

IN THE HIGH COURT OF MALAWI
LLONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 323 OF 2017

BETWEEN:

JAMES MAUWA-----PLAINTIFF

AND

CHRISPINE KAM'MAYANI-----DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Mbwana, Counsel for the Plaintiff

Kam'mayani, Defendant

Itai, Court Interpreter

RULING

On the 26th of July 2017, I granted a mandatory injunction to the plaintiff following hearing of an interpartes application which the defendant did not attend. This matter therefore came before me following an application by the defendant to have the execution of the injunction stayed pending the hearing of an interpartes application. The application is supported by an affidavit deposed by Chrispine Kam'mayani. In his application, the defendant acknowledges that he came late to the court on the material day and found that the court had heard the matter in his absence. The defendant uses the reason of logistical challenges as cause for his delay. It is not even clear as to what this logistical challenge was all about as the defendant did not elaborate on it.

Going into the substantive issues, the defendant says:

1. At the time this injunction was obtained, the defendant had obtained a judgment in default against the plaintiff in the Senior Resident Magistrate Court in another case being **Civil Case Number 602 of 2017 Chrispine Kam'mayani –vs- James Mauwa**. This judgment had ordered the plaintiff to

deliver to the defendant the blue book for motor vehicle registration number BS 77 and letter of authorization for the transfer of ownership and title over motor vehicle registration BS 77. The default judgment is exhibited as CK1. That the plaintiff who is the defendant in the lower court had applied for stay of execution of the default judgment pending an application to set aside the default judgment. The plaintiff exhibited CK2 and CK3 as evidence. The interpartes application to set aside the default judgment has not been heard although it was set down for hearing on the 12th of June 2017. The notice of adjournment was tendered as CK4. That the subject matter for which the injunction was obtained herein is the very subject matter in the lower court where the plaintiff has not yet put forward any defence.

The plaintiff responded to the defendant's application to have the injunction stayed. I will not delve into the details of their response.

Let me put it on record that the defendant now the applicant did not give me persuasive reasons as to why he had failed to show up on time on the day when the interpartes summons was heard. I have a strong impression that the defendant deliberately avoided to be in court to face the plaintiff. This was calculated to further derail this matter. Having looked at the grounds for this application, I first observed that the defendant did not even refer to any provision of the law or rule under which this application is made. I therefore found that this was mere guess litigation which should not be allowed in these courts. I do not agree with the defendant that if the injunction herein is executed it would have the effect of determining the rights of the parties.

I therefore do not find any merit in this application and it is dismissed with costs. I further order that within 7 days from today, the plaintiff should file the substantive matter failing which the injunction herein should be immediately discharged.

MADE THIS DAY OF JANUARY 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE