



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO 33 OF 2016**

**BETWEEN**

**LIWALADZI - MARANATHA  
PRIVATE LIMITED ..... PLAINTIFF**

**AND**

**MR. AUSTIN YESAYA MWENDA ..... DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**

Mr. Chidothe, of Counsel, for the Plaintiff

Mr. Kapeta SC, of Counsel, for the Defendant

Mrs. Jessie Chilimapunga, Court Clerk

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**ORDER**

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*Kenyatta Nyirenda, J.*

This is this Court’s order made following failure by the parties to reach a compromise during mediation that took place on 13<sup>th</sup> and 14<sup>th</sup> March 2018.

Order 13, r.9, of the Court (High Court) (Civil Procedure) Rules [Hereinafter referred to as “CPR”] comes into play where the parties have failed to reach an agreement. The provision is couched in the following terms:

*“(1) Where upon the conclusion of mediation a settlement agreement is not reached, the claim shall be referred to another Judge who shall continue with the claim from the point where, and at which, the claim was referred for mediation.*

*(2) Where there is no settlement agreement, the Judge who presided over the mediation shall make an order outlining the issues where the parties are in agreement and the issues where the parties are in disagreement and the order shall be referred to the Judge who shall continue with the claim.”*

There were the following thirteen issues for determination at mediation stage:

1. Whether or not the Claimant is a company duly registered according to the laws of Malawi? (Issue No.1)
2. Whether or not the Defendant is a businessman and owner of a piece of land known as Liwaladzi Foundation (hereinafter referred to as the “Foundation”) based in Dwangwa, Nkhotakota? (Issue No.2)
3. Whether or not on the parties entered into a lease agreement on 1<sup>st</sup> August 2014 which agreement contained, among other matters, the following terms and conditions:
  - (a) a monthly rental fee of K500,000.00, payable quarterly;
  - (b) rental review every two years (Issue No.3): and
  - (c) lease period of 10 years?
4. Whether or not it was a term of the contract that the Defendant would make the Foundation premises habitable by September 2014 before students enrolled for the 2014/2015 academic year? (Issue No.4)
5. In the event that the answer to Issue No. 4 is positive, whether or not the Defendant failed or refused to maintain the Foundation premises? (Issue No.5)
6. In the event that the answer to Issue No. 5 is positive, whether or not the Claimant was then forced to maintain the Foundation premises so as to occupy it before the commencement of the 2014/2015 academic year in September 2014? (Issue No.6)
7. Whether or not rentals were increased to K5,500,000.00 per month from 1<sup>st</sup> August 2016? (Issue No.7)
8. Whether or not it the Claimant has paid any rentals, including rental arrears, in respect of the Foundation as from 6<sup>th</sup> November 2017? (Issue No.8)
9. Whether or not so far the Claimant has spent about K60,000,000.00 in maintaining part of the premises which maintenance was supposed to be done by the Defendant but shifted to the Claimant due to business exigencies? (Issue No.9)
10. Whether or not a set off is a cause of action? (Issue No.10)

11. In the event that the Court finds that the parties agreed that the lease would be for 10 years, whether or not the Defendant seeks to terminate the lease prior to the expiry of the 10 years? (Issue No.11)
12. Whether or not the Defendant has re-occupied part of the Foundation premises? (Issue No.12)
13. Whether or not the conduct of the Defendant referred to in Issue No. 12 amounts to breach of contract and trespass? (Issue No.13)

During mediation, the parties agreed on Issues No. 1 and Issue No. 2 to the effect that the Claimant is a company duly registered according to the laws of Malawi and that the Defendant is a businessman and owner of the Foundation. However, the parties did not reach any agreement on the remaining eleven issues, that is, Issues No. 3, 4, 5,6,7,8,9, 10, 11, 12 and 13 respectively

In light of the foregoing and by reason thereof, mediation is terminated. Accordingly, the parties are at liberty to proceed to trial of the action before another Judge: see Order 13, r.9, of CPR.

Pronounced in Chambers this 23<sup>rd</sup> day of March 2018 at Blantyre in the Republic of Malawi.

**Kenyatta Nyirenda**  
**JUDGE**