



**REPUBLIC OF MALAWI**  
**JUDICIARY**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**CIVIL CAUSE NO. 487 OF 2016**

**BETWEEN**

**TAYIMU PINDANI AND 32 OTHERS.....CLAIMANTS**

**-and-**

**BLANTYRE CITY COUNCIL .....1<sup>ST</sup> DEFENDANT**  
**MR MPIRANGWE.....2<sup>ND</sup> DEFENDANT**  
**MRS GONDWE.....3<sup>RD</sup> DEFENDANT**  
**MRS DIVALA.....4<sup>TH</sup> DEFENDANT**

**Coram: Honourable Mr. Justice J. M. Chirwa**  
**Mr. Dziwani, Counsel for the Claimants**  
**Ms. Grace Thindwa, Counsel for the Defendant**  
**Doreen Mithi, Official Court Interpreter**

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## RULING

### Introduction:

This is an application by the 1<sup>st</sup> Defendant, Blantyre City Council, for an order to be removed as a party to these proceedings.

The application is supported by a sworn statement of Alexander Mshali, the Assistant Director of Finance, and Skeleton Arguments.

The application is opposed to by the Claimants. There is a sworn statement by Tayimu Pindani and Lottie Matemba, two of the Claimants in these proceedings. There was an attempt, without this Court's leave, to file Skeleton Arguments in support of the said sworn statement at the eleventh hour, which this Court rejected.

### Background:

The Claimants commenced these proceedings by a Writ of Summons (Specially Endorsed) on the 19<sup>th</sup> of December, 2016 making the following claims:

- (a) That the Defendants do render an account of:-
  - (i) the deductions made against each one of the Claimants as their contributions to the welfare fund;
  - (ii) Interest earned on the contributions.
- (b) That the Defendants pay to each of the Claimants such sum as shall, upon the account, to be established to have been deducted from each one together with:
  - (i) interest compounded at the rate of 3% above commercial bank's base lending rate from the date of the first deduction to the date of payment.
- (c) That the Defendants do pay the Claimants further damages suffered as a result of being compelled to borrow money at higher interest rate;
- (d) That the Defendants do pay the Claimants damages for conversion; and
- (e) Costs of this action.

On or about the 14<sup>th</sup> of May, 2017 the Claimants took out a summons for leave to enter a judgment in default of notice of intention to defend and defence. After several adjournments, the said summons was ultimately heard on the 7<sup>th</sup> of November, 2017. The Court proceeded to deliver its Ruling on the application soon thereafter. It is worthy of note that this application was heard, interparties.

Then on or about the 20<sup>th</sup> of November, 2017 the Claimants filed a formal default judgment against the Defendants for all the above stated claims. The same was issued by the Court on the 23<sup>rd</sup> of November, 2017. The Claimants then on the 19<sup>th</sup> of June, 2018 applied for an order for directions and fixation of time on how and when the parties must exchange accounts and within which the Defendants were to render an account to the Claimants, respectively. Before this application could be



heard by this Court, on the 14<sup>th</sup> of November, 2018 the parties executed a Consent Order for Directions which was endorsed by this Court on the 21<sup>st</sup> of February, 2019.

On or about the 2<sup>nd</sup> of August, 2019, the Claimants filed their accounts and interest calculations. However, in terms of the said consent order both the parties were required to file their respective accounts within 21 days from the date of the order, i.e. by the 14<sup>th</sup> of March, 2019.

Then on the 26<sup>th</sup> of September, 2019 the 1<sup>st</sup> Defendant made an application without notice seeking an interim order staying the execution of the default judgment herein pending the determination of an application for an order that the 1<sup>st</sup> Defendant be removed as a party to these proceedings. The order of stay pending the determination of the 1<sup>st</sup> Defendant's said application was granted by this Court on the 10<sup>th</sup> of October, 2019.

### **The position of the parties to these proceedings:-**

#### **First, the 1<sup>st</sup> Defendant's:**

It is the case of the 1<sup>st</sup> Defendant that it was a mere custodian of the funds claimed and that the said funds have been released by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants who were at all material times the duly appointed officers of the Social Welfare Fund.

It is also the case of the 1<sup>st</sup> Defendant that the 1<sup>st</sup> Defendant has no role to play in the present proceedings having released all the funds to the Social Welfare Fund.

It is, in the premises, the prayer of the 1<sup>st</sup> Defendant that it be removed as a party to these proceedings since it has no liability in the claim by the Claimants, whatsoever.

