



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO: 461 OF 2011

BETWEEN:

PERFECTO PEST CONTROL LIMITED.....CLAIMANT

AND

BLUE FINANCIAL SERVICES LIMITED.....RESPONDENT

CORUM : JUSTICE RUTH M. CHINANGWA

Salima Counsel for Claimants

Absent Unrepresented

Nyirenda Court Clerk

RULING

The plaintiff in this matter claims damages for loss of business; interest at bank lending rate on the damages for loss of business and costs of the action. The matter was scheduled for hearing at which the respondent was absent. Prior to the matter being set down for trial, the respondent was legally represented. On application of Counsel for respondents, they were withdrawn from representing the respondents for lack of further instructions to represent them at trial. This meant the respondents had to be personally served. The claimants argued that they had served the respondents through email on an address obtained on their website as deposed in the affidavit of service filed by the claimant's counsel. The question arising is whether the mode and manner of service was appropriate to allow the court proceed with hearing and entering judgement in the absence of the respondent: **Order 16 rule 7 (1c) and (3) of the Court (High Court) (Civil Procedure) Rules 2017?**

Order 8 rule 18 (a) of the Court (High Court) (Civil Procedure) Rules 2017 provides that service of documents on a body corporate shall be done in accordance with section 372 of the Companies Act. **Section 372 of the Companies Act** states as follows:

A document in any legal proceedings may be served on a company—

- (a) by delivery to a person named as a director of the company on the register of companies;*
 - (b) by delivery to an employee of the company at the company's head office or principal place of business;*
 - (c) by leaving it at the company's registered office or address for service;*
 - (d) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or*
 - (e) in accordance with an agreement made with the company.*
- (2) The methods of service specified in subsection (1) are, notwithstanding any other enactment, the only methods by which a document in legal proceedings may be served on a company in Malaŵi.*

Having in mind the above law, the claimant did not serve notice of hearing according to the law. If the claimant was to serve by email it had to be by agreement with the defendant company. No such agreement was presented before the court.

This matter is thus adjourned to a date to be fixed to allow the claimant to effect service as provided under section 372 of the Companies Act.

Pronounced this 8th day of February 2021 at LILONGWE



R.M CHINANGWA

JUDGE