

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL DIVISION**

**PERSONAL INJURY CAUSE NUMBER 1264 OF 2021**

**BETWEEN:**

**STONARD SHORT**

**CLAIMANT**

**AND**

**ELECTRICITY SUPPLY CORPORATION OF MALAWI DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO**

Chizimba, Counsel for the Claimant  
Nampota, Counsel for the Defendant  
Makhambera, Official Court Interpreter

**ORDER**

1. This is the order of this Court on the defendant's application for an order that the claimant's claim herein for damages for personal injuries be struck out for being frivolous, vexatious and abuse of the court process for having been commenced against a party which is a non-legal entity, in that the defendant herein is legally known as Electricity Supply Corporation of Malawi Limited but the claimant commenced this matter against Electricity Supply Corporation of Malawi. The claimant opposed the application.
2. The facts of this matter are that the claimant commenced this matter by filling his summons on 14<sup>th</sup> December, 2021. The same was served on the defendant who neither indicated its intention to contest the claim nor filed a defence. A default judgment was entered against the defendant on 14<sup>th</sup>

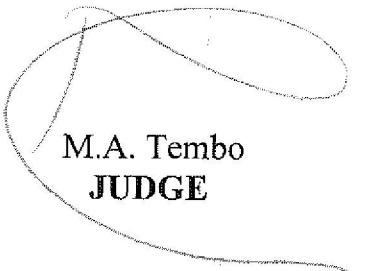
June 2022. Then, the matter came up for assessment of damages on 6<sup>th</sup> December, 2022 at which point the defendant then sought and was granted an order to stay the proceedings pending the present application or an application to set aside the default judgment. The defendant eventually settled for the present application.

3. Whilst the defendant accepted the claimant's contention that Electricity Supply Corporation of Malawi Limited is commonly well known as Electricity Supply Corporation of Malawi, it insisted that it remains a legal requirement that the instant matter ought to have been commenced against the legal entity Electricity Supply Corporation of Malawi Limited and not otherwise. The defendant relied on the views of the court in the case of *Muluzi and another v Malawi Electoral Commission* Constitutional case number 1 of 2009, in which the defendant was sued as Malawi Electoral Commission yet it is legally called Electoral Commission, and the court emphasized that the legal name of a party must be used in legal proceedings.
4. Whilst this Court agrees with the defendant's view that legal names be used when instituting legal proceedings, this Court has noted that in another case of *Maotcha Banda v Malawi Electoral Commission* Election case number 13 of 2019, Professor Kapindu J. indicated, correctly in the view of this Court, that the case against the defendant in the case of *Muluzi and another v Malawi Electoral Commission* Constitutional case number 1 of 2009 was dismissed on account of the wrong mode of commencement and that the views of the Court on legal naming of the defendant in that 2009 case were not the reason for the dismissal of that case against the Electoral Commission. Professor Kapindu J. determined the case before him of *Maotcha Banda v Malawi Electoral Commission* Election case number 13 of 2019 by ordering the amendment of the name of the defendant to be Electoral Commission as opposed to Malawi Electoral Commission as everyone knew who was being petitioned.
5. This Court similarly observes in the present matter that both counsel during oral argument conceded that the defendant in this matter is well known despite the fact that the claimant indicated the defendant as Electricity Supply Corporation of Malawi instead of Electricity Supply Corporation of Malawi Limited. In these circumstances, this Court will exercise its case management powers under Order 1 Rule 5 of the Courts (High Court) (Civil Procedure) Rules to deal with this matter justly by ordering that the

name of the defendant be accordingly amended to read Electricity Supply Corporation of Malawi Limited which the claimant intended to sue all along and who is well known to the parties as the intended defendant in this matter.

6. The other argument made by the claimant against the present application, to which the defendant never responded, was that this Court cannot strike out the claim herein after judgment was already entered against the defendant because the cause of action herein merged with the judgment after the judgment was entered. The claimant alluded to the case of *Daniel Terry v BC Corporation Acceptance Limited* [2018] EWCA Civ 2422 where it was held that a court has no jurisdiction to strike out a claim after judgment because the claim will have merged in the judgment and the rights of the claimant are essentially to enforce the judgment. This Court is persuaded by the reasoning in the foregoing authority and holds similarly here that a defendant cannot come to strike out a claim after a judgment is entered. Rather, the defendant should consider applying to set aside the default judgment for relevant reasons.
7. In the foregoing premises, without looking at the other procedural irregularities alleged by the claimant against the present application which this Court would have considered effectual, this Court is compelled to decline the present application. The stay order granted herein therefore lapses and the claimant shall proceed accordingly to assess the damages before the Registrar.
8. Costs are for the claimant.

Made in chambers at Blantyre this 22<sup>nd</sup> May, 2023.



M.A. Tembo  
**JUDGE**