#### **Secondly, the Claimants':**

It is the case of Claimants that prior to 2010, the Welfare Fund was running smoothly as the funds deducted from their dues were being released by the Welfare Fund and that the contents of Exhibits "AM1", and "AM2" to the sworn statement of **Alexander Mshali** do not thus form part and parcel of the dispute in these proceedings. However, from 2010 onwards, the 1<sup>st</sup> Defendant never allowed the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and ultimately the Claimants to access the funds. Exhibit TP1, an interdepartmental memorandum dated 16<sup>th</sup> of March, 2013 from the Director of Finance of the 1<sup>st</sup> Defendant to the Chief Executive Officer of the 1<sup>st</sup> Defendant has been exhibited to show how the funds were being disbursed.

It is the further case of the Claimants that the 1<sup>st</sup> Defendant had a duty to ensure that funds deducted through the payroll were not fraudulently abused by any of its employees.

It is thus the position of the Claimants that the 1<sup>st</sup> Defendant who was at all material times the custodian of the funds contributed by the Claimants is so pivotal to the

resolution of the dispute in these proceedings in that it has a record of the trail of the monies deducted from their dues.

It is, in the premises, the prayer of the Claimants that the 1<sup>st</sup> Defendant's application herein be dismissed with costs for being frivolous, vexatious and an abuse of the court process.

**Issue for Determination:**

Whether or not the 1<sup>st</sup> Defendant should be removed as a party to these proceedings.

**Determination:**

In the determination of this application the following facts are not in dispute: (i) that the 1<sup>st</sup> Defendant has at all material times been a party to these proceedings, (ii) that the 1<sup>st</sup> Defendant defaulted in the filing of an acknowledgment of service and the filing and service of the Defence, (iii) that the 1<sup>st</sup> Defendant was a party to the interparties application for judgment when after the hearing of both the parties a default judgment was recorded, (iv) that the 1<sup>st</sup> Defendant is also a party to the Consent Order for Directions dated the 21<sup>st</sup> of February, 2019 and (v) that both the said judgment and the said Consent Order for Directions remain in force.

Now, regard being had to the above stated facts under what law would any reasonable tribunal allow the 1<sup>st</sup> Defendant to be removed as a party to these proceedings?

The 1<sup>st</sup> Defendant has cited Order 6 Rule 8 of the Courts (High Court) (Civil Procedure) Rules 2017 ("the CPR") as giving this Court power to order the removal of the 1<sup>st</sup> Defendant as a party to these proceedings. It may here be necessary to reproduce the said provision as follows:

*"The Court may, on application by a party, order that a party in a proceeding is no longer a party wherein:-*

- (a) the person's presence is not necessary to enable the Court to make a decision fairly and effectively in the proceeding; or*
- (b) there is no good and sufficient reason for the person to continue being a party."*

With due respect to the 1<sup>st</sup> Defendant, it is clear from the wording of the said Rule that the removal of a party to the proceedings provided for therein is for the proper or necessary determination of the proceedings and not otherwise. As a matter of fact the wording of the said Rule envisages the removal of a party before the proceedings are determined, not thereafter.

Now, since in these proceedings a judgment dated the 23<sup>rd</sup> of November, 2017 has already been entered by the Court the proceedings are thus already determined. The 1<sup>st</sup> Defendant's reliance on Order 6 Rule 8 of the CPR is thus misplaced.

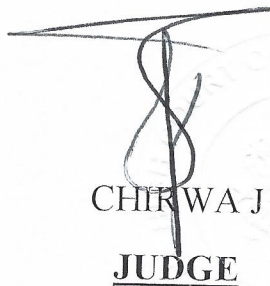


And regard being had to the facts obtaining herein, in particular to the default judgment and the Consent Order for Directions which are both still subsisting on the Court Record, this Court thus finds no basis for ordering the removal of the 1<sup>st</sup> Defendant as a party to these proceedings. It is the fortified view of this Court that the 1<sup>st</sup> Defendant is bound to comply with terms of both the said judgment and the said Consent Order for Directions. Thus, even if the 1<sup>st</sup> Defendant had been wrongly joined as a party to these proceedings it would be unjust to order the removal of the 1<sup>st</sup> Defendant as a party at this stage. This Court thus finds the 1<sup>st</sup> Defendant's application herein to be misconceived.

**Conclusion:**

In conclusion, this Court has no option but to dismiss the 1<sup>st</sup> Defendant's application with costs to the Claimants. It is so ordered.

Dated this 9<sup>th</sup> day of January, 2020.



CHIRWA J  
JUDGE