



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

**CIVIL CAUSE NO.2015 OF 2006**

BETWEEN:

CATHERINE BUNYA MISANJO..... JUDGMENT CREDITOR

AND

HON. BINTON KUNTSAILA.....JUDGMENT DEBTOR

CORAM: Hon. Justice Kamwambe

Mr. Kalanda,

Counsel for the judgment Creditor

Mr. Kasambara

Counsel for the judgment debtor

Mr. Chuma

Official Interpreter

**RULING**

Kamwambe J

Counsel for the judgment debtor raised preliminary issues. Firstly he said that there are two summons to be heard today at the instance of the judgment creditor. The first one is in respect of fixing time within which to comply with the consent order. The second one is to an application to commit the judgment debtor to prison.

Counsel for the judgment debtor showed his discontentment in respect of the first summons because the copy of summons served on him was not signed by the Registrar and that therefore under section 3(1)(a) of the Courts Act it is a nullity. The use of the word “**shall**” in the section makes it mandatory that all summons made by the High Court be signed by the Registrar. This should be followed strictly and any default shall not be

construed as a mere irregularity which can easily be rectified under **O.2r.1 RSC. O.2r.1** in this respect shall not supercede a specific legislation of the country. So, even if the Court copy was duly signed, Counsel for the judgment debtor should have made certain that all copies of summons are so signed by the Registrar. By the time Court reconvenes again this default should be seen to have been rectified since indeed the irregularity has the capacity of making the summons a nullity. The language of section 3 of the Courts Act does not imply that there is no irregularity so long as the court's copy is signed. Otherwise, all must be signed by the Registrar.

As regards the second summons to commit the judgment debtor to prison counsel for the judgment debtor argues that the summons are frivolous, vexatious and an abuse of the court system and that it ought to be struck out under the inherent jurisdiction of the court. He argues that the applicant/judgment creditor already obtained an order of the court allowing him to sell debtor's landed property at Mitundu in Lilongwe after 14 days of the signing of that order. He feels this is being over litigious.

Counsel for the judgment creditor contends that one can enforce judgment herein by using a number of modes as prescribed simultaneously. He says that the judgment creditor has not even acted yet on the order issued and therefore we cannot talk of abuse of system yet. He agrees that there is no need for order of sequestration.

The order requires the judgment debtor to pay the judgment debt within 14 days. The background of all this is nothing other than the consent order. Through this consent order the judgment debtor held himself as a person capable of paying the judgment debt in the manner agreed. S16 (2) of the Courts Act would not apply in this case because the judgment debtor had demonstrated on his own that he is a man of means. Otherwise he would have applied to this court to pay the debt by installments. Committal arises upon a default in payment of any debt or installment of any debt due from him in pursuance of any order or judgment of a Court. On the pretext that default did take place as evidenced by non compliance with the consent order, indeed the judgment debtor may be committed to prison despite a further court order that he pays within 14 days or else that his house

should be sold thereafter. In this regard I am reluctant to strike out the summons to commit the judgment debtor to prison as this means of expectation is available and does not conflict with the latter order to pay within 14 days which is merely extending to the judgment debtor time opportunity within which to pay. The discretion shall be in the court whether to commit him to prison or wait for a further default. The remedy of executing against the house arises because there is default in payment, and therefore can nevertheless be used especially if the judgment debt is not extinguished. As I said before I decline to strike out the summons for committal to prison.

The issue of ascertainment of financial means of the judgment debtor has been touched upon and I do not think I can buy this argument because I believe the assessment of means is done when a JDS is being heard. The consent order as to payment pre-empted need for ascertainment of means. But I should add that this being a judgment debt and not a contractual debt does not become unconstitutional by virtue of section 19(3) of the Republican Constitution.

I order that the substantive matters be heard on the 18<sup>th</sup> October, 2007 at 8.30 am before a Chamber Judge.

Made in Chambers the 15<sup>th</sup> day of October, 2007 at Blantyre.



M.L. Kamwambe

**JUDGE**