



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO.1203A OF 2015**

**BETWEEN**

**Isaac Mbengo..... Plaintiff**

**AND**

**Rachel Mbengo (Nee Jumbe).....1<sup>st</sup> Defendant**

**Mrs Nalidonga.....2<sup>nd</sup> Defendant**

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<b>CORAM:</b>	<i>Madalitso Khoswe Chimwaza,</i>	<i>Assistant Registrar</i>
	<i>Kubwalo,</i>	<i>Counsel for the plaintiff on a brief</i>
	<i>Mpandaguta,</i>	<i>Court Clerk</i>

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**RULING ON APPLICATION TO DISMISS ACTION FOR WANT OF PROSECUTION**

This is a second time the 1st Defendant is moving the court with an application to dismiss matter for want of prosecution filed pursuant to **Order 3 rule7 of the Rules of the High Court**. It is supported by an affidavit which was adopted by Counsel for the applicant. The summons is not opposed and the plaintiff is not present despite being served with notice for today's proceedings on 20<sup>th</sup> June 2017 at 1:16pm and no excuse has been given for such failure.

The brief facts are that the plaintiff commenced action by way of writ of summons on 24<sup>th</sup> September, 2015 subject matter of which is ownership of landed properties situate at Dedza. The 1<sup>st</sup> defendant served her defence on 28<sup>th</sup> October 2015. The next activity on file was a summons to dismiss for want of prosecution filed by 1<sup>st</sup> defendant which was withdrawn by 1<sup>st</sup> defendant upon realizing that the plaintiff had obtained an injunction on the matter.

This court has noted that indeed the plaintiff's delay in prosecuting the matter has been inordinate and there is no excuse for such. As noted the delay is already prejudicial to the 1<sup>st</sup> defendant since there is an injunction restraining the 1<sup>st</sup> defendant from having anything to do with some of the property subject of these proceedings.

As the injunction was granted by a Judge and it was extended to be valid until the hearing of the substantive matter herein, there is no indication that an application was made before a Judge to vacate the injunction.

Such being the case this court is of the view that summons to dismiss for want of prosecution should be brought before a Judge of the High Court. Costs in the cause.

It is so ordered.

Made in Chambers this 29<sup>th</sup> day of August, 2017



Madalitso K. Chimwaza

**ASSISTANT REGISTRAR**