

MZUZU DISTRICT REGISTRY
HIGH COURT OF MALAWI
21 AUG 2018
P.O. BOX 12, MZUZU



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY
CIVIL CAUSE NO. 120 OF 2017

HIGH COURT
LIBRARY

BETWEEN:

JAMES BANDA.....1ST APPLICANT
SIMON SINGANO.....2ND APPLICANT
RONNEX CHAMBULENI.....3RD APPLICANT

-AND-

JOHN DAVIES PHIRI.....RESPONDENT

CORAM: HH Brian Sambo, Ag. Assistant Registrar
Ashim Siadi, of counsel for the Applicants
Patrick Ngwira, of counsel for the Respondent
Kachingwe, Official Interpreter

RULING ON APPLICATION FOR TO PAY JUDGMENT DEBT BY
INSTALMENT

BACKGROUND

The three Applicants, through their lawyer, Mr. Ashim Siadi filed an application to pay the judgment debt of MK860, 000.00 by instalment. The Applicants allowed one of their number by the name of James Banda to swear an affidavit on their behalf and also to give evidence *viva voce* regarding their incapacity to settle the judgment debt at once. In support of their application to pay debt by instalment, the applicants ~~tendered a Bank Statement of Masambiro Secondary School. Going~~ through the statement which was up to the 9th of January, 2018, showed that the learning institution was trading in deficit. During the evidence in chief, James Banda testified that their institution was indebted to other people and institutions as well and hence they would not be able to pay the judgment debt at once. He told the court that his institution could make MK12 million a month but this amount was not enough to settle these debts at one go. In their affidavit, they deponed that they were ready to pay the first instalment, if allowed, February end. Mr. Banda told the court that they were running the learning institution jointly as partners, and Masambiro Secondary School, which had benefitted from the loan facility, was their partnership business.

Counsel Ngwira, who represented the Respondent, who was at that time abroad, vehemently opposed the application. He said, according to the judgment of the court, the Applicants were supposed to settle the judgment debt by January, 2017. He submitted that the Applicants were deliberately delaying to settle the same because the Respondent was the 1st Applicant's relation. He said, the Applicants were making a lot of money through their institution, Masambiro Secondary School, and there was no need for them to make this application. Counsel Ngwira further

submitted that in the event the court allowed their application, then it had to be allowed with interest because the judgment debt was long overdue.

DETERMINATION

I have noticed that the Applicants brought this application under the old law, Rules of Supreme Court yet this is completely a new step being taken. See Order 35 of the Courts (High Court) (Civil Procedure) Rules, 2017. ~~The proper thing to do was to file the same under the new law, the Courts (High Court) (Civil Procedure) Rules, 2017.~~ I will be fair, though the proceedings are ineffectual, and deem it as if it were brought under the new rules, for purposes of progress.

This application is normal. See Order 28 r 59 the Courts (High Court) (Civil Procedure) Rules, 2017. The Court may issue an instalment order authorizing satisfaction of the amount payable under the judgment debt by instalments by the enforcement debtor. However, I find it a bit ironic in that the Applicants are relying on a Bank Statement of an institution who is not even a party to this matter. Masambiro Secondary School is not a party to these proceedings. While the Applicants submit that they are in partnership and are running the school jointly, they were sued as individuals in their natural capacity and not as partners no wonder their liability in the matter was joint and several. Therefore, they cannot readily rely on the Bank Statement of a third party to prove their incapacity. If the Bank Statement is anything to go by, the incapacity it represents is that of the institution and not of the three Applicants. Having said this, there is no evidence remaining which is in support of their application.

I am mindful that this application is more grounded in equity than in law, I will have to rely on my equitable judgment to decide whether to grant or deny this application. See: **Kankhwangwa vs. Liquidator Import & Export (Mw) Ltd** (2008) MLLR, 219. See also Order 23 r 7 of the Courts (High Court) (Civil Procedure) Rules, 2017 states that every judgment in a proceeding shall carry interest at the rate of 5 per centum per annum or such other rate as may be prescribed. I would like to agree with counsel for the Respondent that the Applicants are deliberately delaying to settle this judgment debt. ~~The record before me shows that the judgment debt ought to have been settled by the Applicants by January, 2017. Today is the 30th of January, 2018. The Applicants have delayed by a solid year. This delay is too inordinate. In view of the above, I would only allow the application in part; the Applicants are supposed to pay this judgment debt in two equal instalments starting from February, 2018. Wearing the shoes of equity, I make a further order that each of the two equal instalments should carry a top up of MK50, 000.00 being interest on the judgment debt. For the avoidance of doubt, the Applicants are expected to pay the debt as follows:~~

February, 2018: MK490, 000.00, and
March, 2018: MK490, 000.00.

This court so orders.

Made in chambers today the 30th of January, 2018.

Brian Sambo
Ag. Assistant Registrar

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long vertical line extending downwards.