

**JUDICIARY
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
PERSONAL INJURY CASE No. 916 OF 2015**

BETWEEN:

PATRICIA BANDA.....FIRST CLAIMANT

-AND-

ANNIE THERERE.....SECOND CLAIMANT

-AND-

PRIME INSURANCE Co. LTD.....DEFENDANT

CORAM: JACK N'RIVA, JUDGE
 Mr Matumbi, for Claimant
 Mr. Chikaonda, for the defendant
 Mrs. D Mtegha, Court Clerk and Official Interpreter

RULING

On 23rd January, during a scheduling conference, I set down this matter for hearing on 12th March. I ordered the parties to file trial bundle within 21 days.

On 12th March, I could not hear the case due to other engagements. When I checked to inform the parties, I noted that the parties had not complied with the order I made at the scheduling conference; the parties had not filed the trial bundles. I was going to invoke order 1 rule 2 of the Courts (High Court) (Civil Procedure) Rules to set aside the proceedings. The claimants filed on the very 12th March, a notice of adjournment.

I also noticed that they filed their trial bundle on 11th March. There was failure to comply with the direction of the court. As for the defendant, up to now, they have filed no trial bundle.

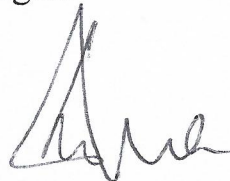
Much as the claimant was in default, the defence is extremely in default. Order 14 rule 5 of the Rules of Civil Procedure in the High Court provides that:

Where a party fails to comply with any of the directions, the Judge may make the following orders—

- (a) dismiss the claim, where the non-complying party is a claimant;
- (b) strike out the defence, where the non-complying party is a defendant;
- (c) order costs against the non-complying party, or against his legal practitioner; or
- (d) make any other order that is deemed just.

The question is what would be a just order to make. I believe that a just order to make in the circumstances is to strike out the defence. As I have said, the default by the defence is on the extreme. I, therefore, strike out the defence of the defendant, and enter judgment for the claimants with costs. The matter should proceed before the Registrar for assessment of damages.

Made the 2nd day of May, 2019



J. N'RIVA
JUDGE