

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO 725 OF 2004**

BETWEEN :

CHIZASO ERIC NYIRONGO.....JUDGMENT CREDITOR

-and-

**SOCIETY FOR THE ADVANCEMENT OF
WOMEN.....JUDGMENT CREDITOR**

-and-

FIRST MERCHANT BANK GARNISHEE

CORAM :K.T. MANDA; SENIOR DEPUTY REGISTRAR

NYIRONGO; For Judgment Creditor
CHINOKO; For Judgment Debtor

R U L I N G

This was a prayer by Mr Nyirongo counsel of Garnishee Order Nisi for the payment of this sum of K283, 766.02 be made absolute.

At the hearing there was no representation on behalf of the Garnishee, hence there was no dispute regarding the Garnishee's liability to the Judgment Debtor. However, there was

representation from the Judgment Debtor, who sought to oppose the prayer that the order nisi should be made absolute. It was Mr Chinoko's submission that the Order Nisi was obtained prematurely and was thus irregular. On this note, Counsel referred to Section 37 of the Solicitors Act of 1843 as well as Section 3 of the Legal Education & Legal Practitioners Act of 1977. These provisions essentially provide that no action shall be brought to recover costs due to solicitor until one month after a bill has been delivered.

The second ground that was raised by Mr Chinoko for opposing the prayer was there was an appeal against the Assistant Registrar's decision to award Summary Judgment to the plaintiff. On this note I must state, however that I did have the occasion to go through the grounds of appeal that were filed by the judgment debtor and I must say that I do agree with Mr Nyirongo that the appeal was not against the whole of the Assistant Registrar's ruling. In particular, there was no appeal against the costs that were awarded to the judgment creditor. In any case an appeal shall not operate a stay of execution of a court order. Indeed Order 18 r 1 (4) is in point.

Having made the above observations I will now turn to the issue as to whether the order nisi was irregularly obtained. Upon going through the provisions cited by Mr Chinoko, I

did note that the same refers to a bill of costs and not an order on taxation. Indeed from this wording it is quite clear that the Sections do not apply to this instance. This is more so when we consider the fact that with an Order on taxation there is no requirement that it must be delivered to a solicitor for a month before any action is taken on the same. Indeed the next step where a court order is concerned would be to have the same enforced. Obtaining a Garnishee Order Nisi would be one way of enforcing that order, so in my view it cannot be said that the Order Nisi was irregularly obtained.

It is therefore in view of this and also in view of the fact that there is no stay of execution of the Order on taxation, That I proceed to grant the judgment creditor's prayer and order that the Garnishee Order Nisi of 31/5/2005 be made absolute. Order accordingly.

Made in Chambers this 5th day of July, 2005
at Lilongwe.

K.T. Manda
SENIOR DEPUTY REGISTRAR