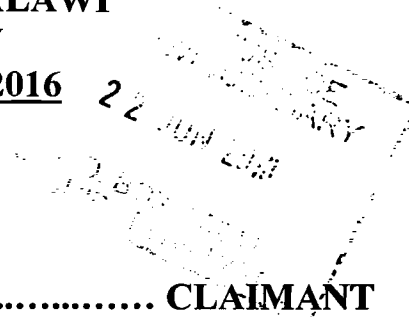


**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
LAND CAUSE NO. 124 OF 2016**



BETWEEN:

FRANCIS SYMON MABEDI CLAIMANT

-AND-

NBS BANK LIMITED DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. George Kaliwo, of Counsel, for the Claimant

Mr. Mambulasa, of Counsel, for the Defendant

Mrs. Doreen Nkangala, Court Clerk

ORDER

Kenyatta Nyirenda, J.

The present proceedings were commenced on 10th October 2017 by writ of summons claiming, among other things, a declaration that the Defendant as chargee was not entitled to possess or sell his property title No. Bwaila-6/182 situated in Area 6 in the City of Lilongwe (charged property).

On 19th October 2016, the Claimant obtained an ex-parte order of interlocutory injunction restraining the Defendant from taking possession of, or in any way, dealing with or selling or purporting to sell or purporting to sell, the charged property pending the determination of the main case or a further order of the Court. The ex-parte order of interlocutory injunction was on 12th December 2016 sustained following an inter-partes hearing.

The Defendant entered its defence on 16th November 2016 and the Claimant was duly served with the same. The Claimant has taken no step whatsoever in these proceedings since then. 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 18 months have elapsed without the Claimant taking steps to prosecute this case. The delay to prosecute the proceedings is inordinate and inexcusable. This is clearly an abuse of court process. I have no option but to strike out the proceedings herein. It is so ordered.

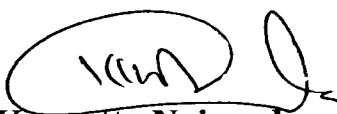
In light of the foregoing and by reason thereof, the Registrar’s attention is drawn to Order 12, r.58, of CPR.

For the sake of completeness, it is worth remembering that the right to an interlocutory injunction is not a cause of action in itself: see **The Siskina [1979] A.C. 210** and **Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd [1993] A.C. 334** at 360-362. To quote Lord Diplock in the former case at 256:

“A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action.” – Emphasis by underlining supplied

In this regard, the continuation of the interlocutory injunction cannot be sustained. The interlocutory injunction has, accordingly, to be discharged. I so order.

Pronounced in Chambers this 22nd day of June 2018 at Blantyre in the Republic of Malawi.


Kenyatta Nyirenda
JUDGE