



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

BETWEEN

Isaac Mbengo..... Plaintiff

AND

Rachel Mbengo (Nee Jumbe).....1st Defendant

Mrs Nalidonga.....2nd Defendant

CORAM:	<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>

**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 20th 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 24th September, 2015 subject matter of which is ownership of landed properties situate at Dedza. The 1st defendant served her defence on 28th October 2015. The next activity on file was a summons to dismiss for want of prosecution filed by 1st defendant which was withdrawn by 1st defendant upon realizing that the plaintiff had obtained an injunction on the matter.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 1st defendant since there is an injunction restraining the 1st 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 29th day of August, 2017



Madalitso K. Chimwaza

ASSISTANT REGISTRAR