



HIGH COURT
LIBRARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

LAND CAUSE NUMBER 18 OF 2018

BETWEEN:

KONDWANI KAMANGA

CLAIMANT

AND

SNOWDEN MAGONJETSA

1st DEFENDANT

MRS SOLOMON

2nd DEFENDANT

MR CHAWEZA

3rd DEFENDANT

**REGISTERED TRUSTEES OF
ANTIOCHEA CHURCH**

4th DEFENDANT

CORAM: JUSTICE M.A. TEMBO

Mwala, Counsel for the Claimant
Tembo, Counsel for the 4th Defendant
Mankhambera, Official Court Interpreter

ORDER

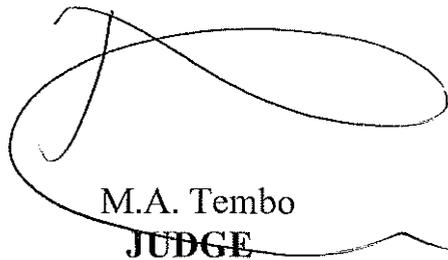
1. This is this Court's order on the 4th defendant's application to set aside a default judgment entered in favour of the claimant on the defendants' failure to file a defence in this matter. The application is taken out under Order 12 Rule 21 of the Courts (High Court) (Civil Procedure) Rules.

2. The claimant by a summons filed in 2018 sued the defendants in relation to a piece of land in Thyolo that the rest of the defendants sold to the 4th defendant. The claimant indicated that he had already bought the land from the rest of the defendants and that he was entitled to the said land as against the 4th defendant.
3. The claimant served the summons on a chief in the area where the land is located. Thereafter the claimant eventually obtained a default judgment in July, 2018 and an order enforcing the same in September 2020. It was only in October, 2021 that the 4th defendant managed to engage counsel to file the instant application after the claimant burnt down its church on the disputed land.
4. The main contention of the 4th defendant is that the default judgment must be set aside because the summons by which the claimant's case was commenced was never served on the 4th defendant.
5. The claimant contended on the contrary that the summons was duly served and that the 4th defendant has inordinately delayed in applying to set aside the default judgment and that therefore the 4th defendant's application must be declined.
6. This Court has considered Order 12 rule 21 (2) of the Courts (High Court) (Civil Procedure) Rules and observes that, as submitted by both parties, an application to set aside a default judgment ought to be made within three months of the judgment being entered, failing which reasons for further delay must be explained and the Court will set aside the default judgment only where it is satisfied that it is in the interests of justice to do so.
7. In the circumstances of this case, it is not disputed that the 4th defendant was never served with the summons. The summons was served on the chief of the area. It must be noted that a summons must be served personally unless otherwise ordered by the Court. See Order 8 rule 3 of the Courts (High Court) (Civil Procedure) Rules.
8. The claimant never served the summons herein personally. Rather he served on a chief of the area who is a third party. That was in contravention of the Rules. And this may account for the default by the 4th defendant in filing the defence to the claim which resulted in the default judgment.
9. Given the lack of service of the summons and all subsequent processes herein, this Court cannot give much weight to the claimant's contention that the 4th

defendant took inordinately long to apply to set aside the default judgment. It appears the 4th defendant only came to know of the claimant's case upon enforcement of the default judgment and even then the 4th defendant had to engage a lawyer and delayed a bit to get to this Court. The 4th defendant has satisfied this Court as to the cause of the delay in making the instant application and that it has a defence on the merits to the claimant's claim, as required by Order 21 rule 3 of the Courts (High Court) (Civil Procedure) Rules. The defence is that the 4th defendant duly acquired the land herein from the other defendants after carrying out due diligence on the same.

10. The default judgment is accordingly set aside as against the 4th defendant and the 4th defendant shall be at liberty to defend the claim.
11. The 4th defendant having already served its defence last month, this Court orders that service of the defence be dispensed with and that the matter proceeds to mediation.
12. In the foregoing circumstances, costs shall be for the 4th defendant since he never got served the summons according to the Rules.

Made in chambers at Blantyre this 22nd March, 2022.



M.A. Tembo
JUDGE

