

A handwritten signature in black ink, appearing to be "W. Mwanza".

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 721 OF 2020

BETWEEN:

ESTHER NASAWA

CLAIMANT

AND

DAVIES MATCHADO

1st DEFENDANT

REUNION INSURANCE COMPANY LIMITED

2nd DEFENDANT

CORAM: JUSTICE M.A. TEMBO,

S. Imaan, Counsel for the Claimant
A. Katuya, Counsel for the Defendants
Mankhambela, Official Court Interpreter

ORDER

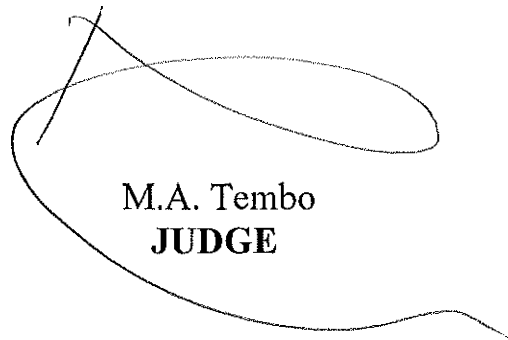
1. The defendant failed to attend a scheduled mediation session and consequently this Court struck out the defence as is provided in Order 13 Rule 6 (1)(a) of the Courts (High Court) (Civil Procedure) Rules and entered judgment for the claimant in her claim for damages on a claim alleging negligence on the part of the defence.
2. Subsequently, the defence took out a Notice to set aside the order striking out the defence. The claimant objected on a preliminary point to the manner of proceeding by way of the Notice.

3. This Court observes that, as correctly submitted by the claimant, the current Rules do not generally provide for making of an application by way of a Notice of application but rather for a Form for making an application which ought to be signed by the Court. See Order 10 Rule 1 Courts (High Court) (Civil Procedure) Rules and *Dr. Chilima and another v Professor Mutharika and another* Constitutional Reference number 1 of 2019 (25th July, 2019) at [16]. In that particular ruling, and a prior one of 21st June, 2019, a Notice of an application was treated as an irregularity and was cured in the circumstances under the Rules for reasons stated therein.
4. This Court's view is that an application must therefore follow the format provided in the Rules to ensure that matters are dealt with expeditiously without first having to grapple with the technicality of format of the application. An application will be signed and sealed by the Registrar and be signed by the applicant or counsel making the application. See Order 10 Rule 2 of the Courts (High Court) (Civil Procedure) Rules.
5. By now, numerous decisions have been made on this point and the point is no longer novel as was being suggested by the defence. The defence cannot therefore plead novelty as an excuse for failing to make the application following what is prescribed in the Rules.
6. The defence cannot also plead as an excuse the allegation that the prescribed Form does not provide where a Registrar is to sign and where the applicant or her counsel is supposed to sign. Rules are Rules and must be complied with. Where there is a variance between the Rule and the Form provided the Rule shall prevail. Counsel will do well to make sure the Form is submitted in a manner that conforms to the Rules. In any event, the applicant or her counsel must sign the application and on the other hand it matters not that in the prescribed Form the application is to be signed by the Judge in place of the Registrar since the former has unlimited original jurisdiction and can do whatever the latter can do under the Rules.
7. To ensure compliance with the Rules and to avert delays and achieve expedition which is one of the crucial objectives of the Rules in terms of Order 1 rule 5 (d) of the Courts (High Court) (Civil Procedure) Rules, this Court is of the view that applications by Notice must be abhorred since they are not provided for and must not be allowed. We must put a lid on time wastage

brought by always having to have that argument that a Notice is inept as in the present matter.

8. In the premises, the application by the defence by Notice herein is not allowed. The defence shall therefore make the relevant application following the format provided in the Rules, to restore its defence, under the relevant rule under Order 13 of the Courts (High Court) (Civil Procedure) Rules. The defence cannot make the application herein by referencing other rules excluding the one under Order 13 of the Courts (High Court) (Civil Procedure) Rules which is relevant herein. The application must be properly titled as 'Application to Restore Case' and as provided under Order 13 Rule 6 (2) of the Courts (High Court) (Civil Procedure) Rules.
9. The claimant shall get the costs on the failed Notice.

Made in chambers at Blantyre this 15th April 2021.



M.A. Tembo
JUDGE

