



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 354 OF 2014

BETWEEN:
ISAAC CHIWALE

PLAINTIFF

-AND-

SHARMA GABRIEL
PRIME INSURANCE COMPANY LTD

1ST DEFENDANT
2ND DEFENDANT

CORAM:	ANNELINE KANTHAMBI	ASSISTANT REGISTRAR
	Mr. R. Ng'omba	for the Plaintiff
	Respondent	Absent
	Mr. M. Manda	Court Clerk

ORDER ON A SUMMONS TO STRIKE OUT DEFENCE

The Background:

This is the order on the summons to strike out the defence for failure to comply with the order for directions. It is made pursuant to the court's inherent jurisdiction. There is neither an affidavit nor skeleton arguments filed in support of the application.

The plaintiff argues that the order for directions was made on the 24th of February 2015 and required the parties to file and exchange witness statements. That at the time of the application on the 20th of October 2015, the plaintiffs had not yet complied with the order, hence the application to strike out the defendant's defence for failure to comply with the court's order for directions.

Service of the summons was duly effected on and acknowledged by the defendant's counsel Destone and Company. They however were absent from the proceedings and no reasons were advanced for their absence.

Counsel for the applicant made no specific reference to any rule or law under which the application was made but only stated that under the inherent jurisdiction of the



court. The said court's order for direction that was not complied with is in regard to exchange of witness statements was made on the 24th of February 2015, and as at the time of the hearing of the hearing on the 20th October 2015 the defendants had allegedly not complied with the order. The present summons were duly served on the defendants but they did not make an appearance.

The Rule Applied:

Order 2 of the Rules of the Supreme Court provides the following on the effect of non-compliance with the Rules:

"(1) where, in the beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content, or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(2) subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph 1 and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit."

On the application of Order 2 rule (1) of the Rules of the Supreme Court, Manyungwa J, in the case of Stella Masamba v Henry Sibale [2012] MLR @ 428, had this to say:

"..the authorities taken as a whole show that Order 2 rule 1 should be applied liberally in order, so far as is reasonable and proper to prevent injustice being caused to one party by mindless adherence to technicalities in the rules of procedure. Thus the power given to the Court by Order 2 r 1 is a power to cure irregularities consisting of failures to comply."

In view of the foregoing, I am of the view that striking off the defence at this point would occasion an injustice. On the authority of the said rule, I hereby order the defence to file with the court the said witness statement and serve the same on the plaintiff by 3 pm on Tuesday, the 23rd of May 2017. Failure to comply with this order will treat the defence as struck out for failure to comply with an order for directions.

Made in Chamber this 12th day of May 2017.



Anneline Kanthambi

Assistant Registrar