



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
REVENUE CAUSE NO. 09 OF 2018**

**BETWEEN**

**BLANTYRE CITY COUNCIL ..... CLAIMANT**

**AND**

**THE REGISTERED TRUSTEES OF  
OF MALAWI CONGRESS PARTY ..... DEFENDANT**

**RULING**

This court entered a judgment against the defendant in default of a response and defence, the relevant periods for doing so having apparently elapsed. Subsequently the court set down for hearing the claimant's application for an order for seizure and sale of the defendant's movable property under Order 28 rule 6 of the Courts (High Court) (Civil Procedure) Rules 2017. There is now before this court an application by the defendant to set aside the default judgment under the provisions of Order 12 rule 21 of the Rules, in reaction to the application aforesaid.

The grounds relied upon are that:

1. The defendant has not been personally served with, and was not aware of, the originating process but only the inter-parte summons for seizure and sale of its movable property which was served at its registered office, only until when the defendant became aware of the action.
2. That the judgment has not been served on the defendant.
3. That if the averment by the claimant that service of the summons was effected by courier is true then the same is an irregularity since under Order 7 rule 1 as

read with Order 8 rule 3 summonses must be served personally except where the court authorises an alternative means of service, which is not the case here.

4. That the defendant has a defence on the merits (which has been filed) as required under Order 12 rule 21 (3) of the Rules.

The claimant opposes the application. The following grounds are advanced:

1. That the law allows service by post without the leave of the court as long as a period of seven days is allowed. No authority has been cited for this position. Counsel has made the point that there he had not come across any law requiring that any mode of service of summonses other than personal service must be sanctioned by the court.
2. That the defence lacks merit. Counsel in this regard has attacked some parts of the defence pointing out why, in his opinion, the same could not succeed.

This court is in agreement with the position taken by the defendant in as far as the issues of service of the summons is concerned. Service by means other than personal service, unless sanctioned by the court, is, under the relevant Orders cited by the defendant, irregular, and may be set aside if the defendant shows that they have a defence on the merits, in other words, if the defendant raises, in its defence, some triable issues. Having examined the defence filed herein this court is satisfied that the same meets the threshold.

The default judgment is accordingly hereby set aside as applied for.

Costs in the cause.

Made in chambers at Blantyre this 14<sup>th</sup> day of June, 2019.

R. Mvundula  
JUDGE