

IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO. 193 OF 1993

BETWEEN:

LILONGWE CITY COUNCIL PLAINTIFF

and

S.H. MAHOMED t/a PRICE SLASHERS DEFENDANT

Coram: Jane Mayemu Ansah (Mrs); Acting Deputy Registrar
Mvundula; of Counsel for the Plaintiff
Gonaulinji; of Counsel for the Defendant.

R U L I N G

This is the defendant's summons to set aside judgement. It is duly supported by an affidavit. The application to set aside judgement is based on the defendant's claim that he has a defence on the merits against the plaintiff's case.

Mr Gonaulinji, counsel for the defendant has given an explanation for the defendant's delay in filing a notice of intention to defend the case. He has said that service was effected by post. The envelope was addressed to the defendant's personally. The envelope reached the registered office in the absence of the defendant. He had gone to Europe on business. Mr Gonaulinji further states that the defendant has a good defence therefore the default judgement be set aside.

The application is strongly opposed by the plaintiff. Mr Mvundula has submitted that the defendant has lied in his explanation for the delay. The defendant has said that the summons was served by post whereas it was personal service and the defendant was within the country. I have gone through all the documents on the file and I find no affidavit of service. In the absence of the affidavit of service there is nothing I can say regarding the fact that the defendant lied or not. I therefore accept the defendant's contention that the time the summons reached his office he was out of the country.

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The defendant's affidavit shows that there are triable issues. I therefore set aside judgement and stay execution of the warrant of execution. The defendant is to pay Sheriff fees if any, and to serve his defence on the plaintiff within 7 days from today's date.

PRONOUNCED in court this ^{3rd}..... Day of ^{Feb}..... 1991.



Jane Mayemu Ansah (Mrs)
ACTING DEPUTY REGISTRAR