IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

REVENUE DIVISION

REVENUE CAUSE NO. 13 OF 2017

MARTIN KANJOSOLO ..... CLAIMANT
AND-

SHOPRITE TRADING LIMITED ..... 1ST DEFENDANT
MALAWI REVENUE AUTHORITY ..... 2ND DEFENDANT

CORAM: HON. JUSTICE R. MBVUNDULA
Pearson, Counsel for the Claimant
Phokoso, Counsel for the 1st Defendant
Kambumwa, Counsel for the 2nd Defendant
Chimang'anga, Official Interpreter

RULING

There was set down before me an application for summary judgment. When the matter came up for hearing counsel for the claimant raised the issue whether the 1st defendant could be heard when it did not file a sworn statement in opposition. The party did not also file skeleton arguments as required under Order 20 rule 1 of the Courts (High Court) (Civil Procedure) Rules (the CPR) which make it mandatory, in all interlocutory applications, for all parties to file and serve skeleton arguments to be relied upon, before the hearing of the application.

The position taken by counsel for the 1st defendant is that since the application relates to matters already on record, namely the defence, and that where the party has given sufficient reasons why no sworn statement was filed, the party may proceed to argue the case *viva voce* without necessarily filing a sworn statement. In this case the

reason given was that there was an oversight in filing the sworn statement on account of the fact that counsel who was then acting for the 1st defendant had left the legal firm representing the 1st defendant and the file could not be located. Counsel for the 1st defendant also advanced the argument that the omission may be treated as an irregularity and as such the court in its discretion may make such order as it deems fit in the circumstances.

Applications for summary judgment are bought under Order 12 rule 23 of the CPR and the procedure relating thereto is provided for up to rule 27. Order 12 rule 25 (a) states that a claimant shall file the application and a sworn statement, whereas rule 25 (b) states that the defendant may file a sworn statement setting out the reasons why the defendant has a good and arguable defence. The use of the word "may" clearly means that it is optional for the defendant to file a sworn statement. It is not mandatory. The defendant may therefore proceed without filing and serving a sworn statement. Order 20 rule 1 however makes it mandatory for all parties to file skeleton arguments. It must be for good reasons that the rule so requires, and in my view, failure to comply with mandatory requirements should not be lightly cast aside as mere irregularities. If that would be the practice then the whole book of rules could as well be thrown out the window. In the premises I order that the 1st defendant shall file and serve its skeleton arguments within two days of this order after which the application shall be set down.

Made in chambers at Blantyre this 2nd day of April 2019.

R Mbvundula
JUDGE