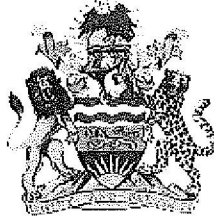
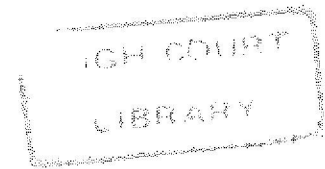


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IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

LAND CASE NUMBER 1118 OF 2021

BETWEEN

ATUMALEJE BITI WILLIAM

CLAIMANT

AND

ROSE KAZEMBE AND 2 OTHERS

DEFENDANTS

Before Justice Jack N'riva

Mr Mwala and Mr Ngunga for the claimant

Mr Chidothe for the defendant

Mrs Nkangala, Court Clerk

#### Ruling

The claimant commenced this action and obtained an interim injunction against the defendants without notice. This court ordered that the claimant should file a notice for continuation of injunction within seven days. It is stated that the claimant did not comply with the condition of the order of the Court namely to file notice of the continuation of the order in the matter. The defendants went on to file a certificate of non compliance.

This application is by the claimant for the Court to set aside the certificate of non-compliance. The claimants argue that they complied with the order and filed the notice within the time ordered by the Court. The argument is that the

documents were filed but counsel was of the view that they might have been misplaced.

The other argument given by the defendants is that the claimants did not file originating summons in this matter. However, the claimant also argued that the record contains the originating summons dated the same day as the application of the interim injunction. They was an argument that the Court might not have attended to the originating process.

The defendants doubted that authenticity of the documents.

The further argument from the claimant is that the defendants did not apply for this certificate for compliance as required by the rules. To this, the defendants argued that that issue is not addressed in the sworn statement. In reply, counsel for the claimant argued that this is a requirement of law and that it is not a factual issue to be put in a sworn statement. Counsel, therefore, argued that the certificate of non-compliance was irregular and of no effect. The defendants argued that what they were saying was that the Court made a note on the file that the claimants did not comply with the order of the injunction. Counsel argued that the claimants just relied on the injunction when they were staying idle in the matter.

The defendants want the Court to discharge the order of the injunction. The defendants argued that they did not file a notice to discharge the order because they noted that the claimants did not file a notice to proceed with the order.

Counsel argued that in case the Court allows the claimant's application, costs should be awarded to the defendants because the claimant was not vigilant in ensuring that the documents have been attended to by the Court. The Claimant opposed to the issue of costs arguing that the problems in the matter were not of their making.

The issue is whether or not to set aside the order of noncompliance.

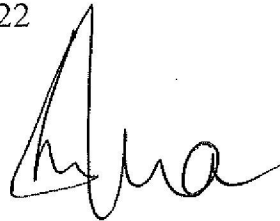
It seems to me that the issue is quite contentious and that it cannot be resolved by referring to the sworn statements since the issues arising are quite contentious. I will give the claimant a benefit of doubt and assume that she filed the document on time.

As to the certificate of noncompliance, I agree that it is a question of law that it has to be applied for according to the rules.

On this ground I set aside the certificate of noncompliance. The matter will be set down to consider whether to continue the order or vacate it.

I make no order of costs at this point.

MADE this 4<sup>th</sup> day of September, 2022

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA

JUDGE