



IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
COMMERCIAL CAUSE NO. 316 OF 2018
(Before Honourable Justice Msungama)

BETWEEN

ENERGEM PETROLEUM LIMITED.....CLAIMANT

AND

GENERAL ALLIANCE INSURANCE COMPANY LIMITED.....DEFENDANT

CORAM: E. M. Zidule : Assistant Registrar
A. Kapoto : Counsel for the Petitioner
P. Mpaka : Counsel for the Respondent
B. Ntonya : Court Clerk

RULING

Background

By an order dated 26th November, 2021, the Defendant was awarded the sum of MK6,963,240.00 as party and party costs. On 28th February, 2023, the Claimant obtained an Order for stay of enforcement of the Order on assessment of costs, dated 26th November, 2021, pending hearing and determination of its application for review of the said Order. A perusal of the court record indicates that Claimant's application for review of assessment of costs was filed on 9th December, 2021 and that the same was scheduled for hearing on 1st February, 2022. However, the application was not heard by the Court on the said date. On 3rd August, 2022, the Supreme Court of Appeal delivered a ruling dismissing Claimant's motion for leave for enlargement of time within which to appeal and for leave to appeal.

The Claimant filed a notice of adjournment and the court scheduled hearing of the application on 3rd August, 2023. However, the application was not heard on the scheduled date. On 13th August, 2023, the Defendant filed an application for an order setting aside an order staying the enforcement of an assessment of costs order. The said application was supported by a sworn statement and skeleton arguments. The Claimant filed a sworn statement in opposition and prayed for an order dismissing Defendant's application with costs.

Issue

Whether or not the Court should set aside the Order staying enforcement/execution of an order on assessment of costs pending review.

Finding

The Defendant is an Insurance Company as such there is no doubt that it can easily repay the money should the court reduce the amount payable as costs upon review of the order on assessment of costs dated 26th November, 2021. Upon considering that it has been over 2 years since the court delivered the order on assessment of costs and also considering that the application has not yet been heard by the Court since the Claimant did not take a step to ensure that the application is heard after the adjournment on 3rd August, 2023, the court finds it proper that the order staying enforcement of the order on assessment of costs dated 26th November, 2021 be set aside. The court, therefore, makes a final Third Party Debt Order against the 2nd Third Party, namely, Ecobank Malawi Limited for the sum of MK6,963,240.00.

Costs occasioned by this application have been awarded to the Defendant.

Any aggrieved party is at liberty to appeal against the decision of this court within 14 days from the date hereof.

Delivered in Chambers this 4th day of January, 2024 at High Court Commercial Division,

Blantyre Registry.



E.M. Zidule

Assistant Registrar