

**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 381 OF 2015**

**BETWEEN**

**NORMAN BANDUWILO ..... PLAINTIFF**

**AND**

**MR FRYTON MOLOSI NYAMANGAWA ..... 1<sup>ST</sup> DEFENDANT**

**GROUP VILLAGE HEADMAN MPAMA ..... 2<sup>ND</sup> DEFENDANT**

**TRADITIONAL AUTHORITY MAKHWIRA ..... 3<sup>RD</sup> DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**

Mrs. Doreen Nkangala, Court Clerk

---

**ORDER**

---

*Kenyatta Nyirenda, J.*

The Plaintiff commenced the present proceedings on 16<sup>th</sup> September 2015 by way of originating summons seeking several orders and declarations. Following a preliminary issue raised by the Defendants, the Court ruled that the Plaintiff's action be recommenced by way of a writ of summons. The Plaintiff complied by filing a specially endorsed writ of summons on 25<sup>th</sup> May 2017.

There is no evidence on the Court file that the writ of summons was ever served on the Defendants. Further, neither party has since 25<sup>th</sup> May 2017 taken any step in these proceedings. Order 12, r.56, of the Court (High Court) (Civil Procedure) Rules [Hereinafter referred to as "CPR"] comes into play where there is such non-action. The provision is couched in the following terms:

*"The Court may strike out a proceeding without notice, if there has been no step taken in the proceedings for 12 months."*

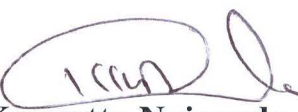
In the present proceedings, more than 16 months have elapsed without the Plaintiff taking steps to prosecute this case. This is clearly an abuse of court process. Public

policy requires that litigation must come to an end. There should be a point where matters should be closed. The delay here is so prolonged that there is a substantial risk that a fair trial of the issues will be no longer possible. When this stage has been reached, the public interest in the administration of justice demands that the action should not be allowed to proceed.

Allowing further prosecution of the action would be prejudicial not only to the interests of the Defendant but it would also be detrimental to good administration in general and to good administration of justice in particular: see **R. v. Dairy Produce Quota for Tribunal for England and Wales, ex p. Caswell** [1989] 1 W.L.R 1089. In short, the delay herein is intolerable. "*They have lasted so long as to turn justice sour*", to use the words of Lord Denning M.R. in **Allen v. Sir Alfred McAlpine & Sons Ltd** [1968] 1 ALL ER 543. In the premises, I have no option but to strike out the proceedings herein. It is so ordered.

In light of the foregoing and by reason thereof, the Registrar's attention is drawn to Order 12, r.58, of CPR.

Pronounced in Court this 25<sup>th</sup> day of September 2018 at Blantyre in the Republic of Malawi.

  
**Kenyatta Nyirenda**  
**JUDGE**