

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NO. 779 OF 2006**

**BETWEEN:**

Y. B. Matumula.....PLAINTIFF

- and -

STANBIC BANK.....DEFENDANT

**CORAM: CHIMASULA PHIRI J,**

Chisale of the counsel for the plaintiff.....absent

Msusa of counsel for the defendant.....present

Mr Mdala, official interpreter

**ORDER**

This is a commercial transaction dispute and as a matter of practice there should be no adjournments granted in such matters except in exceptional circumstances and the present circumstances would not qualify for such adjournment.

I am not keen to adjourn this matter. After all the matter was squeezed in because it failed to proceed on 10th April 2006. Counsel for the plaintiff should have given brief to his colleague to proceed with the application. After all this is not a unique application and as such despite the parties accommodating each other for such adjournment, I refuse to adjourn the matter and I am ready to hear counsel.

## **FURTHER ORDER**

Having heard counsel's submission and also upon consideration of the process filed herein I am convinced that the plaintiff did not make a full disclosure to the court at the time he obtained an *ex parte* injunction order. It is very clear that the plaintiff obtained an overdraft from the defendant and pledged his properties as security. It is clear that the plaintiff has defaulted on that overdraft and arrears plus interest have accumulated. It is clear that the defendant made a demand for repayment giving the plaintiff 120 days. The plaintiff has failed to pay. The defendant intends to recover the overdraft through the sale of the landed properties which were pledged as security. This is a right which the defendant has both under the law and the contract. The question which arises is what right does the plaintiff intend to protect and preserve by the injunction order? Unfortunately none except his equitable right to any money in excess of the debt.

The plaintiff came to the court without making a full and frank disclosure. It is clear from the affidavit in opposition that there are three transactions which are unrelated and yet the plaintiff would like this court to believe that the other two transactions are related to the claim which the defendant is making. I find as a fact that the plaintiff misled the court in obtaining the interlocutory injunction order. It is hereby discharged and the application for interlocutory injunction order on *inter partes* is hereby dismissed with costs to the defendant. Let me mention that at times counsel tend to relax after obtaining an interim injunction order and they remove their heart from the matter. I condemn such behaviour and it must be very clear that courts will not condone relaxation or tactics of buying time.

**MADE** in chambers this 13th day of April 2006 at Blantyre.

Chimasula Phiri

**JUDGE**