

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 386 OF 2018

BETWEEN

ELVIS ELVIN PHIRI.....CLAIMANT

-AND-

TAMANDA PHIRI (NEE MIGOCI) A.K.A TAMANDA GODWIN..... DEFENDANT

CORAM: HON. JUSTICE JACK N'RIVA

MR KAUKA of Counsel for the Claimant

MR SALIMU of Counsel for the Defendant

MS. D. MTEGHA Court Clerk

RULING

This is an application by the claimant for summary judgment in the alternative for judgment in default pursuant to Order 12 rules 6 and 23 and Order 7 rules 6,7 and 8 of the Courts (High Court) (Civil Procedure) Rules 2017 (which I will refer to as the

CPR). The application is supported by a sworn statement and skeleton arguments by the claimant. The application is opposed by the defendant in their defence.

The brief facts of the case are as follows:

The Registrar of Lands was directed by a judgment of the High Court given on the 28th of September, 2017 to register Title Number Likabula 1044 (being Plot No. LK 24) in the name of the parties. In compliance with the judgment, the Registrar duly proceeded and registered the land in the joint names of the parties. The claimant then decided to dispose of his interest in the land and he identified potential buyers who were willing to purchase the land at the sum of K70, 000,000.00. The defendant refused to allow the land in issue to be sold.

The claimant prays to this Court:

- a- for summary judgment directing the Registrar of Lands to register the land in the names of the potential buyers on payment by them of the sum of K70,000,000.00;
- b- for summary judgment requiring the defendant to receive the sum of K35, 000,000.00 (less the costs of these proceedings and those in civil cause number 398 of 2014) being her portion of the purchase price;
- c- for costs of these proceedings;
- d- alternatively, for an order striking out the defendant's defence and entering judgment in favour of the claimant.

In her defence, the defendant asserted that the land in issue could not be sold since there is a family dispute attached to it. Further the defendant argues that the judgment in civil cause number 398 of 2014 did not give the claimant the right to unilaterally find a buyer, and that there was no valuation report of the said purchase price and that the process of sale should be done jointly by the parties.

Counsel of the defendant made oral representation and he emphasised the point that the earlier judgment did not order that the property be sold at K70, 000, 000.00 and neither did it specify that the property should be sold to the intended purchasers. Further that there was no basis as to how the sum of K70, 000, 000.00 had been arrived at and that there should be a joint valuation of the property so that the real market value of the property can be known. Counsel argued that the CPR did not change the law of procedure on summary judgment where the judgment can only be granted when it is obvious that the defendant is playing delaying tactics and that there is no defence at all. In the end, counsel prayed for the Court to make a specific order in the right of the overriding objectives of the CPR *i.e.* the courts to take charge of the proceedings and identify issues for resolution at an early stage. Further that the parties proceed with the proceedings within a certain time frame and that the market value of the property be ascertained and let the property be advertised so that a highest bidder can be identified for it to be sold.

In reply, counsel for the claimant argued that it was obvious that there was no defence at all. On the issue of joint valuation, counsel argued that the defendant had not indicated whether they believed that the property was valued more than the stipulated K70, 000,000.00. If that was the case, counsel argued that the defendant would still be better off as she would pay up the K35, 000,000.00 as requested by the claimant and keep the rest of the money to herself. Counsel was of the opinion that the defendant was just acting tough as she wanted to enjoy the property to the exclusion of the claimant. Counsel argued that there was no logic on the issue of joint valuation.

In reference to the earlier judgment as raised by counsel for the defendant, counsel for the claimant asserted that a co-owner of a property does not need a court's order to sell their property. Counsel, therefore, prayed for the court to enter summary

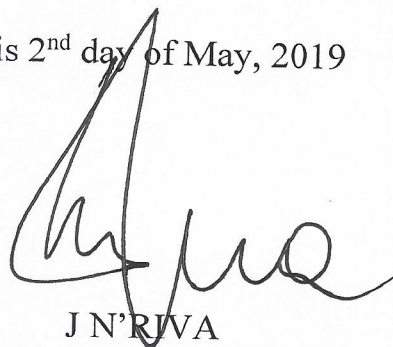
judgment against the defendant or to strike off the defence for failure to comply with the rules.

This Court has to decide whether the defendant has put up a triable defence. The law with regards applications for summary judgment is now more than clear, the defendant must not have a good and arguable defence. In other words, the defence must not be a sham.

I have looked at the defence that has been put forward by the defendant. My considered view is that it is not arguable. Counsel for the defendant does not dispute the fact that the claimant had a right to dispose of his interest in the property. I am in agreement with counsel for the claimant that if the defendant was not happy with the value attached to the property, she was at liberty to obtain a second opinion. It seems the defendant is indeed making delaying tactics so that she can keep on enjoying the benefits out of the property. In light with the overriding objectives of the CPR, I therefore find that this is a proper case where I should enter summary judgment.

I, therefore, allow the application for summary judgment, and enter summary judgment as the claimant applied. I enter the judgment with costs.

PRONOUNCED in chamber this 2nd day of May, 2019



J N'RIVA

JUDGE