



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CRIMINAL DIVISION
CIVIL CAUSE NO 04 OF 2017
BETWEEN:-

MR. NAMZA ALI MOOSA.....1ST CLAIMANT
THE REGISTERED TRUSTEES OF SIGH TRUST..... 2ND CLAIMANT
VS
MPICO MALLS LIMITED.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE .T.R. LIGOWE

Munthali, Holding brief from Amidu Counsel for Claimant

F. Kaduya, Counsel for the Defendant

F.Luwe, Court Clerk

J.N. Chirwa, Court Reporter

Ligowe, J

RULING

1. I am not impressed. The directions were very clear. To begin with, I wonder why counsel for the claimants did not perfect the order of directions given on 23rd

March, 2018. I also wonder why counsel for the defendant did not perfect the order of this court on their application to dismiss the action for want of prosecution, on 12th February, 2019. There were directions on both orders.

2. From 12th February, 2019, the defendant had seven days to amend their defence if they needed to. Thereafter both parties had another seven days to work out together a statement of agreed facts and facts in issue. And thereafter each party had 21 days to file witness statements supporting their side of the facts in issue.
3. I see the amended defence was filed on 28th February, 2019, although too late. I don't see the statement of agreed facts and facts in issue. And the defendant's witness statement which should have been filed by 20th March, 2019 has only been filed today.
4. None of the parties has offered any explanation for failure to comply with their part of the directions. It only indicates lack of seriousness with the matter, to me.
5. I had set the pretrial conference today so we could find a date within the Richard Banda sittings for the trial of the matter. But neither of the parties has shown readiness to do that.
6. As the judge handling this matter, I have to manage the progress of the case but this becomes so difficult when the parties cannot comply with orders of the court.
7. In NBS Bank v Victoria Manyawira t/s Fraya Wholesalers, Commercial Case No 367/18. (Commercial Division, Blantyre Registry) (Unreported) Katsala J. said and I agree:-

“Court business is serious business. It needs to be handled with the seriousness it deserves. The lawyers, litigants and court personnel need to be serious in the manner they conduct court business. Further, courts are run on tax payers' money. These are public resources. Thus it is incumbent

upon all those manning the courts in whatever capacity and all stakeholders to ensure that there is no wastage of resources. Public funds must be used prudently and effectively. Courts must avoid condoning and or being party to any and all conduct that would result in wastage of its resources.”


8. All the directions this court gave on 12th February 2019 should have been complied with by 20th March, 2019. Today was only meant to ensure that everything is in order and we give a date for the trial. Order 14 rule (2) of the courts (High Court) (Civil Procedure) Rules, 2007. Clearly states that “at the pretrial conference, the Judge shall ascertain that parties have complied with the directions given at the scheduling conference.”
9. Rule 6 provides that the pretrial conference may be held by fixed line, mobile telephone, electronic mail, video conferencing or other means where the judge and all parties are able to participate. This indicates that even where counsel Amidu has travelled to Lilongwe due to his sickness, it should not be difficult to hold a pretrial conference where the directions given at the scheduling conference have been complied with.
10. Rule 5 states:-

“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.”
11. I have already found that both parties did not comply with the directions given at the scheduling conference in this case. At least the defendant has today filed their

witness statements and skeleton arguments despite having failed to work together with counsel for the claimant to draft and file the statement of agreed facts and facts in issue. I will for this reason dismiss the claim, but each party pays their own costs for the action.

12. Made in chambers this 26th day of March, 2019.


T.R. Ligowe
JUDGE