had served defence on the plaintiff and matter was due for Mandatory Mediation. On 5th September a mediator was appointed and by 4th December 2013 the 1st defendant made a declaration to both parties that mediation was not worthwhile as per Rule 7 (1) and (2) of the Mandatory Mediation Rules, now repealed. The plaintiff was supposed to take out summons for directions but since then no step has been taken, hence the present application for dismissal of the action for want of prosecution.

The Law

In determining this application this court is going to have regard to the **Court (High Court) Civil Procedure Rules, 2017 especially Order 35 Rules 7, 12,13 and 14** which enjoins the court to adhere to **Order 1 rule 5 of the CPR** on active case management in determining existing proceedings.

The coming into force of the new Civil Procedure Rules in the High Court is overriding the long standing principle of law that each party should have regard upon its own matter, so that this time it is incumbent upon the court to enforce active case management. **Order 1 rule 5 of the CPR.**

This means the court will not hesitate to exercise its discretion to dismiss a matter for want of prosecution where the delay is inordinate and in excusable and is likely to cause substantial injustice to the other party in prosecuting its case.

Reasoned Analysis of Law and Facts

The present case is one such example where there has been inordinate and inexcusable delay in prosecuting the action. There is no explanation as to why the plaintiff has not taken out summons for directions since 4th December, 2013. They did not file any affidavit in opposition to the present application neither were they present in court despite being served with notice.

This application is granted.

Action is dismissed for want of prosecution with liberty to restore within 30 days upon showing good reasons for failure to prosecute action within reasonable time. Costs to the 1st defendants.

Any party aggrieved by this ruling has the right to appeal.

Made in Chambers this.....28th.....day of.....November.....2017



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR