



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 246 OF 2016**

BETWEEN

BUSINESS FINANCE LIMITED PLAINTIFF

AND

ELVIS NSEREBO DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Mrs. Doreen Nkangala, Court Clerk

ORDER

Kenyatta Nyirenda, J.

The present proceedings were commenced on 18th June 2016. The Statement of Claim reads as follows:

- “1. *The Plaintiff is a limited company duly registered and carrying his business in Malawi*
2. *The defendant is a Malawian person of full age.*
3. *By a loan agreement in writing, the Plaintiff advanced a business loan to **Agrifeeds Limited** (now liquidated) in or about **September 2012** in the sum of **MK6,663,800.00***
4. *As security to the above loan, the Plaintiff and the Defendant executed a Deed of Surety ship (Guarantee) where the Defendant signed as guarantor and co-principal debtor.*
5. *The loan became due in **December 2012** and repayments have been made until **February 2013**.*
6. *As at **31st July, 2015** the amount due and owing to the Plaintiff is **MK5,016,138.00***

7. *The Defendant has failed to pay the sum of **MK5,016,138.00** or any part thereof.*
8. *The Plaintiff's claims from the Defendant are as follows:-*
 - a) *A sum of **MK5,016,137.00** which is due and owing.*
 - b) *Interest at the Bank's lending rate from the **31st July, 2015** to the date of judgment or sooner payment.*
 - c) *Costs of this action."*

There is a Defence dated 23rd August 2016 and the same states as:

- "1. Paragraph 1 and 2 of the statement of claim are not denied.*
- 2. The Defendant does not admit contents of paragraph 3 of the statement of claim*
- 3. The Defendant denies ever being guarantor for Agrifeeds Ltd for the alleged sum of money or any sum as alleged in paragraph 4 of the statement of claim*
- 4. If the Defendant did indeed guarantee any loan for Agrifeeds Limited, which is denied, the plaintiff has failed, refused and neglected to the claim the same from AuditConsult, the liquidator of Agrifeeds Limited.*
- 5. The Defendant shall contend that the said guarantee is void and cannot be used in evidence as the same contravenes section 18 of the Stamp Duties Act.*
- 6. The Defendant disputes paragraph 5, 6 and 7 of the statement of claim and puts the Plaintiff to strict proof thereof.*
- 7. The alleged interest is denied.*
- 8. Save as hereinbefore expressly admitted each and every allegation of fact contained in the Applicant's statement of claim is denied as if the same were set forth and expressly traversed seriatim."*

I momentarily pause to observe that the Court (Cash Office) stamp endorsed on the Defence bears the date of 25th June 2018. I guess this has to do with the fact that when Messrs Chagwamnjira and Company filed a Notice of Scheduling Conference with the Court on 29th May 2018, the same was not processed by the Court on the ground that the Court file did not contain a Defence. Messrs Chagwamnjira and Company thereafter brought a copy of the Defence set out above.

In terms of a Notice of Mediation dated 13th September 2016, Mr. Jones Gulumba of Messrs Naphambo and Company was chosen as the mediator and the mediation session was set for 29th September 2016.

After the Notice of Mediation was filed with the Court, neither party took any other step in these proceedings until on 29th May 2018 when the Plaintiff purported to file with the Court a Notice of Scheduling Conference. As at 29th May 2018, more than 20 months had elapsed since the date of the scheduled mediation. There is no record of the outcome of the mediation and no explanation whatsoever for the delay in prosecuting these proceedings.

This is clearly an abuse of court process. Public policy requires that litigation must come to an end (*Interest rei publicae us sit finis litium*). 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.

Pronounced in Court this 23rd day of August 2018 at Blantyre in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE